Statement for the Record

On Behalf of the

American Bankers Association

before the

Financial Institutions Subcommittee

of the

House Financial Services Committee

May 14, 2025

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The American Bankers Association (ABA) appreciates the opportunity to provide a Statement for the Record for this hearing, "Enhancing Competition: Shaping the Future of Bank Mergers and De Novo Formation." ABA is the voice of the nation's $24.1 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2.1 million people, safeguard $19.2 trillion in deposits and extend $12.7 trillion in loans.

Updating Bank Merger Rules and Eliminating Impediments to the Formation of De Novo Banks Is Needed

ABA strongly supports the Subcommittee's examination of the regulatory landscape surrounding bank mergers and de novo bank formation. It is clear that overly narrow supervisory standards, inconsistent approval timelines and other regulatory impediments are limiting new bank formation and leading to further consolidation in the financial sector.

In particular, regulatory guidelines for reviewing bank merger applications largely date from 1995 and do not reflect profound changes in the financial services landscape since then. In the intervening years, the market for financial products and services has seen the rise of availability and use of online banking, the interstate expansion of bank branch networks, the enhanced market access made possible by advertising and communication innovations, and the growing market presence of nonbank financial firms, including "fintechs," credit unions, and Farm Credit System institutions.

Updating the bank merger guidelines is important to the health of the U.S. financial system and economy. For example, banks are facing increased pressure to maintain investments in technology (for improved customer service and cybersecurity) and in compliance infrastructure. Some banks may find that a merger and related economies of scale are the most efficient way to meet these needs. However, a narrow, outdated view of competition is both unreasonably restrictive and likely to cause irrational outcomes. For example, if two community banks have all or most of the branches in their geographic market, they likely cannot merge because, under current standards, the merger would appear to cause excessive market concentration. In this instance, the regulators sometimes fail to consider additional competition from credit unions and other nonbank competitors or from online service delivery by firms that have no local branches. In contrast, if a community bank is willing to combine with a larger multistate bank that has no presence yet in that market, that transaction could be approved because it would be viewed as leaving two viable competitors in the local market.

Bank Merger Rules Assess Competition Too Narrowly

Today, the competitive analysis required for approval of a bank merger looks at whether the proposed transaction (1) would result in a monopoly in any U.S. market, or (2) would substantially lessen competition, unless those anticompetitive effects are clearly outweighed by benefits to community convenience and needs.

Yet, despite the increased and diversified competition since 1995, government agencies often assess competition very narrowly. Competition in geographic banking markets (defined by the Federal Reserve) is normally measured solely by comparing deposit market shares, which essentially treats deposits as a proxy for all banking services. Moreover, deposit market shares are determined primarily by reference to physical branches located in that geographic market.

If the projected combined branch deposit market shares of two banks that intend to merge exceed certain mathematical thresholds, the merger will likely be rejected as damaging overall competition. On the other hand, it could be approved only if the banks make major changes to their footprints, e.g., by divesting branches. Although banks sometimes are able to present limited evidence of broader competition, the regulatory review normally does not take account of nonbank competition or of competition from other banks reaching customers online, without a branch presence in the relevant market.

The Federal banking agencies also consider other factors in reviewing bank merger applications, such as managerial resources, capital, liquidity, supervisory track records, and anti-money-laundering compliance. But two required factors are often weighted very heavily: the institutions' record of Community Reinvestment Act compliance and the effect of the proposed transaction on U.S. financial stability.

OCC and FDIC Regulatory Changes

In 2024 the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) adopted statements of policy updating their approaches to assessing bank mergers. The ABA submitted extensive comments on the OCC's proposed rule, but instead of making needed changes to the process, the final rule and accompanying policy statement created unhelpful new standards that lack transparency and necessary predictability and that are biased against many mergers. Among the several flaws, the new policy statement uses an arbitrary size factor that is very likely to result in an automatic disapproval of certain mergers. This arbitrary standard is not warranted by law and is inconsistent with Congressional intent in enacting the Bank Merger Act.

Moreover, the final rule eliminated a streamlined review process that had been in place for many years for merger applications, such as internal corporate reorganizations, which do not present any legal or policy concerns under the Bank Merger Act. Although the final rule and policy statement emphasized the importance of analyzing a proposed merger's impact on financial stability, the OCC ignored detailed criteria for assessing systemic risk already developed by the regulatory agencies. Finally, it is unclear what factors the OCC will weigh for and against approval of an application.

The FDIC has announced that it is withdrawing the 2024 policy statement and will propose an updated one in the future. Notwithstanding the OCC's recent rescission of its policy statement, the ABA supports Congressional Review Act resolutions in both the House and Senate to overturn the OCC's actions. The Senate has already passed S.J. Res. 13, and the Committee has noticed Chairman Barr's companion measure, H.J. Res. 92, for this hearing.

ABA Recommendations for Congress and the Regulators

ABA provided our recommendations for updating the current merger rules in its statement for the record for the Subcommittees' May 1, 2024, hearing: "Merger Policies of the Federal Banking Agencies."[1] In our view, Congress and the regulators must ensure that banks that decide to combine have clear standards for how proposed mergers will be evaluated, that regulators' decisions will be made promptly, and that the approval process will not reflect a bias against mergers. Otherwise, banking services to communities that could best be preserved or enhanced by a merger may be constrained and even endangered.

In particular, it is important that Congress ensure that the banking agencies and the Department of Justice update the standards governing depository institution merger transactions. They should conduct a more comprehensive analysis of competitive factors, beyond just deposit share based on physical branches. This will provide a more accurate picture of products and services available to customers and promote a healthy market and economy. A more granular and risk-sensitive approach to financial stability impact assessment will not only rationalize the merger review process but will also promote a better general understanding of this critical topic. The agencies have begun rethinking these competitive standards, but much work remains, and until it is complete, the banking industry faces uncertainty that is dangerous to the nation's economic health.

Legislation Noticed for the May 14 Subcommittee Hearing

The Subcommittee noticed several bills for this hearing that are intended to improve transparency and efficiency in the bank merger review process, update the framework for new bank entrants, and promote a more competitive and accessible banking landscape. ABA supports the following bills:

<u>H.J. Res. 92</u>, Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Office of the Comptroller of the Currency of the Department of the Treasury relating to the review of applications under the Bank Merger Act, would repeal the OCC's final rule governing mergers mentioned above.

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[1] See, https://www.aba.com/advocacy/policy-analysis/aba-sfr-merger-policy

The Bank Failure Prevention Act requires the Federal Reserve, FDIC and OCC to decide on merger applications within 90 days and is intended to restore transparency and timeliness in the merger application process.

The Financial Institution Regulatory Tailoring Enhancement Act would raise the asset threshold from $10 billion to $50 billion for applicability of certain regulations, including CFPB supervision, the Volcker Rule, qualified mortgage standards, and certain leverage and risk-based capital requirements. While ABA has long expressed concerns about arbitrary asset thresholds, if they are to be used, they must be adjusted or indexed to ensure they keep up with the growth in the banking industry. Organic bank growth and consolidation driven by heavy regulatory burdens triggered by asset size have rendered the $10 billion asset level and other Dodd Frank thresholds even less meaningful. The ABA supports regulatory tailoring, including by increasing these asset levels. In addition to these reforms, the ABA believes that the harmful Durbin amendment to the Dodd-Frank Act should be repealed. Debit interchange caps and routing mandates have proven harmful to the banking industry and its customers and should be eliminated.

The Stress Testing Accountability and Transparency Act would require notice-and-comment rulemaking by the Fed for the formulas used to calculate the Stress Capital Buffer (SCB) and would also prohibit it from changing the SCB calculation without a new rulemaking. Annual notice-and-comment rulemaking would also be required for the annual stress test scenarios. Every three years, the Government Accountability Office (GAO) would be required to conduct a study and report to Congress on the stress testing scenarios. ABA member banks have often cited the lack of transparency in the formulas used to calculate the SCB and other aspects of the Fed's stress testing scenarios, and this legislation would help bring needed clarity to this process.

The Bringing the Discount Window into the 21st Century Act would require the Fed to review its discount window operations, seek public comment on its operations, and develop and implement a plan to address any deficiencies. ABA and its member banks understand and acknowledge that robust liquidity risk measurement, monitoring, and management are critical for making both individual banks and the U.S. financial system resilient. The discount window, established to help banks weather a liquidity storm, is an essential component of liquidity risk management. For many reasons, however, many banks tend to turn to other funding sources during stress. To make the discount window a preferred source of funding during periods of stress, it needs to meet the needs of modern banking for banks of all sizes. This legislation could be a significant first step in resolving the potential mismatch between when a bank has liquidity needs and the speed at which the Fed can supply the needed funds; implementing lessons learned from the Bank Term Funding Program; eliminating the stigma of banks using the discount window; and not undermining or disadvantaging other important sources of liquidity such as the Federal Home Loan Bank system.

Other Bills Noticed for the Hearing. There were several other bills noticed for this hearing that require studies and reviews of existing regulations. ABA will review these bills and will provide any comments to the Subcommittee as appropriate.

De Novo Bank Formation

In addition to the bills mentioned above, the ABA supports the Promoting Access to Capital in Underbanked Communities Act (H.R. 478), which was introduced by Chairman Barr and ordered reported by the Committee on April 2. The bill would establish a three-year phase-in period for new banks to comply with federal capital standards, among other provisions designed to promote and sustain de novo banking. Today, there are 4,346 fewer banks in the United States (4,487) than in 2005 (8,833), a precipitous 49.2 percent decline. Of the banks active today, only 85 were established after 2010.

By facilitating the formation of new banks in urban and rural areas, this legislation expands additional options for banking access for both individuals and small- and medium-sized businesses. The bill would unlock additional economic opportunity, growth, and investment in communities most in need, thus promoting additional competition. The temporary regulatory adjustments provided in this bill are a reasonable step to encourage the formation of de novo banks that will be well equipped to meet the banking and financial needs of their local customers and communities.

Conclusion

ABA appreciates the focus of the Subcommittee on the current regulatory merger rules and impediments to the formation of de novo banks. The regulatory standards for assessing the competitive impact of mergers are significantly outdated and do not accurately reflect competitive conditions in today's financial services markets. By failing to capture the impacts of competition from online financial institutions and nonbank financial services providers, decisions on merger applications by the bank regulatory agencies and the Department of Justice may unjustifiably constrain mergers involving banks across the industry spectrum. In particular, community banks may be unable to consolidate with neighboring institutions, impairing their ability to continue serving their communities and meet the burdens of increasing technology investments and regulatory and compliance costs.

ABA supports the reform bills mentioned in this statement and we look forward to working with the Members of the Subcommittee as well as the Full Committee to advance this legislation. Thank you for the opportunity to provide our views on this very important hearing.