

Statement by Vice Chairman Travis Hill on the Final Statement of Policy on Bank Merger Transactions

September 17, 2024

In March, the FDIC proposed updating its Statement of Policy (SOP) on bank merger transactions. I voted against the proposal, arguing that it “move[d] in the wrong direction, potentially making the process longer, more difficult, and less predictable.”¹ Today, the FDIC Board is considering finalizing that proposal. While the final SOP makes a few small improvements over the proposal,² I will vote against it for largely the same reasons.

I continue to believe the revised approach to the competition factor will add considerable unpredictability, by deemphasizing the use of HHI thresholds, long a predictable proxy for concentrations, and by elevating consideration of “concentrations in any specific products or customer segments.”³ I also think the FDIC could have done more to address comments raising concerns regarding the impact of the SOP on rural areas in which a small number of banks represent the entire or near-entire banking presence.⁴

I also continue to oppose imposing an affirmative burden on applicants to demonstrate the merger would *better* meet the convenience and needs of the community, and am unpersuaded by the preamble’s suggestion⁵ that Congress intended a mandate that the FDIC “take into

¹ [Statement by Vice Chairman Travis Hill on the FDIC’s Proposed Statement of Policy on Bank Merger Transactions](#) (March 21, 2024).

² *See, e.g.*, Final Statement of Policy on Bank Merger Transactions, at 4 (“With respect to adjudication, the Final Statement retains the FDIC’s longstanding tenet of the FDIC’s applications processing policy and procedures, to not use conditions as a means to favorably resolve statutory factors, but adopts slightly modified language to more clearly articulate this point. The Final Statement indicates imposition of conditions will be taken into account as part of the FDIC’s consideration of the merger application, but will not necessarily lead to the favorable resolution of any statutory factor where the facts and circumstances are otherwise unfavorable.”) (citations omitted); *id.* at 8 (“[T]he Final Statement does not incorporate the Proposed Statement’s assertion that the FDIC will not find favorably on the financial resources factor if the merger would result in a weaker IDI from a financial perspective. This statement was removed to avoid the suggestion that an IDI that reflects a very strong financial condition would be precluded from absorbing a weaker target. . . . For example, when a proposed merger transaction involves an IDI in less than satisfactory condition (or experiencing potentially significant financial or managerial concerns), emphasis is placed on the capacity of the acquiring IDI to absorb the weaker IDI and address the problems or concerns identified. Furthermore, purchase accounting rules generally require an acquiring IDI to recognize the target’s assets and liabilities at fair value, which often causes the resulting IDI to look weaker financially on day one, post-merger.”).

³ *Id.* at 18.

⁴ *See, e.g.*, [Comment Letter of Conference of State Bank Supervisors](#), Request for Comment on Proposed Statement of Policy on Bank Merger Transactions (June 17, 2024); [Comment Letter of Independent Community Bankers of America](#), Proposed Changes to FDIC’s Proposed Statement of Policy on Bank Merger Transactions (June 18, 2024). While the SOP notes “the FDIC will carefully balance the competitive effects of such a merger with the public interest served by the ability of the resulting IDI to serve the convenience and needs of the community,” the SOP could have gone further to more directly address the issue in how the FDIC analyzes the competition factor. Final Statement of Policy on Bank Merger Transactions, *supra* note 2, at 7.

⁵ The preamble states that this expectation is “consistent with Congressional intent” and cites a Senate Floor statement by Senator A. Willis Robertson stating, “The banking agency may approve the merger if it thinks the merger will be *beneficial* from these points of view ...”. Final Statement of Policy on Bank Merger Transactions,

consideration” the convenience and needs of the community⁶ to impose an affirmative burden on applicants.

I also believe our analysis of the financial stability factor should acknowledge that a merger can both add to and subtract from financial stability risks, and should focus more on a before-and-after comparison rather than solely looking at the resulting institution. I also generally think the inclusion of the \$100 billion threshold is unhelpful, even if the preamble acknowledges that it is “not a threshold for a presumptive denial.”⁷

I appreciate staff’s work on the SOP but will vote no.

supra note 2, at 21. The full quote from Sen. Robertson reads, “Of course, if there are no substantial anticompetitive effects and no tendency to create a monopoly and no suggestion of restraint of trade, the banking agency will proceed to consider the merger on the basis of the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served. The banking agency may approve the merger if it thinks the merger will be beneficial from these points of view, or it can turn the merger down if it thinks the merger undesirable or objectionable in any respects from these points of view.” Statement by Senator A. Willis Robertson, Chairman of the Senate Committee on Banking and Currency, 112 Cong. Rec. 2542 (1966). Nothing in Sen. Robertson’s statement suggests that Congress intended “shall take into consideration ... the convenience and needs of the community to be served” to mean an applicant must demonstrate that the convenience and needs must be *better* served by the resulting institution.

⁶ 12 U.S.C. 1828(c).

⁷ Final Statement of Policy on Bank Merger Transactions, *supra* note 2, at 27.