

February 17, 2021

## Review of the Federal Reserve's Approach to Bank Mergers

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On February 16, 2021, Federal Reserve Board Governor Michelle Bowman gave a speech ([available here](#)) discussing the supervision and regulation of community banks, as well as “initiatives that are underway to support community banks during the pandemic and into the future.” She said that one of those initiatives involves a review of the Federal Reserve’s approach to assessing proposed mergers involving community banks and how to take into account the competition community banks face from non-banks and new technologies:

Technological developments and financial market evolution are quickly escalating competition in the banking industry, and our approach to analyzing the competitive effects of mergers and acquisitions needs to keep pace. The Board’s framework for banking antitrust analysis hasn’t changed substantially over the past couple of decades. I believe we should consider revisions to that framework that would better reflect the competition that smaller banks face in an industry quickly being transformed by technology and non-bank financial companies. As part of this effort, we have engaged in conversations and received feedback from community banks about the Board’s competitive analysis framework and its impact on their business strategies and long-term growth plans. We are in the process of reviewing our approach, and we are specifically considering the unique market dynamics faced by small community banks in rural and underserved areas.

Governor Bowman’s remarks follow the September 2020 request ([available here](#)) from the U.S. Department of Justice’s Antitrust Division (the “DoJ”) for public comments respecting the DoJ’s approach to bank mergers in general. A number of commenters suggested to the DoJ approaches that would make it easier for community banks to merge, citing (1) competition from banks without physical presences in the communities in which the community banks are located, (2) fintech competitors, and (3) farm credit lenders. Because the competitive influence of those three kinds of entities is largely ignored under both the DoJ’s and the Federal Reserve’s current approach to assessing proposed mergers, affording more significance to those entities in the review process would make it easier for community banks to merge. Although

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Governor Bowman's remarks arose in the context of community banks, the first two of these factors should apply well beyond the community-bank context, potentially affecting mergers in all geographic locations.

The DoJ has not announced a timeframe for its own review process or provided any updates since the recent change in Administration. Nevertheless, Governor Bowman's remarks suggest that these issues are under active consideration at the Federal Reserve, which traditionally has coordinated its approach to reviewing mergers with the DoJ. Banking organizations should take these potential developments into account in their planning for transactions.

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