Request for Information and Comment on Rules, Regulations, Guidance, and Statements of Policy Regarding Bank Merger Transactions

Background Information

Significant changes over the past several decades in the banking industry and financial system necessitate a review of the agencies' regulatory framework that applies to bank merger transactions involving one or more insured depository institutions pursuant to the Bank Merger Act.[1] First, three decades of consolidation in the banking industry have significantly reduced the number of smaller banking organizations and increased the number of large and systemically-important banking organizations. Second, the agencies have a responsibility to promote public confidence in the banking system, maintain financial stability, review proposed mergers, and resolve failing large insured depository institutions. Third, the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the Bank Merger Act to include, for the first time, a financial stability factor. Fourth, and finally, a recent Executive Order instructed U.S. agencies to consider the impact that consolidation may have on maintaining a competitive marketplace. Thus, the agencies have determined that it is both timely and appropriate to review the regulatory framework and consider whether updates or other changes are warranted.

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[1] Bank Merger Act, Pub. L. 86-463, 72 Stat. 129 (1960); Bank Merger Act Amendments of 1966, Pub. L. 89-356, 80 Stat. 7 (codified as amended at 12 U.S.C. 1828(c)(2018)), available at *fdic.gov/regulations/laws/rules/1000-2000.html#1000sec.18c*.

Consolidation in the Banking Sector

The banking sector has experienced a significant amount of consolidation over the last 30 years as shown in Tables 1 through 3. This period of consolidation, fueled in large part by mergers and acquisitions, has resulted in a significant growth of the number of large insured depository institutions, especially insured depository institutions with total assets of $100 billion or more.

In 1990, there was only one insured depository institution with assets greater than $100 billion; however, that number had increased to 33 by 2020.[2] Of these 33 insured depository institutions with assets greater than $100 billion, nine were owned by the 8 U.S. bank holding companies designated as Global Systemically Important Banks (U.S. GSIBs), and three were owned by foreign banking organizations designated as foreign Global Systemically Important Banks (foreign GSIBs).[3] While insured depository institutions with total assets of more than $100 billion comprise less than one percent of the total number of insured depository institutions, they hold about 70 percent of total industry assets and 66 percent of domestic deposits.

Consolidation also has materially altered the economic landscape of insured depository institutions with assets less than $100 billion. Over the same 30-year period, the number of institutions with assets less than $10 billion has declined drastically from 15,099 in 1990 to 4,851 in 2020, a reduction of approximately 68 percent.[4] The declining number of smaller

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[2] Prior to the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. 103-328 (the Riegle-Neal Act of 1994), many states did not permit intra-state branching and interstate branch branching was not permitted. Following the passage of the Riegle-Neal Act of 1994, many bank holding companies chose to consolidate existing bank charters.

[3] See Financial Stability Board, 2020 list of global systemic important banks, available at *https://www.fsb.org/wp-content/uploads/P111120.pdf*.

[4] Based on Thrift Financial Reports (TFR) and Consolidated Reports of Condition and Income (Call Report) between 1990 and 2005, the number of institutions with assets less than $10 billion declined from 15,099 to 8,715, before falling to 4,851 in 2020. Over the same time period, the

insured depository institutions may limit access to financial services and credit in communities, potentially adversely affecting the welfare of the communities' workers, farmers, small businesses, startups, and consumers.

Over this same period, the number of insured depository institutions with assets between $10 billion and $100 billion has doubled from 59 in 1990 to 118 in 2020. However, the percentage of total industry assets held by all insured depository institutions with assets less than $100 billion declined by 68 percent and their percentage of insured deposits held declined by approximately 70 percent.

Several insured depository institutions with assets less than $100 billion were owned by either a U.S. GSIB or a foreign GSIB. For example, 12 insured depository institutions with assets less than $10 billion were owned by GSIBs, with six owned by U.S. GSIBs and six owned by foreign GSIBs. Further, 11 insured depository institutions with assets between $10 billion to $100 billion were owned by GSIBs, with four owned by U.S. GSIBs and seven were owned by foreign GSIBs.

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percentage of industry assets held by those banks declined from 66.4 percent in 1990 to 26.1 percent in 2005, and then to 14.8 percent in 2020. Similarly, the percentage of domestic deposits held by those institutions declined from 73.9 percent in 1990 to 34.2 percent in 2005, and then to 15.4 percent in 2020.

Table 1: Number of Insured Depository Institutions by Asset Size			
	Year		
Asset Size	**1990**	**2005**	**2020**
$10B - $50B	52	86	102
$50B - $100B	7	21	16
$100B - $250B	1	5	20
$250B - $500B	0	3	8
$500B - $700B	0	0	1
≥$700B	0	3	4

Source: TFR and Call Reports

Table 2: Percentage of Industry Assets Held by Insured Depository Institutions by Asset Size			
	Year		
Asset Size	**1990**	**2005**	**2020**
$10B - $50B	20.2%	16.7%	10.5%
$50B - $100B	10.0%	13.1%	5.3%
$100B - $250B	3.4%	7.2%	13.3%
$250B - $500B	0.0%	11.1%	13.9%
$500B - $700B	0.0%	0.0%	2.5%
≥$700B	0.0%	25.8%	39.8%

Source: TFR and Call Report

Table 3: Percentage of Domestic Deposits Held by Insured Depository Institutions by Asset Size			
	Year		
Asset Size	**1990**	**2005**	**2020**
$10B - $50B	18.5%	16.6%	11.4%
$50B - $100B	6.4%	12.2%	5.9%
$100B - $250B	1.2%	6.4%	13.9%
$250B - $500B	0.0%	12.8%	14.3%
$500B - $700B	0.0%	0.0%	2.6%
≥$700B	0.0%	17.8%	35.5%

Source: TFR and Call Report

The Financial Stability Factor in the Bank Merger Act and Large Bank Resolution

The Dodd-Frank Act made a number of statutory changes aimed at addressing the risks posed by the largest banks, including an amendment to the Bank Merger Act requiring consideration of the risk posed to the stability of the United States banking or financial system of a proposed bank merger.[5] To date, from a financial stability perspective, efforts to improve the resolvability of large banks have focused on GSIBs.[6] As shown above, given the increased number, size, and complexity of non-GSIB large banks, however, a reconsideration by the Federal banking agencies of the framework for assessing the financial stability prong of the BMA and focused attention on the financial stability risks that could arise from a merger involving a large bank may be warranted.

In particular, the failure of a large insured depository institution would present significant challenges to the FDIC's resolutions and receivership functions and could present a threat to the financial stability of the United States. Insured depository institutions are resolved under the Federal Deposit Insurance Act. For various reasons, including their size, sources of funding, and other organizational complexities, the resolution of large insured depository institutions can present great risk to the Deposit Insurance Fund, as well as extraordinary operational risk for the

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[5] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, section 604(f), 124 Stat. 1376, 1602 (2010) (codified as 12 U.S.C. 1828(c)(5) (2018)), available at *https://www.govinfo.gov/app/details/PLAW-111publ203*.

[6] See Federal Reserve Board and FDIC joint final rules: Resolution Plans Required, 76 FR 67323, (Nov. 1, 2011), available at *https://www.govinfo.gov/content/pkg/FR-2011-11-01/pdf/2011-27377.pdf*, and Tailored Resolution Plan Requirements, 80 FR 59194, (Nov. 1, 2019), available at *https://www.govinfo.gov/content/ pkg/ FR-2019-11-01/pdf/2019-23967.pdf*. See also, FDIC final rule, Certain Orderly Liquidation Authority Provisions under Title II of the Dodd Frank Wall Street Reform and Consumer Protection Act, 76 FR 41626, (July 15, 2011), available at *https://www.govinfo.gov/content/pkg/FR-2011-07-15/pdf/2011-17397.pdf*.

FDIC. In addition, as a practical matter, the size of an insured depository institution may limit the resolution options available to the FDIC in the event of failure.[7]

In recent history, including the global financial crisis that began in 2008, the most common resolution transactions have involved a purchase and assumption transaction where an acquiring institution takes all or a substantial part of the failed insured depository institution. For example, between 2008 and 2013, there were a total of 489 bank failures, of which 463, or approximately 95 percent, were resolved by the FDIC through purchase and assumption transactions.

While most of these purchase and assumption resolution transactions were for insured depository institutions with assets under $10 billion, the largest purchase and assumption transaction completed by the FDIC was that of Washington Mutual Bank, which failed on September 25, 2008 with assets of approximately $307 billion. However, that transaction resulted in a larger and more complex acquirer (JPMorgan Chase & Co.) and the need for the resolution heightened financial turmoil and contributed to concerns about the safety of the financial system. As a result of the systemic concerns arising from the resolution of Washington Mutual Bank, when Wachovia Bank required resolution days later, the FDIC, the Board of Governors of the Federal Reserve System (Board), and the Secretary of the Treasury invoked the systemic risk exception (SRE) to allow the acquisition of Wachovia by another large insured

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[7] Although the FDIC has developed a framework of systemic resolution regulations, strategies, and policies and procedures to operationalize its authority to handle the orderly failure of a GSIB or other systemically important financial company under Title II of the Dodd-Frank Act, such a failure would present additional risks for the FDIC and could, depending on the circumstances, also involve failure of a large insured depository institution.

depository institution. At the time that the SRE was granted—the first-ever use of the SRE—Wachovia had total holding company assets of approximately $800 billion.[8]

Recent Executive Order

Additionally, on July 9, 2021, the President signed an Executive Order on Promoting Competition in the American Economy (Executive Order).[9] This Executive Order, in part, instructs U.S. agencies to consider the impact that consolidation may have on maintaining a fair, open, and competitive marketplace and on the welfare of workers, farmers, small businesses, startups, and consumers.

Conclusion

In light of the significant consolidation in the banking industry over the past three decades, the Agencies' requirement to consider financial stability risk under the BMA, the FDIC's responsibilities for the resolution of large insured depository institutions, and the Executive Order, the Agencies are soliciting comments from interested parties regarding the rules, regulations, guidance, and statements of policy (together, regulatory framework) that apply to bank merger transactions involving one or more insured depository institutions. The Agencies are interested in receiving comments regarding the effectiveness of the existing regulatory framework in meeting the requirements of Section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act or Act).

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[8] While the systemic risk exception was approved, Wachovia Corporation was ultimately acquired by Wells Fargo & Company on an open-institution basis without FDIC assistance. See FDIC, Crisis and Response: An FDIC History, 2008–2013, available at http://www.fdic.gov/bank/historical/crisis/

[9] See *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/ and https://whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/*.

Bank Merger Act Overview

The Bank Merger Act of 1960 established a framework that required, in general, consent of the appropriate banking agency prior to a merger.[10] The appropriate banking agency is defined in the Act as the FDIC for state nonmember banks and state savings associations, the Federal Reserve Board for state member banks, and the Office of the Comptroller of the Currency (OCC) for national banks and Federal savings associations.[11] FDIC approval is also required for a bank merger or consolidation with a non-insured bank or institution.[12]

In addition, the Act requires that, prior to approving any merger, the appropriate banking agency must (a) provide public notification of a proposed merger, (b) request a report on competitive factors from the Attorney General of the United States, (c) not approve any proposed merger that would result in a monopoly or produce substantial anticompetitive effects, and (d) consider certain additional factors, including the effectiveness of any insured depository institution involved in the merger at combatting money laundering.[13]

When assessing the potential anticompetitive effects of the proposed merger, the appropriate banking agency is required to consider whether the merger would substantially lessen competition, tend to create a monopoly, or otherwise be in restraint of trade.[14] The

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[10] Bank Merger Act, Pub. L. 86-463, 72 Stat. 129 (1960); Bank Merger Act Amendments of 1966, Pub. L. 89-356, 80 Stat. 7 (codified as amended at 12 U.S.C. 1828(c)(2018)), available at *fdic.gov/regulations/laws/rules/1000-2000.html#1000sec.18c*.

[11] Pursuant to Title III of the Dodd–Frank Act, all functions of Office of Thrift Supervision relating to federal savings associations were transferred to the OCC, and all functions of the OTS relating to state savings associations were transferred to the FDIC.

[12] 12 U.S.C. 1828(c)(1) and (2). For an uninsured national bank, OCC approval of the bank's application under 12 C.F.R. 5.33 is also required.

[13] Id.

[14] All things being equal, the number of competitors in the market for banking products and services can be affected by two different types of transactions: (1) unaffiliated depository institutions can merge with each other, or (2) depository institutions can be acquired by

appropriate banking agency may not approve any merger that exhibits anticompetitive effects unless the appropriate banking agency determines "that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served."[15] Further, the appropriate banking agency may not approve an application for an interstate merger transaction if the resulting insured depository institution would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States.[16]

In addition to consideration of anticompetitive effects, the Act requires that: "In every case, [emphasis added] the responsible agency shall take into consideration the financial and managerial resources and future prospect of the existing and proposed institutions, the convenience and needs of the community to be served, and the risk to the stability of the United

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unaffiliated companies that already own one or more depository institutions. Companies that own or and control depository institutions are commonly known as financial institution holding companies. Financial institution holding companies are regulated by the Board. Bank holding companies are subject to the Bank Holding Company Act (BHCA) (for companies owning state and national banks, see 12 U.S.C. 1841 et. seq.), and savings and loan holding companies are subject to the Home Owners Loan Act (HOLA) (for companies owning savings associations, see 12 U.S.C. 1461 et. seq.). It has been through the acquisition of depository institutions by existing financial institution holding companies, or the merger of these holding companies, that a number of depository institutions have come under the common control. The Board, in consultation with the U.S. Department of Justice (DOJ), analyzes the competitive impact of these acquisitions under standards similar to those applicable under the Bank Merger Act. For example, when depository institutions under common control merge, the DOJ and the banking agencies have determined that these mergers of affiliates are competitively neutral. Competitive analysis under the Bank Merger Act takes place when unaffiliated depository institutions merge and is performed by the appropriate federal banking agency responsible for the supervision of the depository institution that would continue to operate should the proposed merger be approved.

[15] 12 U.S.C. 1828(c)(5)(B).

[16] 12 U.S.C. 1828(c)(13)(A).

States banking or financial system."[17] The latter condition—that the appropriate banking agency consider systemic risk—was added in 2010 by section 604(f) of the Dodd-Frank Act.[18]

FDIC and OCC Regulations and Statement of Policy Regarding Bank Mergers

The requirements of the Bank Merger Act are incorporated into part 303 of the FDIC's regulations[19] and into the OCC's regulations at 12 CFR 5.33.[20]

In the FDIC's regulations, Subpart A of part 303 provides regulations that are generally applicable for all filings and includes general filing procedures, computation of time, the effect of Community Reinvestment Act performance on filing, and the administrative procedures associated with a filing.[21] Subpart D of part 303 provides regulations specifically pertaining to mergers involving an insured depository institution and includes definitions, transactions requiring prior approval, filing procedures, expedited and standard processing procedures, and public notice requirements.[22] Additional guidance on the application of part 303 is provided in the FDIC Statement of Policy on Bank Merger Transactions (FDIC Policy Statement).[23]

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[17] Id.

[18] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, sec. 604(f), 124 Stat. 1376, 1602 (2010) (codified as 12 U.S.C. 1828(c)(5) (2018)), available at *https://www.govinfo.gov/app/details/PLAW-111publ203*.

[19] 12 CFR part 303, available at *https://www.fdic.gov/regulations/laws/rules/2000-250.html*.

[20] 12 CFR 5.33, available at *https://www.ecfr.gov/current/title-12/chapter-I/part-5*.

[21] See 12 CFR 303.1 – 303.19.

[22] See 12 CFR 303.60 – 303.79.

[23] 63 FR 44762, August 20, 1998, effective October 1, 1998; amended at 67 FR 48178, July 23, 2002; 67 FR 79278, December 27, 2002; and 73 FR 8871, February 15, 2008, available at *https://www.fdic.gov/regulations/laws/rules/5000-1200.html*.

The FDIC Policy Statement notes that transactions that do not involve a transfer of deposit liabilities typically do not require FDIC approval under the Bank Merger Act, unless the transaction involves the acquisition of all or substantially all of an insured depository institution's assets. For those transactions requiring FDIC approval, the FDIC Statement of Policy describes the four factors that the FDIC will consider in its review: competitive factors, prudential factors, convenience and needs factor, and anti-money laundering record. The FDIC Policy Statement also describes related considerations such as those related to interstate bank merger transactions, interim merger transactions, branch closings, legal fees and other expenses, and trade names. The FDIC Policy Statement, however, does not address the financial stability provisions added to the Bank Merger Act under section 604(f) of the Dodd-Frank Act.

The OCC's regulation, at 12 CFR 5.33, provides a framework for evaluating mergers, which includes the consideration of the risk to financial stability. 12 CFR 5.33 generally addresses business combinations involving a national bank or federal savings association. Section 5.33(c) covers the licensing requirements for business combinations. The factors the OCC considers in all business combinations, including business combinations under the BMA, are set forth in § 5.33(e)(1)(i), and §§ 5.33(e)(1)(ii) & (iii) provide the additional factors that the OCC considers for business combinations under the Bank Merger Act.

When considering the risk to the stability of the banking or financial system pursuant to a BMA application, the OCC considers six factors: (1) whether the proposed transaction would result in a material increase in risks to financial system stability due to an increase in size of the combining institutions; (2) whether the transaction would result in a reduction in the availability of substitute providers for the services offered by the combining institutions; (3) whether the combined institution would engage in any business activities or participate in markets in a manner that, in the event of financial distress of the combined institution, would cause significant risks to other institutions; (4) whether the transaction would materially increase the extent to which the combining institutions contribute to the complexity of the financial system; (5) whether the transaction would materially increase the extent of cross-border activities of the combining institutions; and (6) whether the transaction would increase the relative degree of difficulty of resolving or winding up the combined institution.[24]

1995 Interagency Bank Merger Competitive Review Guidelines[25]

In order to expedite the competitive review process required by the BHCA, HOLA, and the Bank Merger Act, and to reduce regulatory burden, in 1995 the federal banking agencies and the DOJ jointly developed Bank Merger Competitive Review Guidelines (Interagency Guidelines).[26] The Interagency Guidelines state that the federal banking agencies will rely primarily on the effects of competition in predefined markets determined by the Board. To the extent that the post-merger Herfindahl-Hirschman Index (HHI) does not exceed 1800 or increase by more than 200, the federal banking agencies generally are unlikely to review further the competitive effects of the merger.[27]

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[24] See, e.g., OCC Conditional Approval No. 1031 (April 6, 2012). See also the "Business Combinations" booklet of the Comptroller's Licensing Manual, available at *https://occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/bizcombo.pdf*.

[25] In September 2020, DOJ sought comment on whether to revise the Guidelines or its competitive analysis of bank mergers. See *https://www.justice.gov/opa/pr/antitrust-division-seeks-public-comments-updating-bank-merger-review-analysis*.

[26] Available at *http://justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995*.

[27] The HHI is a statistical measure of market concentration and is also used as the principal measure of market concentration in the Department of Justice's Merger Guidelines. The HHI for a given market is calculated by squaring each individual competitor's share of total deposits

However, the Interagency Guidelines provide that the agencies may examine a merger transaction in greater detail if the agencies believe additional scrutiny is necessary. As part of this further examination under the Guidelines, the agencies may consider, among other things, whether there is evidence that (a) the merging parties do not significantly compete with one another, (b) rapid economic change has resulted in an outdated geographic market definition and an alternate market is more appropriate, (c) market shares are not an adequate indicator of the extent of competition in the market, (d) a thrift institution is actively engaged in providing services to commercial customers, particularly loans for business startup or working capital purposes and cash management services, (e) a credit union has such membership restrictions, or lack of restrictions, and offers such services to commercial customers that it should be considered to be in the market, (f) there is actual competition by out-of-market institutions for commercial customers, particularly competition for loans for business startup or working capital purposes; and (g) there is actual competition by non-bank institutions for commercial customers, particularly competition for loans for business startup or working capital purposes.[28]

Request for Comment

The Agencies are seeking comment on all aspects of the existing regulatory framework that applies to bank merger transactions. In responding to the following questions, the Agencies ask that commenters please include quantitative as well as qualitative support for their responses, as applicable.

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within the market and then summing the squared market share products. For example, the HHI for a market with a single competitor would be: $100^2 = 10{,}000$: for a market with five equal competitors with equal market shares, the HHI would be: $20^2 + 20^2 + 20^2 + 20^2 + 20^2 = 2{,}000$.

[28] Section 2 of the Interagency Guidelines, available at *www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995*.

Question 1. Does the existing regulatory framework properly consider all aspects of the Bank Merger Act as currently codified in Section 18(c) of the Federal Deposit Insurance Act?

Question 2. What, if any, additional requirements or criteria should be included in the existing regulatory framework to address the financial stability risk factor included by the Dodd-Frank Act? Are there specific quantitative or qualitative measures that should be used to address financial stability risk that may arise from bank mergers? If so, are there specific quantitative measures that would also ensure greater clarity and administrability? Should the Agencies presume that any merger transaction that results in a financial institution that exceeds a predetermined asset size threshold, for example $100 billion in total consolidated assets, poses a systemic risk concern?

Question 3. To what extent should prudential factors (for example, capital levels, management quality, earnings, etc.) be considered in acting on a merger application? Should bright line minimum standards for prudential factors be established? If so, what minimum standard(s) should be established and for which prudential factor(s)?

Question 4. To what extent should the convenience and needs factor be considered in acting on a merger application? Is the convenience and needs factor appropriately defined in the existing framework? Is the reliance on an insured depository institution's successful Community Reinvestment Act performance evaluation record sufficient? Are the convenience and needs of all stakeholders appropriately addressed in the existing regulatory framework? To what extent should the convenience and needs factor take into consideration the impact that branch closings and consolidations may have on affected communities? To what extent should the agencies differentiate their consideration of the convenience and needs factor when considering merger transactions involving a large insured depository institution and merger transactions involving a small insured depository institution? To what extent should the Consumer Financial Protection Bureau be consulted by the agencies when considering the convenience and needs factor and should that consultation be formalized?

Question 5. In addition to the HHI, are there other quantitative measures that the banking agencies should consider when reviewing a merger application? If so, please describe the measures and how such measures should be considered in conjunction with the HHI. To what extent should such quantitative measures be differentiated when considering mergers involving a large insured depository institution and mergers involving only small insured depository institutions?

Question 6. How and to what extent should the following factors be considered in determining whether a particular merger transaction creates a monopoly or is otherwise anticompetitive? Please address the following factors:

(a) The merging parties do not significantly compete with one another,

(b) Rapid economic change has resulted in an outdated geographic market definition and an alternate market is more appropriate,

(c) Market shares are not an adequate indicator of the extent of competition in the market,

(d) A thrift institution is actively engaged in providing services to commercial customers, particularly loans for business startup or working capital purposes and cash management services,

(e) A credit union has such membership restrictions, or lack of restrictions, and offers such services to commercial customers that it should be considered to be in the market,

(f) There is actual competition by out-of-market institutions for commercial customers, particularly competition for loans for business startup or working capital purposes; and

(g) There is actual competition by non-bank institutions for commercial customers, particularly competition for loans for business startup or working capital purposes.

With respect to the preceding factors, how and to what extent should the activity of current branches or pending branch applications be considered?

Question 7. Does the existing regulatory framework create an implicit presumption of approval? If so, what actions should the Agencies take to address this implicit presumption?

Question 8. Does the existing regulatory framework require an appropriate burden of proof from the merger applicant that the criteria of the Bank Merger Act have been met? If not, what modifications to the framework would be appropriate with respect to the burden of proof?

Question 9. The Bank Merger Act provides an exception to its requirements if the responsible agency finds that it must act immediately in order to prevent the probable failure of one of the insured depository institutions involved in the merger transaction. To what extent has this exception proven beneficial or detrimental to the bank resolution process and to financial stability? Should any requirements or controls be put into place regarding the use of this exemption, for example when considering purchase and assumption transactions in a large bank resolution? Are there attributes of GSIB resolvability, such as a Total Loss-Absorbing Capacity (TLAC) requirement, that could be put into place that would facilitate the resolution of a large insured depository institution without resorting to a merger with another large institution or a purchase and assumption transaction with another large institutions?

Question 10. To what extent would responses to Questions 1-9 differ for the consideration of merger transactions involving a small insured depository institution? Should the regulations and policies of the Agencies be updated to differentiate between merger transactions involving a large insured depository institution and those involving a small insured depository institution? If yes, please explain.