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June 18, 2024

Ms. Debra Buie Decker
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

RE: Comments on Proposed Changes to FDIC Statement of Policy (SOP) on Bank Merger Transactions (Proposed SOP), Comments-RIN: 3064-ZA31

Dear Ms. Decker:

The members of the Community Development Bankers Association respectfully submit the following comments in response to the FDIC's April 19, 2024 proposed changes to the FDIC Statement of Policy (SOP) on Bank Merger Transactions (Proposed SOP).

CDBA is the national trade association of banks and thrifts with a primary mission of promoting community development. The majority of our members are US Treasury-designated Community Development Financial Institutions (CDFIs). This means that they have a primary mission of promoting community development and target at least 60% of their total lending and activities to Low- and Moderate-Income (LMI) communities and customers that are underserved by traditional financial service providers. Many of our members are also Minority Depository Institutions (MDIs). CDBA members serve our nation's most distressed and credit-starved communities and are engines of economic inclusion throughout the United States.

Nationally, there are 196 CDFI certified banks representing total assets of approximately $124 billion dollars. Individually, community development banks are overwhelmingly "small" banks. In Q1 2024, the average asset size of a CDFI bank was $631 million, with the smallest bank $26 million in assets, and the largest $7.9 billion in assets.

General Comments

CDBA supports the stated focus on community needs and convenience in the proposed "Policy on Bank Merger Transactions." We especially value consideration of the impact of branch closings on credit access in LMI areas. We are grateful for the opportunity to submit comments on how the merger process can be improved to support the work of community development banks and meet the needs of LMI communities they serve.

Principles for the Merger Policy

Any changes to the merger policy should ensure that the final SOPs support the work and independence of smaller, mission-driven banks that foster economic opportunity in urban, rural, minority, Native, and high-poverty communities.

Establish an Interagency Framework: The bank regulatory landscape is complex. Bank mergers often require the approval of multiple agencies. Therefore, we believe that changes to bank merger policy should be conducted on an interagency basis. Multiple sets of merger guidelines make the already complicated process of reviewing bank mergers even more difficult. Unfortunately, this complexity may deter mergers between smaller institutions that would otherwise lead to stronger community banks that are better able to meet the compliance and technology demands all banks face. Recently, both the OCC and FDIC proposed bank merger frameworks for public comment, while the Federal Reserve Board is not proposing an update that we know of at this time. We strongly urge the FDIC to work with the other national prudential regulators to create a unified framework.

Ensure a Balanced Framework for Small Banks in Underserved Markets: The SOPs should not unduly obstruct bank mergers between small banks already operating in underserved markets. The SOPs should also not create artificial advantages for out-of-market large banks seeking to consolidate small banks and monopolize those markets.

These goals can be supported in a number of ways. First, the SOPs should include a streamlined application and expedited review for transactions between small banks that do not raise significant supervisory or financial stability concerns and where no adverse public comments have been filed. The proposed SOP does not include metrics or benchmarks to establish such a process, but we urge the FDIC to consider this. Specifically, the FDIC should consider a *de minimis* exception for mergers where both institutions are very small (i.e. below $1 billion in assets). Certainly, mergers where the resulting institution is below $10 billion in assets should be deemed as not posing a risk to financial stability.

Further, we join colleagues concerned that the configuration of the Herfindahl–Hirschman Index (HHI) calculations can unduly favor large bank acquisitions over small bank mergers. The FDIC should consider that in small, underserved markets, there are frequently fewer financial institutions. For example, the current configuration of the HHI might lead agencies to conclude that a merger between two small banks in a small, underserved market poses an anticompetitive risk because two small in-market banks would join to become one. However, the review might not flag a potentially anti-competitive acquisition where a large bank from outside the market purchases a small bank in a rural market, because two banks would still be operating in that market. While the large bank acquisition might eventually be appropriately approved, the HHI should not provide an unfair advantage to the large bank acquisition over the small bank merger

Add Specificity to Increase Transparency: We commend the FDIC for addressing how bank merger applications "take into consideration . . . the convenience and needs of the community to be served." It is essential to understand how mergers affecting LMI and minority communities might result in *better* service than would occur absent the merger. However, we must urge the FDIC to ensure this analysis is transparent, objective and consistently applied. Unfortunately, the current proposal lacks specificity, and appears to grant the FDIC a high level of discretion. This discretion is evident in language such as "will be closely evaluated," "generally result" and "may not necessarily be sufficient." This suggests the FDIC is planning an opaque process that will lead to uncertainty and confusion.

In contrast, the FDIC should be specific about its criteria and standards, particularly to the extent the FDIC evaluates a bank's forward-looking information for the purposes of evaluating a merger's effects on LMI, minority, rural and other underserved communities. For example, entities that are certified as Community Development Financial Institutions have demonstrated conclusively, through a rigorous certification process and ongoing reporting, that they have a strong, historic record of serving LMI and underserved communities. But it is not clear how the FDIC would evaluate a merger involving one or

more CDFI banks.

This is especially true given the FDIC's intention to "also consider the impact of branch closings or consolidations, particularly on low- and moderate-income neighborhoods or designated areas." While we agree this information should be known, understood and evaluated, the standards for evaluation must also be clear and transparent.

For example, when community development banks with overlapping branch footprints merge, it may be possible to consolidate branches that are close to one another without meaningfully reducing the accessibility of branch banking for consumers. Given the increased ability to serve customers locally and around the country through digital channels, the FDIC should not penalize community development banks for adopting tools that ensue their competitiveness and ability to serve customers.

Incorporate Information on Nonbank Financial Institutions: We commend the FDIC for confirming that the SOPS will consider "the influence of (non-bank) entities" such as "credit unions, fintech firms, Farm Credit System institutions and other online entities" in the competitive analysis.

In underserved areas, community development banks provide essential financial services but face significant competition from non-bank entities. In the words of former FDIC Chairman Sheila Bair and Vice Chairman Thomas Hoenig: "Failure to consider these nonbanks in assessing the competitive effects of an acquisition could impede M&A among smaller local banks while permitting acquisitions by larger banks outside of the community."[1] This would be a dire anticompetitive result.

Conclusion

We sincerely appreciate the opportunity to comment on this important issue. Please feel free to contact Brian Blake, Chief Public Policy Officer, at (202) 689-8935 ext. 225 or blakeb@pcgloanfund.org, if you have any questions about the positions stated in this letter.

Sincerely,

Brian Blake
Chief Public Policy Officer

[1] Letter submitted by Sheila Bair, Former Chairman, FDIC, and Thomas Hoenig, Former Vice Chair, FDIC, to the FDIC, dated June 7; www.fdic.gov/resources/regulations/federal-register-publications/2024/2024-proposed-policy-on-bank-merger-transactions-3064-za31.html