June 18, 2024

James P. Sheesley
Assistant Executive Secretary
Attention: Comments-RIN: 3064-ZA31, Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Dear Mr. Sheesley,

Thank you for considering our comments related to your request for comment on the proposed statement of policy on bank mergers and acquisitions. Specifically, we would like to comment on question 9. How should the Proposed SOP specifically address the ways to calculate the competitive effects of mergers of IDIs with non-insured entities, whether credit unions, financial services entities, bank service corporations, or other entities?

We find the question to be inappropriate given that Congress has only granted national banks the authority to acquire or be acquired by another FDIC-insured institution (12 USC 214c). We find the willingness of federal banking agencies to consider the acquisition of a bank by non-FDIC-insured credit unions under the general bank powers statute, extremely problematic given the lack of such authorization in the statute specifically adopted by Congress to govern these transactions. According to generally accepted rules of statutory construction, when there is both a general rule and a specific rule that could apply, the more specific rule should govern.

This is particularly important in the case of bank acquisitions by credit unions which enjoy protection from taxation under section 501(C) of the Internal Revenue Code. If Congress were to enact laws specifically authorizing such acquisitions, they would have to consider arguments that extend beyond issues of safety and soundness, and specifically address the impact of these combinations on the budgets of federal, state and local governments. This analysis would be even more critical with respect to any acquisition by a federal credit union given their status as an instrumentality of the federal government which would not only exempt them from the income taxes previously paid by the bank, but a number of other taxes such as sales, hotel, rental car, and other unique state and local taxes.

We understand why this has become an issue. The acquisition of an FDIC-insured bank by a tax-exempt credit union is highly beneficial to the shareholders of the bank as they can convert future tax payments and expenditures under the Community Reinvestment Act into a substantial premium on the sale of the bank. It is also clear, that the increased number of assets under the credit union's management will likely increase the compensation of the executives pursuing the acquisition.

However, we are skeptical that Congress ever intended for a tax exemption designed to help "people of small means" gain better access to credit for provident purposes be used to direct future tax payments into the pockets of bank shareholders. These transactions will have a substantially negative impact on state and local government budgets and communities (CRA), which will likely necessitate an increase in taxes on other taxpayers and businesses. Additionally, there is no legislative history suggesting that Congress would condone the retention of excess profits from unsuspecting credit union members for the purpose of transferring that wealth to bank shareholders through an above market premium.

It is clear that Congress would need to carefully consider a broad range of public policy issues, including issues of taxes and revenues and impacts on the Community Reinvestment Act, before expanding national bank authority to engage in these transactions. Furthermore, the FDIC should acknowledge that as many as six states have taken recent action to prevent these unauthorized transactions under state law.

Until these policy issues are resolved by the appropriate legislative bodies, it is entirely inappropriate for federal bank regulators, in absence of a specific statutory grant of authority, to arrogate legislative power to consider, let alone approve such transactions.

Sincerely,

Jenifer Waller
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Colorado Bankers Association

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President & CEO
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