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Portfolio

[tag] Checks and Balances

[hed] Are changes to bank M&A rules on the horizon?

[dek] The Department of Justice and other banking agencies are evaluating a new potential M&A framework. What does this mean for community banks?

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A little over a year since the Federal Deposit Insurance Corporation (FDIC) first issued a request for information on bank mergers and acquisitions under the Bank Merger Act, the Department of Justice (DOJ) and leaders within the federal banking agencies are expressing interest in updating existing M&A rules.

ICBA is working to ensure that any new regulatory framework promotes a strong community banking industry and protects local communities.

Bank mergers are scrutinized under DOJ Bank Merger Guidelines that were last updated in 1995, when the banking industry looked very different. As ICBA has repeatedly pointed out, this framework is outdated and no longer reflects either the realities of the competitive field or the advances in mobile and online banking that have taken place since 1995.

These guidelines reflect an era when there were no fintechs and much smaller credit union and Farm Credit System (FCS) competition, and interstate branching had just recently been introduced. The seven largest U.S. banks didn’t yet have the same combined market share of deposits as the rest of the banks combined.

Today, this outdated framework often delays or even prevents community bank mergers that would preserve community bank presence in communities, especially small rural communities, while all too often greenlighting megamergers of too-big-to-fail banks.

[subhed] Renewed M&A interest

In June, assistant attorney general Jonathan Kanter once again shined a spotlight on bank M&As in a speech where he said that it’s time “to take stock of how the department is fulfilling its statutory role in bank merger enforcement” to ensure it reflects the realities of the current market and preserves competition. Acting comptroller of the currency Michael Hsu also reiterated his previous calls to update the framework in February, citing concerns over diminished competition and increased systemic risk if the rules don’t evolve with the marketplace.

The DOJ invited comments on its Bank Merger Guidelines in 2020 and again in 2021 after President Joe Biden issued an executive order calling for an **update of bank merger guidelines**. The FDIC also published a request for information in 2022 seeking comments on the bank merger regulatory framework.

Agency leaders’ demonstrated interest in revisions to the bank merger framework, coupled with a framework that has not been updated in nearly 30 years, suggests more concrete proposals to modernize bank merger regulations could be forthcoming.

As the agencies review public comment and evaluate possible changes to the framework, ICBA encourages the FDIC and the DOJ to coordinate with the Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System to revise the framework based on three key principles:

* Promote a competitive playing field among banks of all sizes, credit unions, nonbank fintechs and farm credit associations
* Prohibit “too big to fail” bank monopolies
* Make it quicker and easier for small bank mergers that strengthen local communities with a continued community bank presence, including rural and low-to-moderate income (LMI) communities.

[subhed] ICBA recommendations for bank M&A updates

ICBA has written comment letters offering suggestions for furthering these goals. They include:

* Creating a small bank <i>*de minimis*<i> exception where small banks benefit from shorter review timeframes and those with less than $1 billion in assets are presumed not to create monopolies or anticompetitive effects
* Assessing whether mergers involving banks with $100 billion or more in assets pose systemic risk or are too big to fail
* Giving credit unions and the Farm Credit System the same weight as bank competitors when assessing the competitive landscape
* Scrutinizing the impact of credit union bank acquisitions due to lack of Community Reinvestment Act (CRA) accountability
* Measuring concentration beyond geographic boundaries such as fintech companies, large banks that lend nationwide, online lenders that compete with community banks and farm credit associations
* Excluding community bank merger applicants from a higher burden of proof or a formalized consultation with the Consumer Financial Protection Bureau (CFPB) to evaluate convenience and needs

As the DOJ and banking agencies reevaluate the current, restrictive M&A framework, ICBA will continue to urge the adoption of these policy changes and the modernization of the existing framework.

At a time when community banks face increasing pressures of regulatory compliance while squaring off against competitors with far less regulatory scrutiny, community banks should be permitted to scale up and compete without undue scrutiny or restrictions on merger activities caused by an outdated merger framework. It’s an issue of fair competition—one that preserves consumer choice and access to community banks that are vital to local economies throughout the nation.

ICBA will continue to closely monitor progress on this issue and remain a strong advocate for revising the M&A framework in a way that strengthens the community banking industry and Main Street America.

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