UNC Banking Institute 2025
Bank M&A: The Future Ain’t What It Used to Be

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FDIC-Assisted

Failed Bank Acquisitions

March 2025

Sullivan & Cromwell LLP

Topics To Be Covered

- How Does an FDIC-Assisted Failed Bank Acquisition Differ From A Traditional Bank Acquisition?
- Selected Additional Topics
  - Raising Capital
  - Value Appreciation Instruments
  - Accounting and Tax
  - Loss Sharing
  - Operational Considerations
- Key Terms of Recent Transactions

How Does an FDIC-Assisted Failed Bank Acquisition Differ from a Traditional Bank Acquisition?

FDIC Transactions Involve Only Selected Liabilities and Assets

FDIC transactions involve the assumption of selected liabilities and the purchase of selected assets and not the purchase of a "whole" bank

- Acquisition of liabilities and assets is from the FDIC as receiver for the failed bank in receivership
  - The FDIC, as receiver, has extraordinary statutory and common law authority to "resolve" the entity in receivership. These powers are substantially greater than those of a bankruptcy court/trustee. For example, the FDIC has:
    - Broad discretion to manage the affairs of a bank in receivership, including the ability to transfer any and all assets and liabilities without any third party consents

FDIC Transactions Involve Only Selected Liabilities and Assets

FDIC transactions involve the assumption of selected liabilities and the purchase of selected assets and not the purchase of a "whole" bank	▪ The authority to provide financial and other assistance ▪ The authority to repudiate any contract ▪ The authority to void fraudulent conveyances ▪ The authority to "stay" any pending litigation ▪ The authority to sue on behalf of the receivership ▪ The authority to settle claims

FDIC Transactions Involve Only Selected Liabilities and Assets

FDIC transactions involve the assumption of selected liabilities and the purchase of selected assets and not the purchase of a "whole" bank

- Not a purchase of all the stock of a bank and all its liabilities, including contingent and unidentified liabilities, and assets
  - Would typically not include bank's securities portfolio
  - May have an ability to pick and choose loan portfolios (but not loans within portfolios)
  - May have to service (at least on an interim basis) loans left behind
  - Potential to exclude subsidiaries of the bank
- Holding company not part of the transaction (files for bankruptcy)

FDIC Transactions Happen Very Quickly

Typically, the entire process happens very quickly —

Advance preparation is essential

- Limited due diligence may occur over a week or two, or less
- Bids due very shortly after the due diligence opportunity
- Little or no negotiation of a purchase agreement – bidders are required to accept a well-known FDIC standard form purchase and assumption agreement with no changes other than those to identify the liabilities assumed and the assets purchased.
- Simultaneous sign and close within hours or a few days after a winning bid is accepted
- Regulatory approvals are granted on an expedited basis at the time the winning bidder is selected based on an abbreviated application process
- No statutory 15/30 day Department of Justice waiting period
- Limited / no post-closing recourse

FDIC Transactions Involve Limited Due Diligence But There Are Countervailing Considerations

Diligence is typically very limited, especially asset due diligence (may only get a loan tape). **Countervailing considerations —**	▪ Contingent and unidentified liabilities are NOT assumed ▪ May, in some cases, exclude certain liabilities and asset portfolios ▪ Large discount on asset bid allows for conservative reserve establishment and additional equity cushion (bargain purchase gain was $2.1 billion in the NYCB/Signature transaction and about $16 billion in the First Citizens/SVB transaction) ▪ Recent transactions have involved either no or a minimal deposit premium ▪ Post-closing, buyer can choose not to assume any contracts or agreements it does not want to assume and does not bear the costs of termination ▪ Although not in favor today, asset loss sharing protection may be available from the FDIC, as well as financing from the FDIC ▪ Acquired operations will “open up” for business day 1 on failed bank’s existing systems and failed bank’s employees

FDIC Transactions Involve a Full Auction Conducted by the FDIC and Virtually No Negotiation

- Process involves a full auction by the FDIC with the FDIC decision driven by the bid that results in the "least cost resolution"
  - FDIC required to resolve failed bank in a way that is least costly to the insurance fund
  - Valued on present value basis using a "realistic discount rate"
  - Systemic Risk Exception can be involved in extraordinary circumstances
    - ⅔ supermajority approval of FDIC Board and Federal Reserve Board of Governors, as well as approval of Treasury Secretary in consultation with the President
- Done on a sealed bid basis with no input from FDIC on price (i.e., no real opportunity for negotiation); can submit multiple bids
- All bids become public at a future date

FDIC Transactions Can Be More Attractive Financially and Economically Than Regular Deals

- Historically, no or minimal deposit premium
- Asset discount results in bargain purchase gain to shareholders' equity which is accretive to tangible book value and tangible book value per share
- Deals have been very favorably received by market – approximately 40.5% stock price increase for NYCB and 57.3% for First Citizens in two trading days after announcement

Selected Additional Topics

- **Raising Capital – It is available but need to be prepared**
- **Value Appreciation Instruments – Allows the FDIC to participate in any acquirer stock price appreciation after announcement**
- **Accounting and Tax – Be prepared**
- **Loss Sharing on Loans – Available but not a good historical experience**
- **Operational Considerations – Acquired operations operated, in the short term, under existing systems and with existing employees until a conversion can be completed**

Key Terms of Recent Transactions – NYCB/Signature

Acquired Select Assets and Assumed Certain Liabilities of Signature Bridge Bank from the FDIC

Key Transaction Details

- NYCB acquired a highly liquid, mostly cash balance sheet with a $2.725Bn excess asset position at no deposit premium

- $34Bn of deposits acquired
  - Represents all deposits other than deposits related to crypto currencies
  - Meaningful noninterest bearing deposits assumed
- $13Bn pool of loans acquired
  - Traditional C&I, Signature Financial, Healthcare Banking, Mortgage Warehouse and SBA
- $25Bn of total cash received from the FDIC
  - ***NYCB to use excess liquidity to pay down a substantial amount of wholesale borrowings, leaving the balance sheet with a strong liquidity position***
- Acquiring all branches and retaining employees related to acquired businesses

- NYCB may act as servicer for the CRE, multi-family, and fund finance loans left behind (subject to finalization of terms, including fees)
- FDIC to receive equity appreciation instruments from NYCB valued up to $300MM (payable in stock)

- Not acquiring remaining loan portfolios (includes fund banking, CRE, or multifamily), QFCs or the credit card business
- Not acquiring crypto related deposits and Signet

- All regulatory approvals have been received and the transaction has closed
- Acquired branches now operating as Flagstar Bank

Acquired Balance Sheet ($MM)

Assets	
Cash	**25,044**
Investment Securities	-
Total Cash & Securities	25,044
Gross Loans HFI	**12,870**
Loan Loss Reserves	-
Total Net Loans	12,870
Goodwill & Intangibles	-
Other Assets	510
Total Assets	**38,423**
Liabilities & Equity	
Deposits	**33,989**
Borrowings	-
Other Liabilities	1,710
Total Liabilities	**35,698**
Equity	**2,725**
Total Liabilities and Equity	**38,423**

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Strategic Rationale

NEW YORK COMMUNITY BANCORP, INC. + Signature SIGNATURE BANK

Enhances NYCB Commercial Lending Platform by Adding New Verticals

- Adds Traditional C&I, Signature Financial, Healthcare Banking and SBA
- Experienced relationship managers will be additive to NYCB platform
- Continues build-out of commercial banking platforms

Significantly Strengthens NYCB's Deposit Base and Funding Profile

- Deposits increase from $59Bn to $93Bn; significant amount of noninterest bearing deposits
- Adds branches in NY, CA, CT, NC and NV
- Receives $25Bn of cash from FDIC to pay down wholesale borrowings
- Lowers loan to deposit ratio from 118% to 88%

Adds a Significant Number of Highly Productive Private Client Banking Teams

- Adds teams in New York and California
- Teams are significant deposit generators with future opportunities to offer more commercial / retail client solutions
- Provides opportunity to jump start NYCB's wealth strategy

Represents a Financially Attractive Transaction

- Indicative EPS accretion: +20% (1)
- Indicative TBVPS accretion: +15% (1)
- TBV Earn-back: Immediately accretive

Opportunistic Transaction that Underscores NYCB's Strong Financial & Capital Position

- Approximately capital neutral to key capital ratios
- Transaction is self-capitalizing due to asset discount structure

(1) Based on NYCB information as of 12/31/2022 and Signature as of 3/17/2023 as provided by the FDIC.

Key Terms of Recent Transactions – First Citizens/SVB

Acquired certain assets and assumed certain liabilities of Silicon Valley Bridge Bank, N.A. from the FDIC

Acquisition details

- We acquired **total assets of $110.1 billion** with a **$16.5 billion discount bid on assets**, consisting of:
  - **$72.1 billion** in loans
  - **$56.5 billion** in deposits
  - No investment securities acquired
- Option to purchase all bank branches and corporate locations.
- Retaining employees in the acquired revenue-producing businesses and those necessary to manage operations to support those businesses.
- FDIC received a value appreciation instrument from First Citizens BancShares, Inc. valued at up to $500 million (payable in cash) and exercisable until April 14th, 2023.

Downside protections

- Transaction structured to **limit liquidity and credit risks** to First Citizens:
  - Asset discount and loss share agreement with the FDIC provides downside protection against credit risk.
  - Five-year loss share agreement stipulates that the FDIC will reimburse First Citizens for 50% of losses on commercial loans in excess of $5 billion.
  - Entered into a liquidity facility with the FDIC to provide additional contingent funding if needed.

Integration

- All regulatory approvals received and transaction has closed.
- All branches now operating as a division of First Citizens Bank.
- All depositors will continue to have access to their funds.

Preliminary Acquired Assets & Liabilities (1)

($ in millions)

Assets		
Cash	$	35,264
Gross loans		72,114
Earning assets	**$**	**107,378**
Other assets		2,704
Total assets	**$**	**110,082**

Liabilities		
Deposits	$	56,491
Borrowings (2)		34,605
Other liabilities		2,536
Total liabilities	**$**	**93,632**
Discount bid on assets	**$**	**16,450**

FirstCitizens BancShares

(1) Assets and liabilities as of March 24, 2023 as provided by the FDIC. Subject to change based on closing balance sheet. Asset and liability data does not include purchase accounting marks.
(2) In connection with the acquisition, First Citizens entered into a five-year $35 billion note payable to the FDIC bearing an annual interest rate of 3.50%. Amount is estimated based on the March 24, 2023 balance sheet provided by the FDIC. Subject to change based on closing balance sheet.

Key Takeaways

1	Adds significant scale, geographic diversity, capabilities and solutions for our customers.
2	Financially attractive transaction with favorable downside protections against liquidity and credit risk.
3	Committed to serving the innovation economy and preserving legacy SVB's strong relationships.
4	Expands talent and expertise with shared commitment to deep, longstanding client relationships.
5	Proven track record of prudent risk management with a strong liquidity position and capital ratios within or above target ranges post acquisition.

FirstCitizens BancShares

Key Terms of Recent Transactions – JPMC/First Republic

KEY TRANSACTION DETAILS[1]

Transaction overview

- JPMorgan Chase acquired substantial majority of assets and assumed certain liabilities of First Republic Bank from the FDIC
  - $173B of loans and $30B of securities
  - Approximately $92B of deposits and $28B of FHLB advances
  - JPMorgan Chase did not assume First Republic Bank's corporate debt or preferred stock
- JPMorgan Chase will make a payment of $10.6B to the FDIC
- FDIC will provide loss share agreements with respect to most acquired loans
  - Single family residential mortgages: 80% loss coverage for seven years
  - Commercial loans, including CRE: 80% loss coverage for five years

Balance sheet restructuring

- JPMorgan Chase will repay $25B of deposits from large U.S. banks and eliminate a $5B deposit from JPMorgan Chase on consolidation
- FDIC will provide a new $50B five-year fixed-rate term financing

Integration

- All regulatory approvals received and the transaction has closed
- First Republic branches and offices will open as normal
- Committed to treating employees with respect, care and transparency

BALANCE SHEET ($B)[1]

	Pre-closing	Post-closing[2]
Assets		
Cash	–	–
Securities[3]	$29.6	$29.6
Total cash and securities	**$29.6**	**$29.6**
Loans	$172.9	$150.3
Intangibles[4]	–	1.1
Other assets	5.0	4.8
Total assets	**$207.5**	**$185.8**
Liabilities		
Deposits	$92.4	$87.4
FHLB advances	28.1	28.1
Term financing	–	50.0
Other liabilities	1.4	2.3
Total liabilities	**$122.0**	**$167.8**

[1] Estimated as of April 28, 2023 based on data provided by the FDIC
[2] Includes estimated fair value marks and elimination of $5B deposit from JPMorgan Chase. Estimates are subject to refinement, including during purchase accounting measurement period
[3] Securities balances reflected at fair value in pre- and post-closing balance sheet
[4] Reflects core deposit intangible

Accelerates key growth opportunities

- Increases penetration with U.S. high net worth clients
- Accelerates U.S. wealth strategy by adding J.P. Morgan wealth centers in attractive locations
- Complementary to JPMorgan Chase's #1 business bank

Financially attractive

- >$500mm net income accretion[1]
- Tangible book value per share accretive
- IRR > 20%

High-quality portfolio with additional protection

- Strong credit profile supplemented by FDIC loss sharing agreement
- Loan portfolio marks supported by due diligence process
- Maintains JPMorgan Chase's fortress balance sheet

Contributes to rapid and orderly resolution

- First Republic depositors will be backed by the strength of JPMorgan Chase
- Lowest cost and most efficient option for the Deposit Insurance Fund
- Our capabilities and capital strength enabled a competitive bid

[1] Accretion excluding bargain purchase gain in 2023 and restructuring costs expected in 2023 and 2024

Key Terms of Recent Transactions – Fulton/Republic First

Acquisition Details

- Fulton is acquiring a highly liquid balance sheet with cash and securities accounting for ~50% of total assets
- **$1.0 billion cash position** to be received from the FDIC[1]
- **$2.0 billion of securities** purchased at fair value
- **$2.9 billion of loans**, including residential mortgage, commercial real estate, construction, commercial and industrial, and other consumer loans
- **$4.2 billion of deposits**, substantially all of Republic Bank's deposit base
- **$1.3 billion of borrowings**, Federal Home Loan Bank advances and Bank Term Funding Program
- Option to purchase all bank branches and corporate locations

Integration

- All regulatory approvals received
- All branches to open as Fulton Bank starting on Monday, April 29, 2024
- No service disruption expected for Republic Bank or Fulton Bank customers
- Extensive customer and team member communications drive integration effort

Acquired Balance Sheet ($ in billions)

Assets	
Cash	$1.0[1]
Investment Securities (at Fair Value)	$2.0
Gross Loans	$2.9
Other Assets	<$0.1
Total Assets	**$5.9**
Liabilities	
Deposits	$4.2
Borrowings	$1.3
Other Liabilities	<$0.1
Total Liabilities	**$5.5**

$374mm Asset Discount

FULTON FINANCIAL CORPORATION

(1) Includes $0.8 billion FDIC cash payment composed of an estimated $0.4 billion of settlement amount due to negative asset value of balance sheet and $0.4 billion asset discount, and $0.2 billion in cash on balance sheet.

A STRATEGIC AND FINANCIALLY COMPELLING TRANSACTION WITH MITIGATED EXECUTION RISK

✓ **Advances Strategic Growth Plan by Adding ~$4.2 billion in Deposits and ~$2.9 billion in Loans, Concentrated in the Heart of Our Philadelphia Market**

- Substantially increases Fulton's Philadelphia metropolitan statistical area ("MSA") presence with combined company deposits of $8.5 billion, projected to rank #9 by market share on a combined basis[(1)]

✓ **Meaningful Financial Impact and Return Potential for Fulton Shareholders**

- Provides immediate positive operating leverage through purchase accounting, expected cost savings and anticipated restructuring of the balance sheet
- ~20% projected run-rate accretion to 2024E EPS[(2)]; expected low tangible book value ("TBV") dilution (< 4%) and projected short TBV dilution earn back (~1.25 years)[(3)]

✓ **Improves Liquidity and Capital Position through Anticipated Balance Sheet Restructuring & Equity Offering**

- Provides ability to pay down high-cost wholesale funding with excess cash and marked securities
- Anticipated repayment of ~$2.3 billion of acquired and the Corporation's wholesale funding sources in the near term
- Improves the Corporation's loan-to-deposit ratio from 99% to ~92%[(4)]

✓ **Maintains Strong Risk Management Culture and Robust Balance Sheet**

- Expected to increase credit reserve position
- Anticipated robust capital ratios of the combined company – 9.9% Common Equity Tier 1 and 8.8% Tier 1 Leverage ratios[(3)]

✓ **Lower Execution Risk Driven by Familiarity of Customer Base, Market and FDIC Asset Discount**

- The Corporation's due diligence and integration teams provide efficient and focused execution
- Asset discount provides downside financial protection

FULTON FINANCIAL CORPORATION

(1) Reflects FDIC Summary of Deposits data as of June 30, 2023. Republic Bank's estimated deposits in the Philadelphia MSA based on best available information provided in the FDIC data room as of January 31, 2024. (2) Run-rate EPS accretion for 2024E is based on median consensus estimates for the Corporation and illustratively assumes a closing of the transaction on January 1, 2024, a $250 million common stock issuance and full realization of cost savings, as set out on page 9. (3) TBV dilution based on March 31, 2024 financial information for the Corporation, adjusted for purchase accounting adjustments, restructuring charges and a $250 million common stock issuance. Refer to page 9 for additional detail on transaction assumptions and page 15 for additional detail on TBV dilution calculation. TBV is a non-GAAP financial measure; see appendix for certain GAAP to Non-GAAP reconciliations. (4) Combined Company Loans / Deposits ratio includes the impact of anticipated purchase accounting adjustments.

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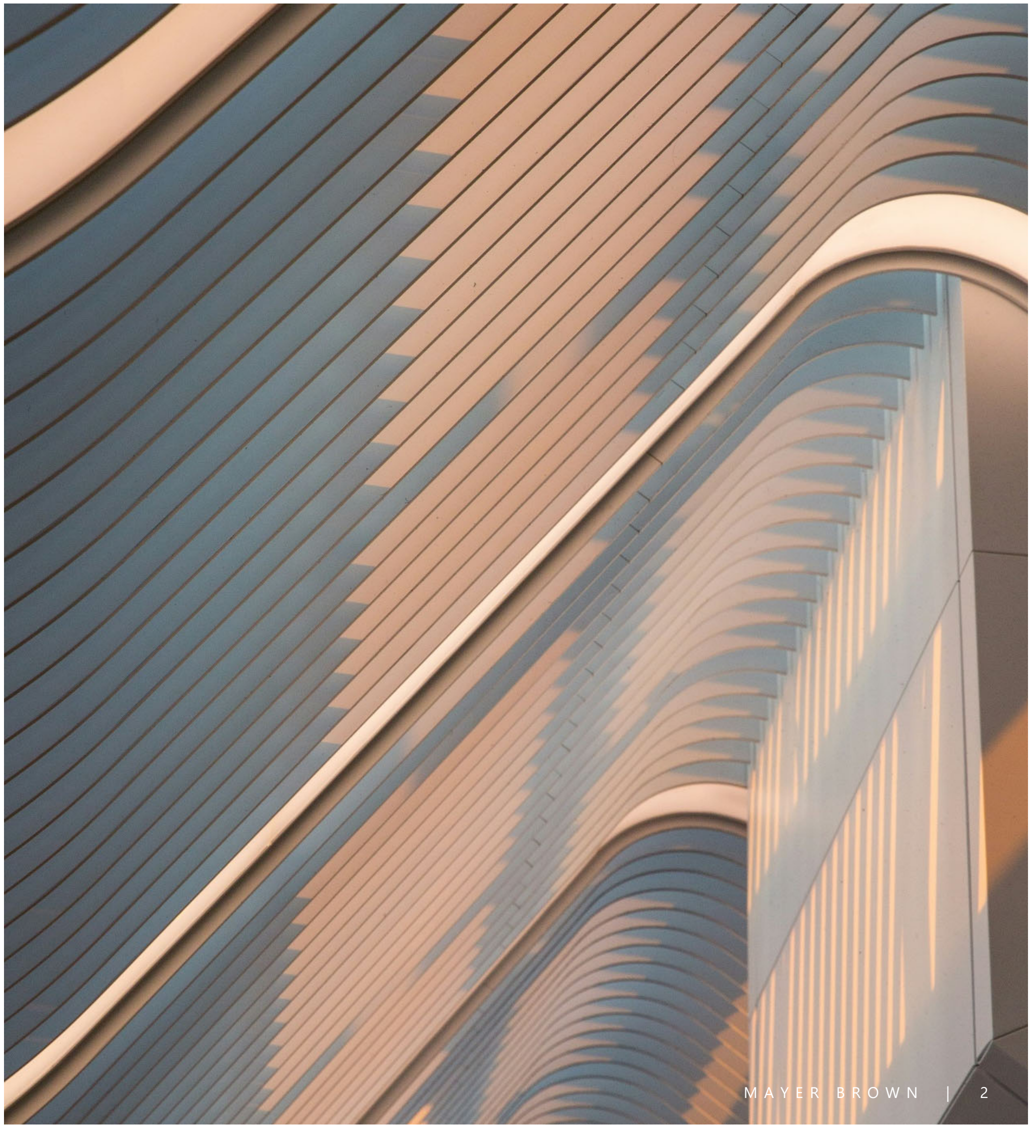
MARCH 27, 2025

HIGH-LEVEL PERSPECTIVE FOR 2025

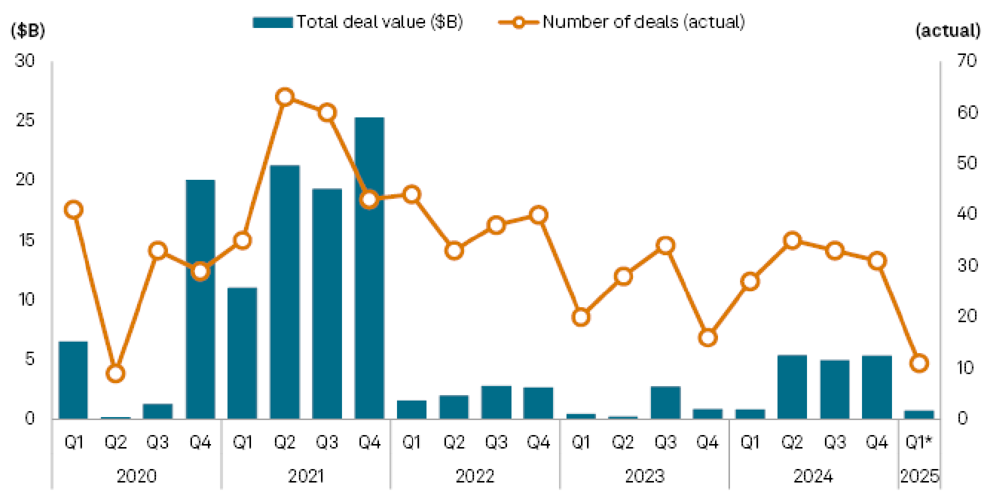
- While the outlook is more positive then in 2024, the start has been slow and there are some possible speed bumps in the road.
  - First, acquisitions by large banks are likely to remain subject to heightened scrutiny and face continued difficulty.
  - Second, state authorities could increase their scrutiny of transactions.

- Distressed acquisitions of banks and bank assets may see broader types of buyers, including non-banks.



S&P BANK M&A DEAL TRACKER

11 US bank deals announced in 2025



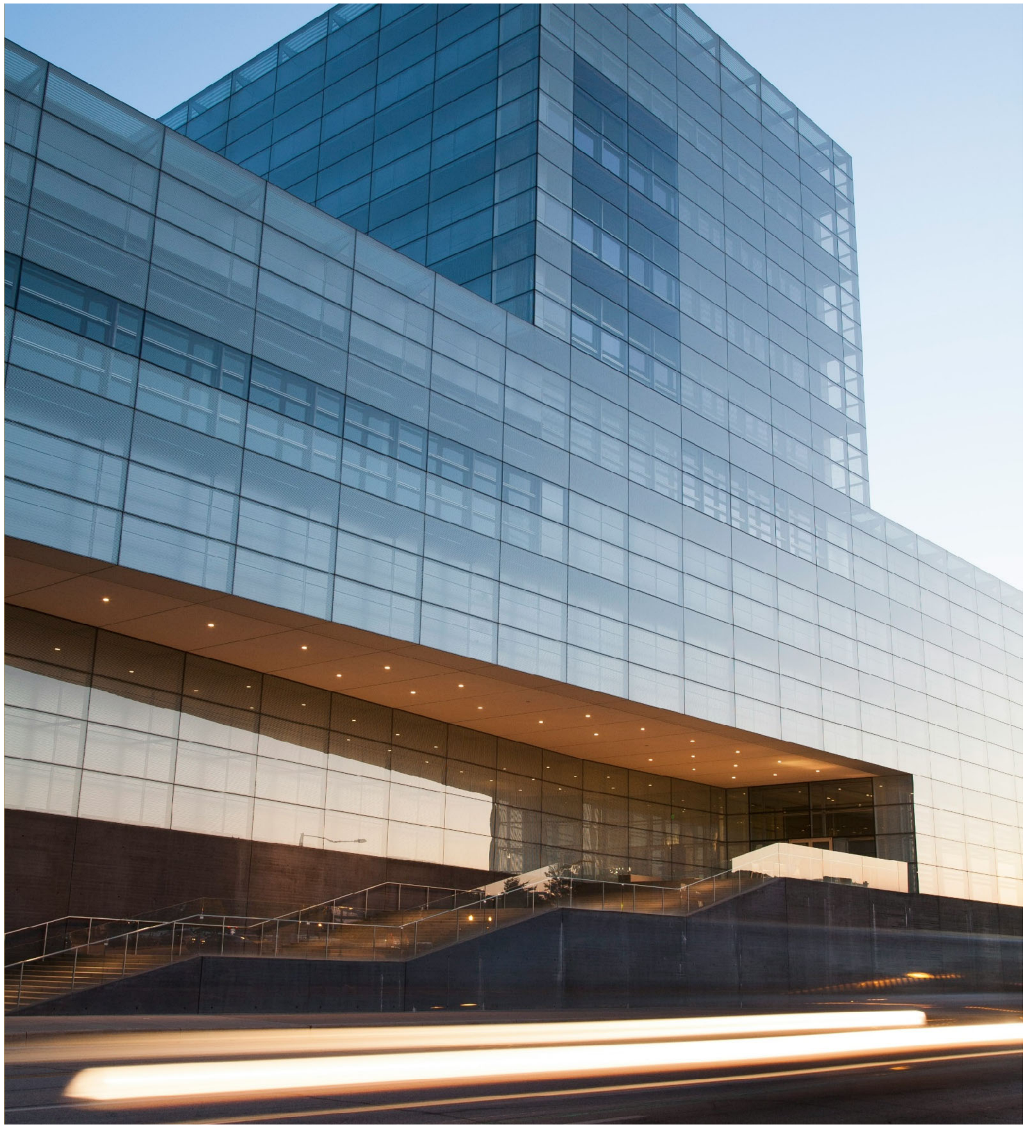
Data compiled Feb. 5, 2025.

Analysis limited to US-based whole company, minority stake, and franchise bank and thrift deals that were announced between Jan. 1, 2020, and Jan. 31, 2025. Excludes branch, government-assisted and terminated deals, as well as bids and thrift merger conversions.

* Quarter to date through Jan. 31, 2025.

Deal values are as of the announcement date.

Source: S&P Global Market Intelligence.

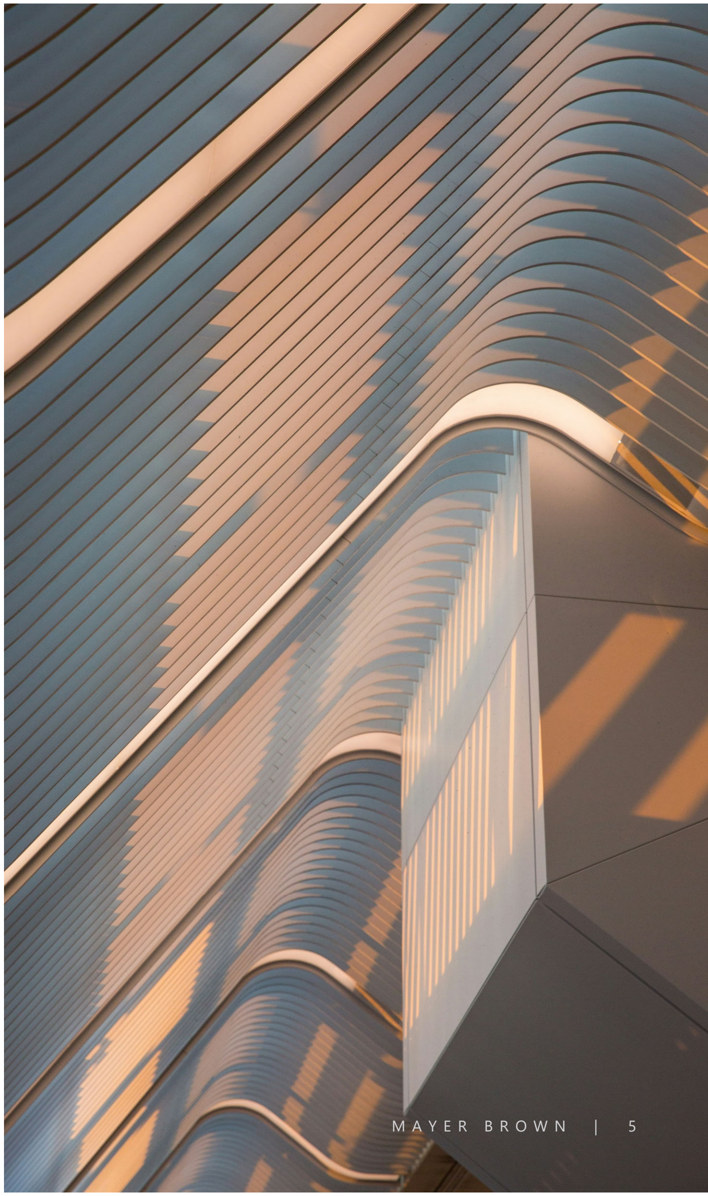


RECENT BANK M&A TRENDS

- Bank merger activity over the past few years was flat and application process timelines significantly lengthened.
  - Largely driven by regulatory uncertainty and delays.
  - Some impact from economic conditions.
- Although the OCC and the FDIC recently updated their guidelines for reviewing merger transaction, we expect more banks mergers for several reasons –
  - Shorter and higher likelihood for regulatory approvals.
  - Increased demand due to stagnant market and greater need to achieve economies of scale (especially with smaller and mid-size banks).

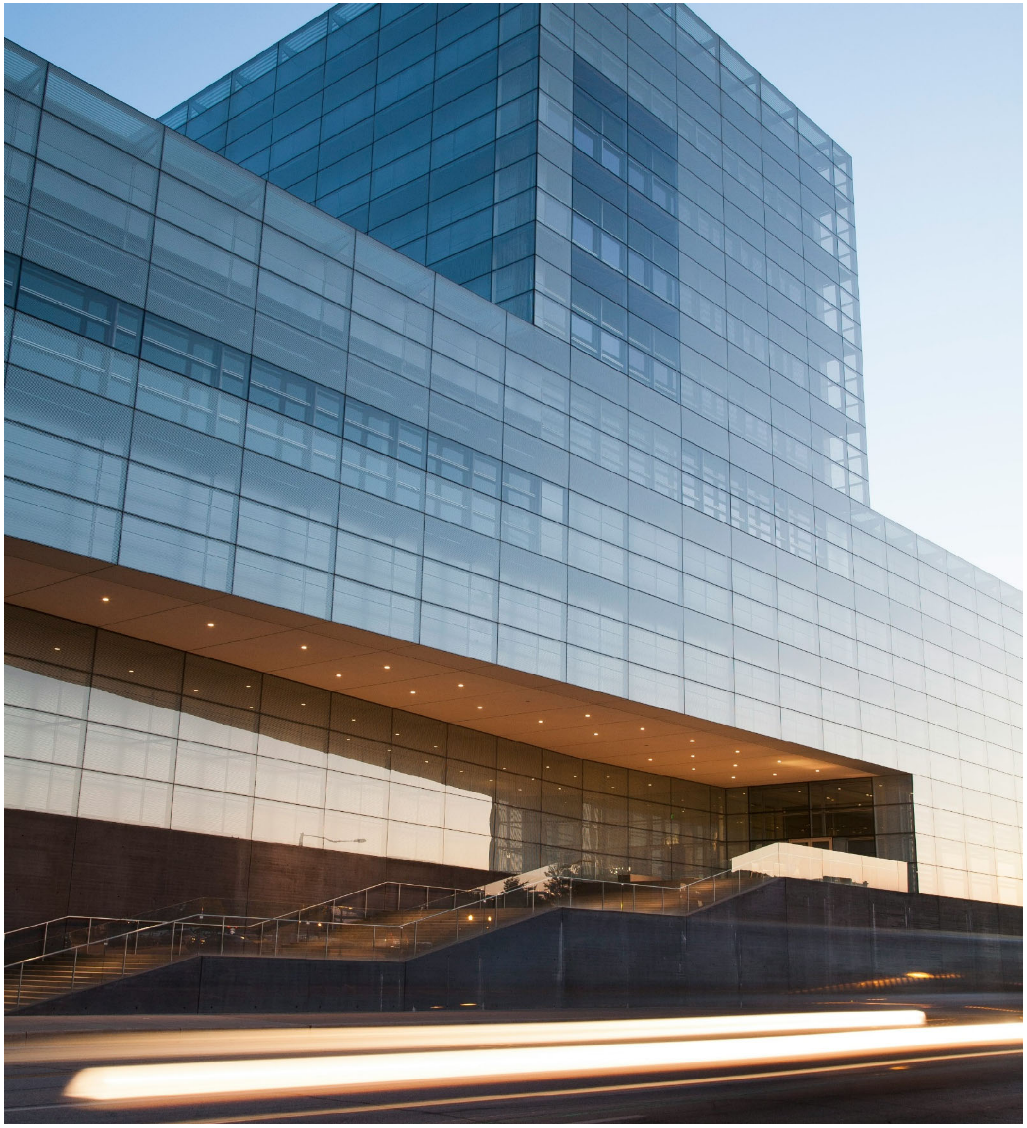
2024 AGENCY GUIDELINES FOR BANK MERGERS

- In 2024, the FDIC and OCC issued updated merger policies.
  - FDIC Statement of Policy on Bank Merger Transactions.
    - In September 2024, the FDIC approved changes focusing on the scope of transactions subject to approval, the process for evaluating merger applications, and the principles that guide the consideration of the applicable statutory factors as set forth in the Bank Merger Act.
  - OCC Policy Statement on Bank Mergers.
    - In September 2024, OCC approved a final rule updating its regulations for business combinations involving national banks and federal savings associations and a policy statement clarifying its review of applications under the Bank Merger Act.
- FRB publicly stated that it does not plan to issue new merger guidance.
- DOJ withdrew from 1995 bank merger guidelines and stated it would apply 2023 general merger guidelines to bank mergers going forward.



EFFECTS OF 2024 FDIC AND OCC ACTIONS

- **FDIC**
  - Expanded scope of merger review to include "mergers in substance."
  - Deemphasized use of HHI thresholds and added consideration of "concentrations in any specific products or customer segments."
  - Imposed expectation that applicants must demonstrate that a merger will better meet the convenience and needs of the community
  - Increased scrutiny on transactions resulting in a bank with more than $100 billion in assets.
- **OCC**
  - Outlined 13 indicators that generally must be present for an application to be approved expeditiously.
  - Defined 6 indicators that would delay an application until the applicant has adequately addressed or remediated the concern
  - Removed expedited review procedures and streamlined applications.

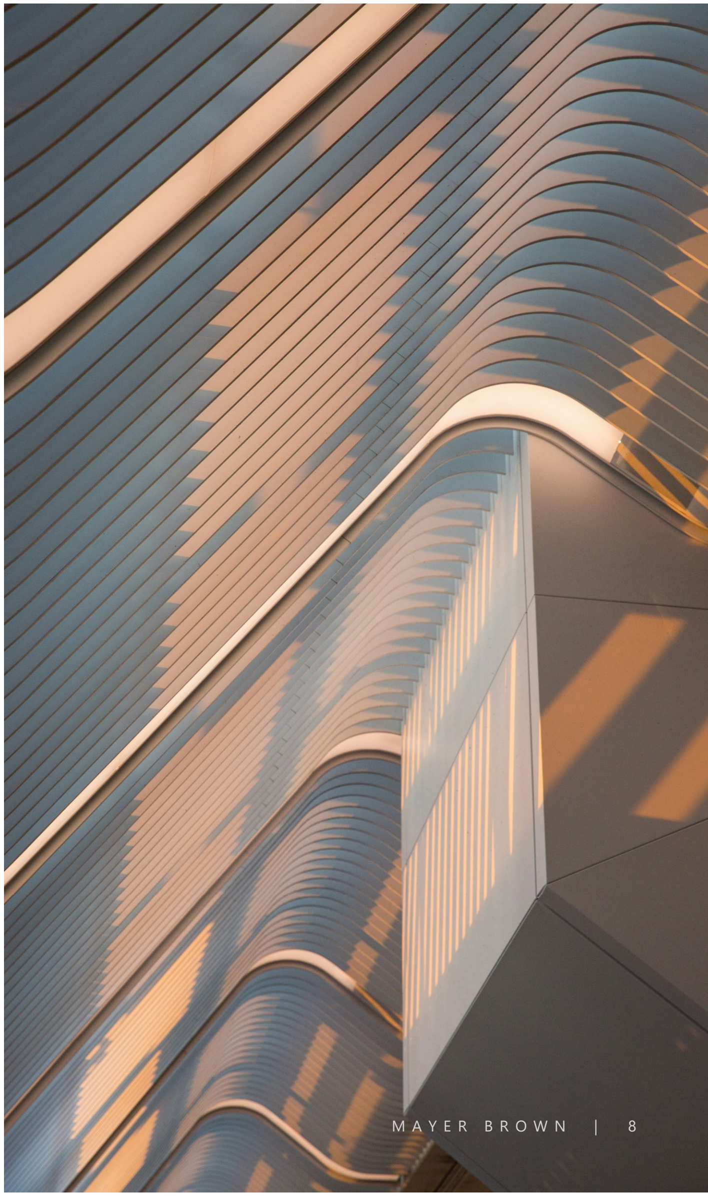


CHANGES EXPECTED IN 2025

- In March 2025, the FDIC proposed to rescind the 2024 merger policy and reinstate the prior policy.
  - Subsequently will conduct a broader reevaluation of its bank merger review process.
  - Also rescinded a proposal that would have required applicants to submit a notice to the FDIC under the Change in Bank Control Act for investments in state non-member banks even if the Federal Reserve will review a notice at the holding company-level.
- Expect OCC to reconsider its 2024 policy statement once a permanent Comptroller is in place.

M&A ALTERNATIVES

- **Bank Charters**
  - Limited number of new charter applications have been approved in recent years and timeline for approval can be lengthy and uncertain.
  - State non-bank bank and trust company charters could provide opportunity for de novo entry into banking without Bank Holding Company Act restrictions.
  - FinTechs have generally pivoted to acquisition of existing banks abandoning the new charter application process.
- **Bank Partnerships**
  - FinTechs and others have used the bank partnership model to originate loans or offered banking services through banking as a service (BaaS) programs.
  - Regulatory scrutiny has caused certain bank partnership arrangements to unwind so the increased regulatory environment may renew interest in bank charter.
  - State licenses still required.
- **Lenders and Money Services Businesses**
  - In lieu of a bank charter, some lenders have obtained state licenses to originate consumer loans or act as money transmitter.



FRAMEWORK OF REGULATION OF BANK M&A

- Bank Merger Act
  - The Bank Merger Act prohibits an insured depository institution from engaging in a merger transaction without prior regulatory approval. This generally includes merging with another insured depository institution or a non-bank or assuming the deposit liabilities of another insured depository institution.
- Change In Bank Control Act
  - Change in Bank Control Act requires prior written notice to the appropriate federal banking agency before anyone can acquire "control" of an insured depository institution.
    - Acquiring 25 percent or more of any class of voting securities of the institution constitutes control.
    - There is a rebuttable presumption of control if acquiring 10 percent or more of any class of voting securities of the institution and (i) the institution has registered securities or (ii) no other person will own, control, or hold the power to vote a greater percentage of that class of voting securities.
- Sections 3 and 4 of the Bank Holding Company Act also require prior approvals from the banking agencies for certain acquisitions.
- Regulatory approval process elongates time frames for transactions and creates uncertainty, which leads to higher costs.

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Section 3 of the Bank Holding Company Act

12 USC 1842: Acquisition of bank shares or assets
Text contains those laws in effect on March 12, 2025

From Title 12-BANKS AND BANKING
CHAPTER 17-BANK HOLDING COMPANIES
Jump To:

Source Credit
Miscellaneous
References In Text
Amendments
Effective Date

§1842. Acquisition of bank shares or assets

(a) Prior approval of Board as necessary; exceptions; disposition, time extension; subsequent approval or disposition upon disapproval

It shall be unlawful, except with the prior approval of the Board, (1) for any action to be taken that causes any company to become a bank holding company; (2) for any action to be taken that causes a bank to become a subsidiary of a bank holding company; (3) for any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than 5 per centum of the voting shares of such bank; (4) for any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or (5) for any bank holding company to merge or consolidate with any other bank holding company. Notwithstanding the foregoing this prohibition shall not apply to (A) shares acquired by a bank, (i) in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 1841(b) of this title and except as provided in paragraphs (2) and (3) of section 1841(g) of this title, or (ii) in the regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after May 9, 1956, in securing or collecting any such previously contracted debt shall be disposed of within a period of two years from the date on which they were acquired; (B) additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition; or (C) the acquisition, by a company, of control of a bank in a reorganization in which a person or group of persons exchanges their shares of the bank for shares of a newly formed bank holding company and receives after the reorganization substantially the same proportional share interest in the holding company as they held in the bank except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under State or Federal law if-

(i) immediately following the acquisition-

(I) the bank holding company meets the capital and other financial standards prescribed by the Board by regulation for such a bank holding company; and

(II) the bank is adequately capitalized (as defined in section 1831o of this title);

(ii) the holding company does not engage in any activities other than those of managing and controlling banks as a result of the reorganization;

(iii) the company provides 30 days prior notice to the Board and the Board does not object to such transaction during such 30-day period; and

(iv) the holding company will not acquire control of any additional bank as a result of the reorganization..[1]

The Board is authorized upon application by a bank to extend, from time to time for not more than one year at a time, the two-year period referred to above for disposing of any shares acquired by a bank in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years. For the purpose of the preceding sentence, bank shares acquired after December 31, 1970, shall not be deemed to have been acquired in good faith in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto, but in such instances acquisitions may be made without prior approval of the Board if the Board, upon application filed within ninety days after the shares are acquired, approves retention or, if retention is disapproved, the acquiring bank disposes of the shares or its sole discretionary voting rights within two years after issuance of the order of disapproval.

(b) Application for approval; notice to Comptroller of Currency or State authority; views and recommendations; disapproval; hearing; order of Board; nonaction deemed grant of application; procedure in emergencies or probable failures requiring immediate Board action and orders

(1) Notice and hearing requirements

Upon receiving from a company any application for approval under this section, the Board shall give notice to the Comptroller of the Currency, if the applicant company or any bank the voting shares or assets of which are sought to be required [2] is a national banking association, or to the appropriate supervisory authority of the interested State, if the applicant company or any bank the voting shares or assets of which are sought to be acquired is a State bank, in order to provide for the submission of the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be. The views and recommendations shall be submitted within thirty calendar days of the date on which notice is given, or within ten calendar days of such date if the Board advises the Comptroller of the Currency or the State supervisory authority that an emergency exists requiring expeditious action. If the thirty-day notice period applies and if the Comptroller of the Currency or the State supervisory authority so notified by the Board disapproves the application in writing within this period, the Board shall forthwith give written notice of that fact to the applicant. Within three days after giving such notice to the applicant, the Board shall notify in writing the applicant and the disapproving authority of the date for commencement of a hearing by it on such application. Any such hearing shall be commenced not less than ten nor more than thirty days after the Board has given written notice to the applicant of the action of the disapproving authority. The length of any such hearing shall be determined by the Board, but it shall afford all interested parties a reasonable opportunity to testify at such hearing. At the conclusion thereof, the Board shall, by order, grant or deny the application on the basis of the record made at such hearing. In the event of the failure of the Board to act on any application for approval under this section within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. Notwithstanding any other provision of this subsection, if the Board finds that it must act immediately on any application for approval under this section in order to prevent the probable failure of a bank or bank holding company involved in a proposed acquisition, merger, or consolidation transaction, the Board may dispense with the notice requirements of this subsection, and if notice is given, the Board may request that the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be, be submitted immediately in any form or by any means acceptable to the Board. If the Board has found pursuant to this subsection either that an emergency exists requiring expeditious action or that it must act immediately to prevent probable failure, the Board may grant or deny any such application without a hearing notwithstanding any recommended disapproval by the appropriate supervisory authority.

(2) Waiver in case of bank in danger of closing

If the Board receives a certification described in section 1823(f)(8)(D) [3] of this title from the appropriate Federal or State chartering authority that a bank is in danger of closing, the Board may dispense with the notice and hearing requirements of paragraph (1) with respect to any application received by the Board relating to the acquisition of such bank, the bank holding company which controls such bank, or any other affiliated bank.

(c) Factors for consideration by Board

(1) Competitive factors

The Board shall not approve-

(A) any acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(B) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint or [4] trade, unless it finds 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.

(2) Banking and community factors

In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

(3) Supervisory factors

The Board shall disapprove any application under this section by any company if-

(A) the company fails to provide the Board with adequate assurances that the company will make available to the Board such information on the operations or activities of the company, and any affiliate of the company, as the Board determines to be appropriate to determine and enforce compliance with this chapter; or

(B) in the case of an application involving a foreign bank, the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.

(4) Treatment of certain bank stock loans

Notwithstanding any other provision of law, the Board shall not follow any practice or policy in the consideration of any application for the formation of a one-bank holding company if following such practice or policy would result in the rejection of such application solely because the transaction to form such one-bank holding company involves a bank stock loan which is for a period of not more than twenty-five years. The previous sentence shall not be construed to prohibit the Board from rejecting any application solely because the other financial arrangements are considered unsatisfactory. The Board shall consider transactions involving bank stock loans for the formation of a one-bank holding company having a maturity of twelve years or more on a case by case basis and no such transaction shall be approved if the Board believes the safety or soundness of the bank may be jeopardized.

(5) Managerial resources

Consideration of the managerial resources of a company or bank under paragraph (2) shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or bank.

(6) Money laundering

In every case, the Board shall take into consideration the effectiveness of the company or companies in combatting money laundering activities, including in overseas branches.

(7) Financial stability

In every case, the Board shall take into consideration the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.

(d) Interstate banking

(1) Approvals authorized

(A) Acquisition of banks

The Board may approve an application under this section by a bank holding company that is well capitalized and well managed to acquire control of, or acquire all or substantially all of the assets of, a bank located in a State other than the home State of such bank holding company, without regard to whether such transaction is prohibited under the law of any State.

(B) Preservation of State age laws

(i) In general

Notwithstanding subparagraph (A), the Board may not approve an application pursuant to such subparagraph that would have the effect of permitting an out-of-State bank holding company to acquire a bank in a host State that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State.

(ii) Special rule for State age laws specifying a period of more than 5 years

Notwithstanding clause (i), the Board may approve, pursuant to subparagraph (A), the acquisition of a bank that has been in existence for at least 5 years without regard to any longer minimum period of time specified in a statutory law of the host State.

(C) Shell banks

For purposes of this subsection, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, an existing bank shall be deemed to have been in existence for the same period of time as the bank to be acquired.

(D) Effect on State contingency laws

No provision of this subsection shall be construed as affecting the applicability of a State law that makes an acquisition of a bank contingent upon a requirement to hold a portion of such bank's assets available for call by a State-sponsored housing entity established pursuant to State law, if-

(i) the State law does not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or bank holding companies;

(ii) that State law was in effect as of September 29, 1994;

(iii) the Federal Deposit Insurance Corporation has not determined that compliance with such State law would result in an unacceptable risk to the Deposit Insurance Fund; and

(iv) the appropriate Federal banking agency for such bank has not found that compliance with such State law would place the bank in an unsafe or unsound condition.

(2) Concentration limits

(A) Nationwide concentration limits

The Board may not approve an application pursuant to paragraph (1)(A) if the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the acquisition for which such application is filed would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

(B) Statewide concentration limits other than with respect to initial entries

The Board may not approve an application pursuant to paragraph (1)(A) if-

(i) immediately before the consummation of the acquisition for which such application is filed, the applicant (including any insured depository institution affiliate of the applicant) controls any insured depository institution or any branch of an insured depository institution in the home State of any bank to be acquired or in any host State in which any such bank maintains a branch; and

(ii) the applicant (including all insured depository institutions which are affiliates of the applicant), upon consummation of the acquisition, would control 30 percent or more of the total amount of deposits of insured depository institutions in any such State.

(C) Effectiveness of State deposit caps

No provision of this subsection shall be construed as affecting the authority of any State to limit, by statute, regulation, or order, the percentage of the total amount of deposits of insured depository institutions in the State which may be held or controlled by any bank or bank holding company (including all insured depository institutions which are affiliates of the bank or bank holding company) to the extent the application of such limitation does not discriminate against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or holding companies.

(D) Exceptions to subparagraph (B)

The Board may approve an application pursuant to paragraph (1)(A) without regard to the applicability of subparagraph (B) with respect to any State if-

(i) there is a limitation described in subparagraph (C) in a State statute, regulation, or order which has the effect of permitting a bank or bank holding company (including all insured depository institutions which are affiliates of the bank or bank holding company) to control a greater percentage of total deposits of all insured depository institutions in the State than the percentage permitted under subparagraph (B); or

(ii) the acquisition is approved by the appropriate State bank supervisor of such State and the standard on which such approval is based does not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or holding companies.

(E) "Deposit" defined

For purposes of this paragraph, the term "deposit" has the same meaning as in section 1813(l) of this title.

(3) Community reinvestment compliance

In determining whether to approve an application under paragraph (1)(A), the Board shall-

(A) comply with the responsibilities of the Board regarding such application under section 2903 of this title; and

(B) take into account the applicant's record of compliance with applicable State community reinvestment laws.

(4) Applicability of antitrust laws

No provision of this subsection shall be construed as affecting-

(A) the applicability of the antitrust laws; or

(B) the applicability, if any, of any State law which is similar to the antitrust laws.

(5) Exception for banks in default or in danger of default

The Board may approve an application pursuant to paragraph (1)(A) which involves-

(A) an acquisition of 1 or more banks in default or in danger of default; or

(B) an acquisition with respect to which assistance is provided under section 1823(c) of this title;

without regard to subparagraph (B) or (D) of paragraph (1) or paragraph (2) or (3).

(e) Insured depository institution

Every bank that is a holding company and every bank that is a subsidiary of such a company shall become and remain an insured depository institution as defined in section 1813 of this title.

(f) [Repealed]

(g) Mutual bank holding company

(1) Establishment

Notwithstanding any provision of Federal law other than this chapter, a savings bank or cooperative bank operating in mutual form may reorganize so as to form a holding company.

(2) Regulations

A bank holding company organized as a mutual holding company shall be regulated on terms, and shall be subject to limitations, comparable to those applicable to any other bank holding company.

(May 9, 1956, ch. 240, §3, 70 Stat. 134 ; Pub. L. 89–485, §7, July 1, 1966, 80 Stat. 237 ; Pub. L. 91–607, title I, §102, Dec. 31, 1970, 84 Stat. 1763 ; Pub. L. 95–188, title III, §§301(a), 302, Nov. 16, 1977, 91 Stat. 1388 , 1389; Pub. L. 96–221, title VII, §§712(b), (c), 713, Mar. 31, 1980, 94 Stat. 189 , 190; Pub. L. 97–320, title I, §§118(c), 141(a)(4), title IV, §404(d)(2), Oct. 15, 1982, 96 Stat. 1479 , 1489, 1512; Pub. L. 100–86, title I, §§101(d), 107(b), title V, §§502(h)(1), 509(a), Aug. 10, 1987, 101 Stat. 561 , 579, 628, 635; Pub. L. 101–73, title VI, §602(b), Aug. 9, 1989, 103 Stat. 409 ; Pub. L. 102–242, title II, §§202(d), 210, Dec. 19, 1991, 105 Stat. 2290 , 2298; Pub. L. 103–325, title III, §§319(a), 322(c)(1), Sept. 23, 1994, 108 Stat. 2224 , 2227; Pub. L. 103–328, title I, §101(a), Sept. 29, 1994, 108 Stat. 2339 ; Pub. L. 106–102, title I, §§105, 118, Nov. 12, 1999, 113 Stat. 1359 , 1373; Pub. L. 107–56, title III, §327(a)(1), Oct. 26, 2001, 115 Stat. 318 ; Pub. L. 108–386, §8(c)(2), Oct. 30, 2004, 118 Stat. 2232 ; Pub. L. 109–173, §9(h)(2), Feb. 15, 2006, 119 Stat. 3618 ; Pub. L. 111–203, title VI, §§604(d), 607(a), July 21, 2010, 124 Stat. 1601 , 1607.)

Editorial Notes

References in Text

Section 1823(f)(8)(D) of this title, referred to in subsec. (b)(2), which defined "bank in danger of closing", was repealed by Pub. L. 101–73, title II, §217(5)(H), Aug. 9, 1989, 103 Stat. 257 .

Amendments

2010-Subsec. (c)(7). Pub. L. 111–203, §604(d), added par. (7).

Subsec. (d)(1)(A). Pub. L. 111–203, §607(a), substituted "well capitalized and well managed" for "adequately capitalized and adequately managed".

2006-Subsec. (d)(1)(D)(iii). Pub. L. 109–173 substituted "Deposit Insurance Fund" for "appropriate deposit insurance fund".

2004-Subsec. (b)(1). Pub. L. 108–386 struck out "or a District bank" after "national banking association" in first sentence.

2001-Subsec. (c)(6). Pub. L. 107–56 added par. (6).

1999-Subsec. (f). Pub. L. 106–102, §118, amended subsec. (f) generally, substituting "(f) [Repealed]." for provisions relating to authorized activities of qualified savings banks which are subsidiaries of bank holding companies.

Subsec. (g)(2). Pub. L. 106–102, §105, amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "A corporation organized as a holding company under this subsection shall be regulated on the same terms and be subject to the same limitations as any other holding company which controls a savings bank."

1994-Subsec. (a). Pub. L. 103–325, §319(a), substituted "(B)" for "or (B)" and added subpar. (C).

Subsec. (d). Pub. L. 103–328 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Notwithstanding any other provision of this section, no application (except an application filed as a result of a transaction authorized under section 1823(f) of this title) shall be approved under this section which will permit any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank located outside the State in which the operations of such bank holding company's banking subsidiaries were principally conducted on July 1, 1966, or the date on which such company became a bank holding company, whichever is later, unless the acquisition of such shares or assets of a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located, by language to that effect and not merely by implication. For the purposes of this section, the State in which the operations of a bank holding company's subsidiaries are principally conducted is that State in which total deposits of all such banking subsidiaries are largest."

Subsec. (e). Pub. L. 103–325, §322(c)(1), struck out after first sentence "This subsection does not apply to a bank described in the last sentence of section 1841(c) of this title."

1991-Subsec. (c). Pub. L. 102–242, §202(d), inserted heading, inserted par. (1) designation and heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, inserted par. (2) designation and heading, added par. (3), and inserted par. (4) designation and heading.

Subsec. (c)(5). Pub. L. 102–242, §210, added par. (5).

1989-Subsec. (e). Pub. L. 101–73, which directed the substitution of "an insured depository institution as defined in section 1813 of this title" for "an insured bank as defined in section 1813(h) of this title", was executed by making the substitution for "an insured bank as such term is defined in section 1813(h) of this title", as the probable intent of Congress.

1987-Pub. L. 100–86, §509(a), repealed Pub. L. 97–320, §141. See 1982 Amendment note below.

Subsec. (b). Pub. L. 100–86, §502(h)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (f). Pub. L. 100–86, §101(d), added subsec. (f).

Subsec. (g). Pub. L. 100–86, §107(b), added subsec. (g).

1982-Subsec. (d). Pub. L. 97–320, §118(c), inserted "(except an application filed as a result of a transaction authorized under section 1823(f) of this title)" after "no application".

Pub. L. 97–320, §141(a)(4), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 118 of Pub. L. 97–320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100–86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97–320 note set out under section 1464 of this title.

Subsec. (e). Pub. L. 97–320, §404(d)(2), inserted "This subsection does not apply to a bank described in the last sentence of section 1841(c) of this title."

1980-Subsec. (c). Pub. L. 96–221, §713, inserted provisions relating to applications for the formation of one-bank holding companies.

Subsec. (d). Pub. L. 96–221, §712(b), (c), temporarily designated existing provisions as par. (1) and added par. (2). See Termination Date of 1980 Amendment note set out below.

1977-Subsec. (a). Pub. L. 95–188, §301(a), authorized the Board to extend the time for disposition of acquired shares for not more than one year at a time and three years in the aggregate.

Subsec. (b). Pub. L. 95–188, §302, inserted provision for alternative submission of views and recommendations within ten calendar days of the date on which notice is given if the Board advises the appropriate supervisory authority that an emergency exists requiring expeditious action, substituted "shall, by order," for "shall by order" and inserted provisions respecting procedure in emergencies or probable failures requiring immediate Board action and orders.

1970-Subsec. (a). Pub. L. 91–607, §102(1), inserted provision deeming acquisition of bank shares after Dec. 31, 1970, as not being in good faith in a fiduciary capacity if acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto, and provision for subsequent approval of retention of acquired shares upon application filed within 90 days of acquisition and disposition of shares or sole discretionary voting rights within two years after order in an event of disapproval.

Subsec. (b). Pub. L. 91–607, §102(2), inserted provision deeming an application for approval as granted where Board has not acted on application within 91 day period beginning on date of submission to Board of complete record on application.

Subsec. (e). Pub. L. 91–607, §102(3), added subsec. (e).

1966-Subsec. (a). Pub. L. 89–485, §7(a), (b), expanded the list of acts requiring prior approval of the Board by including therein any action that causes a bank to become a subsidiary of a bank holding company and substituted provisions excepting shares that are held under a trust that constitutes a company as defined in section 1841(b) of this title and excepting shares as provided in pars. (2) and (3) of section 1841(g) of this title from the effect of the clause lifting the requirements of prior Board approved in the case of shares acquired by a bank in good faith in a fiduciary capacity for provisions excepting shares held for the benefit of the shareholders of a bank from the effect of the clause.

Subsec. (c). Pub. L. 89–485, §7(c), inserted provision prohibiting any acquisition, merger, or consolidation that would result in a monopoly or would further any combination or conspiracy to monopolize the banking business in any part of the United States or would substantially lessen competition or in any manner be in restraint of trade unless the public interest clearly outweighed the anticompetitive effects and substituted provisions requiring the Board to take into consideration the financial and managerial resources and future prospects of the company or bank concerned and the convenience and needs of the community to be served for provisions requiring the Board to take into consideration the financial history of the company or bank concerned, its prospects, the character of its management, the needs of the community, and the public interest.

Subsec. (d). Pub. L. 89–485, §7(d), substituted provisions restricting expansion to state in which the operations of the bank holding company's banking subsidiaries were principally conducted, defined, as that state in which total deposits of all such banking subsidiaries were largest, on July 1, 1966, or the date on which the company became a bank holding company, whichever is later, for provisions restricting expansion to state in which the holding company maintains its principal office and place of business or in which it conducts its principal operations.

Statutory Notes and Related Subsidiaries

Effective Date of 2010 Amendment

Amendment by section 604(d) of Pub. L. 111–203 effective on the transfer date, see section 604(j) of Pub. L. 111–203, set out as a note under section 1462 of this title.

Amendment by section 607(a) of Pub. L. 111–203 effective on the transfer date, see section 607(c) of Pub. L. 111–203, set out as a note under section 1831u of this title.

Effective Date of 2006 Amendment

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109–173, set out as a note under section 24 of this title.

Effective Date of 2004 Amendment

Amendment by Pub. L. 108–386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108–386, set out as notes under section 321 of this title.

Effective Date of 2001 Amendment

Pub. L. 107–56, title III, §327(a)(2), Oct. 26, 2001, 115 Stat. 319 , as amended by Pub. L. 108–458, title VI, §6202(i), Dec. 17, 2004, 118 Stat. 3746 , provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to any application submitted to the Board of Governors of the Federal Reserve System under section 3 of the Bank Holding Company Act of 1956 [12 U.S.C. 1842] after December 31, [sic]."

Effective Date of 1999 Amendment

Amendment by Pub. L. 106–102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as a note under section 24 of this title.

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–328 effective at end of 1-year period beginning on Sept. 29, 1994, see section 101(e) of Pub. L. 103–328, set out as a note under section 1828 of this title.

Termination Date of 1980 Amendment

Amendment by Pub. L. 96–221 repealed on Oct. 1, 1981, see section 712(c) of Pub. L. 96–221, set out as a note under section 27 of this title.

Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97–320

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect before Aug. 10, 1987, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had been made before such date, see section 509(c) of Pub. L. 100–86, set out as a note under section 1464 of this title.

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect on the day before Oct. 8, 1986, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had taken effect before such date, see section 1(c) of Pub. L. 99–452, set out as a note under section 1464 of this title.

Section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect on the day after Aug. 27, 1986, applicable as if included in Pub. L. 97–320 on Oct. 15, 1982, with no amendment made by such section to any other provision of law to be deemed to have taken effect before Aug. 27, 1986, and any such provision of law to be in effect as if no such amendment had taken effect before Aug. 27, 1986, see section 1(c) of Pub. L. 99–400, set out as a note under section 1464 of this title.

[1] *So in original.*

[2] *So in original. Probably should be "acquired".*

[3] *See References in Text note below.*

[4] *So in original. Probably should be "of".*

Office of the Comptroller of the Currency – Business Combinations Under the Bank Merger Act – Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket ID OCC–2023–0017]

RIN 1557–AF24

Business Combinations Under the Bank Merger Act

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Final rule.

SUMMARY: The OCC is adopting a final rule to amend its procedures for reviewing applications under the Bank Merger Act and adding, as an appendix, a policy statement that summarizes the principles the OCC uses when it reviews proposed bank merger transactions under the Bank Merger Act.

DATES: The final rule is effective on January 1, 2025.

FOR FURTHER INFORMATION CONTACT: Valerie Song, Assistant Director, Christopher Crawford, Special Counsel, Elizabeth Small, Counsel, Chief Counsel's Office, 202–649–5490; or Yoo Jin Na, Director for Licensing Activities, 202–649–6260, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Background

The Bank Merger Act (BMA), section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), and the OCC's implementing regulation, 12 CFR 5.33, govern the OCC's review of business combinations of national banks and Federal savings associations with other insured depository institutions (institutions) that result in a national bank or Federal savings association.[1] Under the BMA, the OCC must consider the following factors: competition, the financial and managerial resources and future prospects of the existing and proposed institutions, the convenience and needs of the community to be served, the risk to the stability of the United States banking or financial system, and the effectiveness of any insured depository institution involved in combatting money laundering activities, including in overseas branches.[2] The BMA generally requires public notice of the transaction to be published for 30 days.[3] OCC regulations require the public notice include essential details about the transaction and instructions for public comment. The regulations incorporate the statutory 30-day public notice period and provide a 30-day public comment period, which the OCC may extend.[4] The OCC may also hold a public hearing, public meeting, or private meeting on an application.[5]

The OCC has issued several publications that provide additional information about the procedures that the OCC follows in reviewing and acting on proposed business combinations. For example, the ''Business Combinations'' booklet of the *Comptroller's Licensing Manual* details the OCC's review of applications under the BMA. The ''Public Notice and Comments'' booklet of the *Comptroller's Licensing Manual* sets forth policies related to the public notice and comment process, including hearings and meetings. The *Comptroller's Licensing Manual* provides OCC staff, institutions, and the public with information about the procedures applicable to corporate applications filed with the OCC.

After reviewing these materials, the OCC determined that additional transparency about the standards and procedures that the agency applies when reviewing bank business combinations may be helpful to institutions and the public.

To better reflect the OCC's view that a business combination is a significant corporate transaction, the OCC proposed amendments to 12 CFR 5.33 to remove provisions related to expedited review and the use of streamlined applications.[6] The OCC also proposed adding a policy statement at appendix A to 12 CFR part 5, subpart C, that would discuss both the general principles the agency uses to review applications under the BMA and how it considers financial stability, financial and managerial resources and future prospects, and convenience and needs factors. Proposed appendix A also described the criteria informing the OCC's decision on whether to hold a public meeting on an application subject to the BMA.

The OCC received 34 substantive written comments on this proposal from banks, trade groups, academics, and members of the public. Most commenters agreed that the OCC should update its merger regulations and guidelines, but expressed varying views on the proposed changes. The comments are addressed below with the relevant discussion of 12 CFR 5.33 and appendix A. After careful consideration of these comments, the OCC is adopting its proposed amendments to 12 CFR 5.33 in final form and making minor, clarifying modifications to proposed appendix A.

II. Description of the Final Policy Statement and Regulatory Amendments

Regulatory Amendments

The OCC proposed two substantive changes to its business combination regulation at 12 CFR 5.33. First, the OCC proposed removing the expedited review procedures in § 5.33(i). Paragraph (i) currently provides that a filing that qualifies either as a business reorganization as defined in § 5.33(d)(3) or for a streamlined application under § 5.33(j) is deemed approved as of the 15th day after the close of the comment period, unless the OCC notifies the applicant that the filing is not eligible for expedited review or the expedited review process is extended under § 5.13(a)(2).[7]

Some commenters opposed eliminating the expedited review procedures. These commenters argued that eliminating the expedited review procedures would unnecessarily increase the complexity and cost of the application process for categories of transactions that are unlikely to present issues under the BMA, such as reorganizations. Further, many commenters expressed concern that removing § 5.33(i) would increase the burden on smaller institutions, including community banks. Some of these commenters suggested that the OCC continue to allow expedited processing for banks under a certain size. Other commenters supported eliminating expedited review, stating that eliminating the possibility that an application will be deemed approved solely due to the passage of time is necessary to address the systemic risks posed by large banks and the harms of consolidation. Further, some commenters that supported eliminating expedited review noted that the current expedited review process fails to adequately prevent anti-competitive mergers and the proposed changes to the review process would allow for a

[1] A business combination for these purposes includes an assumption of deposits in addition to a merger or consolidation.

[2] 12 U.S.C. 1828(c)(5), (11).

[3] 12 U.S.C. 1828(c)(4).

[4] 12 CFR 5.8(b), 5.10(b)(1).

[5] 12 CFR 5.11.

[6] 89 FR 10010 (February 13, 2024).

[7] Under the proposal, the provisions in 12 CFR 5.13(a)(2) regarding adverse comments would no longer apply to business combination applications because they only apply to filings that qualify for expedited review.

more comprehensive evaluation of merger application. Nevertheless, some supportive commenters noted that the proposed changes, including the removal of expedited review, do not go far enough to effectively address the issues raised by large bank consolidations.

The OCC reviews business combination applications to determine whether applicable procedural [8] and substantive [9] requirements are met. The only benefit conferred by the expedited review provisions in § 5.33(i) is that these applications are deemed approved as of the 15th day after the close of the comment period [10] unless the OCC takes action to remove the application from expedited review or extends the expedited review process. As described in the OCC's Annual Report, Licensing Activity section, the OCC's current target time frame for licensing decisions on merger applications is 45 days for expedited review and 60 days for standard review.[11] However, as noted in § 5.33(i), the OCC can remove an application from expedited review. Additionally, as noted in the OCC's Annual Report, the OCC may extend the standard review target time frame if it needs additional information to reach a decision, process a group of related filings as a single transaction, or extend the public comment period. The OCC's practice has been to approve or deny an application on expedited review within 15 days after the close of the comment period or remove the application from expedited review. The OCC is not aware of any application for a business combination having been deemed approved solely due to the passage of time. Accordingly, the OCC does not expect that removing this provision will result in a significant change to the time in which the OCC processes merger applications. Instead, this change will more closely align the regulatory framework with the OCC's current practices and promote transparency. Further, it is consistent with the OCC's view that any business combination subject to a filing under § 5.33 is a significant corporate transaction requiring active OCC consideration and decisioning of the application. The principles underlying the expedited process in § 5.33(i) (*i.e.,* transactions with certain indicators are likely to satisfy the statutory factors, do not otherwise raise supervisory or regulatory concerns, and therefore can be processed more expeditiously) are reflected in section II of the final appendix A.

Second, the OCC proposed removing § 5.33(j), which specifies four situations in which an applicant may use the OCC's streamlined business combination application, rather than the Interagency Bank Merger Act Application.[12] The streamlined application requests information about topics similar to those addressed in Interagency Bank Merger Act Application, but the former only requires an applicant to provide detailed information if the applicant answers in the affirmative to any one of a series of yes or no questions.

Many commenters opposed eliminating the streamlined application. Commenters stated that it is easy to complete and generally more efficient. Commenters stated that its removal would lead to longer processing times and higher costs for applicants. Several commenters emphasized that eliminating the streamlined application would disproportionately affect smaller banks, which often have limited resources to devote to a more complex, administratively burdensome, and detailed application process. Commenters critical of eliminating the streamlined application focused on the increased burden of associated with the Interagency Bank Merger Act Application. On the other hand, some commenters supported removing the streamlined application, with one also supporting the adoption of a more robust interagency merger application that would include a question on community benefit agreements or commitments.

The OCC believes that the more complete record created with the Interagency Bank Merger Act Application provides the appropriate basis for the OCC to consider a business combination application. Further, the removal of the streamlined business combination form should not significantly increase the burden on applicants. Although the Interagency Bank Merger Act Application requires the submission of additional information with the initial application, in practice, the OCC often requests additional information from many applicants, including those that file a streamlined application. Eliminating the streamlined application may decrease the likelihood the OCC requests additional information from applicants, which slows down the agency's processing an application and increases the burden on applicants. Further, the OCC may tailor the information applicants must submit in the Interagency Bank Merger Act Application as appropriate to reduce the information that the applicant needs to provide.[13] For example, there may be situations where a discussion of all items in the Interagency Bank Merger Act Application may not be appropriate, such as in a purchase and assumption transaction from an insured depository institution in Federal Deposit Insurance Corporation receivership.

Additionally, the U.S. Small Business Administration's (SBA's) Office of Advocacy and one other commenter stated that the OCC's Regulatory

[8] *See, e.g.,* 12 U.S.C. 215a (procedures for mergers resulting in a national bank).

[9] *See, e.g.,* 12 U.S.C. 1828(c) (BMA).

[10] The public comment period is typically 30 days. *See* 12 CFR 5.10(b)(1).

[11] *See, e.g.,* Office of the Comptroller of the Currency, 2023 Annual Report, at 36.

[12] 12 CFR 5.33(j) authorizes the use of a streamlined application if: (i) At least one party to the transaction is an eligible bank or eligible savings association, and all other parties to the transaction are eligible banks, eligible savings associations, or eligible depository institutions, the resulting national bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the total assets of the target institution are no more than 50 percent of the total assets of the acquiring bank or Federal savings association, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application; (ii) The acquiring bank or Federal savings association is an eligible bank or eligible savings association, the target bank or savings association is not an eligible bank, eligible savings association, or an eligible depository institution, the resulting national bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the filers in a prefiling communication request and obtain approval from the appropriate OCC licensing office to use the streamlined application; (iii) The acquiring bank or Federal savings association is an eligible bank or eligible savings association, the target bank or savings association is not an eligible bank, eligible savings association, or an eligible depository institution, the resulting bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank or acquiring Federal savings association, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application; or (iv) In the case of a transaction under 12 CFR 5.33(g)(4), the acquiring bank is an eligible bank, the resulting national bank will be well capitalized immediately following consummation of the transaction, the filers in a prefiling communication request and obtain approval from the appropriate OCC licensing office to use the streamlined application, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank, as reported in the bank's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application.

[13] Under 12 CFR 5.2(b), the OCC may adopt materially different procedures for a particular filing or class of filings as it deems necessary (*e.g.,* in exceptional circumstances or for unusual transactions) after providing notice of the change to the filer and any other party that the OCC determines appropriate. For example, the OCC may use this authority, if appropriate, to reduce the information it requires in a transaction involving a failing bank, given the limited time available to prepare the application.

Flexibility Act (RFA) certification in the proposal lacked a factual basis. The SBA's Office of Advocacy and others recommended that the OCC continue to allow small entities to have access to expedited review and use the streamlined application form. Specifically with respect to the RFA certification, the commenters stated it lacked sufficient information about (1) the number of small entities that would be impacted (because the OCC only estimated the number of entities that apply for business combinations in a given year and did not explain how many of those entities were small entities) and (2) the basis for its conclusion that the impact on affected institutions would be *de minimis.*

In response to these comments, the OCC has revised the number of small entities that will be impacted by this rulemaking. (This change is reflected in its discussion of the RFA below.) Further, as discussed above, the OCC's process for reviewing business combination applications allows the agency to vary the information that applicants must submit on a case-by-case basis and to request additional information not required on the initial application, if necessary. The OCC also may remove an application from expedited review if it needs additional review time. Accordingly, the OCC expects these changes will have a *de minimis* impact on small entities.

For the reasons discussed above, the final rule removes § 5.33(i) and (j) as proposed. Further, because the term ''business reorganization,'' as defined in § 5.33(d)(3), is only used to define a class of applications eligible for expedited review under § 5.33(i), the final rule also removes § 5.33(d)(3).

Policy Statement

As discussed in Section I, *Introduction,* of proposed appendix A, the policy statement would have provided institutions and the public with a better understanding of how the OCC reviews applications subject to the BMA and thus provided greater transparency, facilitate interagency coordination, and enhance public engagement. Specifically, proposed appendix A would have outlined the general principles the OCC applies when reviewing applications and provided information about how the OCC considers the BMA statutory factors of financial stability, financial and managerial resources, and convenience and needs of the community.[14] Proposed appendix A would have provided transparency regarding the public comment period and the factors the OCC considers in determining whether to hold public meetings.

Commenters generally supported the OCC's goals of increasing transparency; however, some commenters stated that by merely codifying current practices, the proposed appendix A did not go far enough in fulfilling the OCC's statutory obligations in reviewing bank mergers or preventing anti-competitive mergers in the banking industry. Several commenters also urged the OCC to coordinate closely with other regulators, such as the Federal Deposit Insurance Corporation, in finalizing the proposed policy statement and in updating the 1995 interagency document, Bank Merger Competitive Review—Introduction and Overview.

Other commenters suggested that appendix A should address the uncertainty surrounding the processing considerations and timelines of the OCC's review of BMA applications, noting that uncertainty in the timelines for regulatory approval could deter beneficial merger transactions. Several commenters offered additional ways to increase transparency, including by releasing some of the confidential supervisory information (*e.g.,* ratings) that the OCC uses in evaluating the statutory factors, televising live coverage of internal OCC deliberations, making all agency requests for additional information and bank responses public, and responding to all comments raised by the public in merger approval orders.

Several commenters suggested topics that the OCC should add to proposed appendix A. For example, several commenters suggested appendix A should provide details of the OCC's analysis of the BMA statutory factor of competition, generally and particularly with regard to how improvements in convenience and needs can outweigh anticompetitive effects. These commenters provided several suggested approaches. Other commenters urged the OCC to be more transparent when an applicant withdraws an application. One commenter also suggested the OCC take steps to reduce ''charter shopping.'' Another commenter urged the OCC to avoid the use of non-standard conditions to approve problematic mergers. Some commenters expressed concerns with the OCC's practice of holding prefiling meetings described in the *Explanatory Calls or Meetings* section of the ''Business Combinations'' booklet of the *Comptroller's Licensing Manual* and were concerned that such communications could unduly influence the agency. Suggestions to resolve this issue included automatically making transcripts or summaries of the calls or meetings public or ending the practice of holding the meetings.

The OCC is finalizing appendix A generally as proposed, with minor grammatical changes, except as noted below. The OCC intends for appendix A to provide substantive information on how it evaluates many of the BMA's statutory factors. Given complexities of the competition factor review and the involvement of the Department of Justice, the OCC does not believe that appendix A is the appropriate vehicle for discussing its current approach to competition issues.[15] The OCC's existing regulations govern the standards for impositions of conditions.[16] Similarly, the OCC does not intend appendix A to address OCC processing issues such as the disclosure of confidential supervisory information, the reasons for withdrawal of applications, its internal decision-making process, or its practice of holding pre-filing meetings. Accordingly, the OCC is finalizing Section I, *Introduction,* as proposed, with minor grammatical changes.

Section II, *General Principles of OCC Review,* of proposed appendix A would have discussed the OCC's review of and action on an application. Although, the OCC aims to act promptly on all applications, proposed appendix A identified certain indicators that, in the OCC's experience, generally feature in applications that are consistent with approval. These indicators included: (i) attributes regarding the acquirer's

[14] Proposed appendix A would not have addressed the BMA statutory factors of competition and the effectiveness of any insured depository institution involved in combatting money laundering activities, including in overseas branches. 12 U.S.C. 1828(c)(5), (11).

[15] The OCC notes that the convenience and needs analysis is relevant to the competition analysis in some instances. Under 12 U.S.C. 1828(c)(5)(B), the OCC may approve a merger whose effect in any section of the country may be substantially to lessen competition or to tend to create a monopoly, or which in any other manner would be in restraint of trade if it finds 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.

[16] 12 CFR 5.13(a)(1) governs the OCC's imposition of conditions to address a significant supervisory, Community Reinvestment Act (CRA), or compliance concern if the OCC determines that the conditions are necessary or appropriate to ensure that approval is consistent with relevant statutory and regulatory standards, including those designed to ensure the fair treatment of consumers and fair access to financial services, and OCC policies thereunder and safe and sound banking practices. The OCC imposes conditions on a case-by-case basis and makes a determination of appropriate conditions based on a merger's facts and circumstances.

financial condition; size; Uniform Financial Institution Ratings System (UFIRS) [17] or risk management, operational controls, compliance, and asset quality (ROCA) [18] ratings; Uniform Interagency Consumer Compliance Rating System (CC Rating System) rating; Community Reinvestment Act (CRA) rating; the effectiveness of its Bank Secrecy Act/anti-money laundering program; and the absence of fair lending concerns; (ii) attributes regarding the target's size and status as a eligible depository institution, as defined in § 5.3; (iii) the transaction clearly not having a significant adverse effect on competition; and (iv) the absence of significant CRA or consumer compliance concerns, as indicated in any comments or supervisory information.

The *General Principles of OCC Review* section of proposed appendix A would have also recognized that there are indicators that raise supervisory or regulatory concerns. Based on the OCC's experience, if any of these indicators are present, the OCC is unlikely to find the statutory factors under the BMA to be consistent with approval unless and until the applicant has adequately addressed or remediated the concern. Proposed appendix A would have stated that these indicators include: (i) the acquirer has a CRA rating of Needs to Improve or Substantial Noncompliance; (ii) the acquirer has a UFIRS or ROCA composite or management rating of 3 or worse; (iii) the acquirer has a consumer compliance rating of 3 or worse; (iv) the acquirer is a global systemically important banking organization (G–SIB), or subsidiary thereof; [19] (v) the acquirer has an open or pending Bank Secrecy Act/Anti-Money Laundering enforcement or fair lending action, including referrals or notification to other agencies; [20] (v) failure by the acquirer to adopt, implement, and adhere to all the corrective actions required by a formal enforcement action in a timely manner; and (vi) multiple enforcement actions against the acquirer executed or outstanding during a three-year period.

Commenters expressed confusion about how these indicators apply and how the OCC's reviews applications that meet some, but not all, of the indicators that generally feature in applications consistent with approval. For example, numerous commenters interpreted the proposed policy statement as indicating that the OCC would not approve an application if one of the first set of indicators was absent. Commenters also requested clarification about how an absence or resolution of any or most of the listed indicators of supervisory or regulatory concerns would expedite a positive decision on an application.

The OCC understands the confusion of some commenters with respect to appendix A as proposed. In addition to the two categories of transactions recognized in proposed section II, there is a middle category of transactions that do not feature all of the indicators in the first category but also have none of the indicators that raise supervisory or regulatory concerns. The OCC believes that most transactions will be in this middle category and that many of these transactions are likely consistent with approval.

The OCC is revising proposed appendix A to eliminate this confusion and clarify the significance of the two types of indicators. The final appendix A includes prefatory text that notes that applications that feature all of the first set of indicators tend to be more likely to withstand scrutiny and to be approved expeditiously. In the OCC's experience, these indicators reflect a national bank or Federal savings association's condition or other features that the OCC is likely to quickly find consistent with approval. However, these indicators are not *required* for a transaction to be approved. For example, the OCC has approved many transactions where the target is not an eligible depository institution and the acquirer brings the appropriate financial and managerial resources to bear to mitigate deficiencies at the target.

With respect to the individual indicators, some commenters objected to $50 billion in total assets serving as a ceiling for transactions consistent with approval. One commenter requested that the OCC raise indicator to $100 billion or more in total assets. Another commenter noted that having $50 billion dollars as a threshold could prevent or make it more difficult for regional and midsized institutions to combine and compete with the largest banks. As clarified in final appendix A, the $50 billion indicator merely reflects the likelihood of an expeditious approval. The OCC recognizes that national banks and Federal savings associations with $50 billion or more in total assets tend to be more complex than smaller banks. For example, insured national banks and Federal savings associations with at least $50 billion in total assets are subject to the *OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches.* In light of the increased complexity of these institutions, the OCC may require additional time for review of the application. The OCC believes that many transactions where the resulting institution will have total assets of more than $50 billion are consistent with approval. Accordingly, the OCC is finalizing the indicator as proposed at $50 billion or more in total assets, as clarified by a modification to the prefatory text to the indicators.

Two commenters expressed concern with the indicator focusing on transactions where the target's total assets are less than or equal to 50 percent of acquirer's total assets. The indicator is not intended to discourage mergers of equals. It was included because, in the OCC's supervisory experience, mergers between institutions of similar sizes are likely to require more review than transactions where the target is much smaller than the acquirer. In transactions with significant size disparities, the acquirer is more likely to use its existing policies, procedures, and control framework, with which the OCC is already familiar. Integration of two similarly sized institutions is more likely to result in more changes to resulting institution, which the OCC will need to review for consistency with the applicable BMA factors. The inclusion of this indicator simply highlights that applications for mergers between institutions that are similar in size may require additional time to assess but does not indicate that those applications will not be approved. The OCC is, however, deleting the word ''combined'' referring to the target's total assets in this indicator for clarity. The OCC is thus finalizing this indicator as proposed, as clarified by a modification of the prefatory text to the indicators which emphasizes that the first set of indicators are intended to identify applications that are more likely to withstand scrutiny and to be approved expeditiously.

Commenters also asserted that the proposed indicators regarding lack of enforcement actions, lack of fair lending concerns, clear absence of a ''significant

[17] UFIRS is also known as the CAMELS rating system. The CAMELS component factors address capital, asset quality, management, earnings, liquidity, and sensitivity to market risk.

[18] The ROCA System is the interagency uniform supervisory rating system for U.S. branches and agencies of foreign banking organizations.

[19] The Basel Committee on Bank Supervision annually identifies certain banking organizations as global systemically important.

[20] For example, the OCC is required to institute an enforcement action or make a referral if it makes certain supervisory findings with respect to the Bank Secrecy Act or fair lending laws. *See, e.g.,* 12 U.S.C. 1818(s)(3); 15 U.S.C. 1691e(g).

adverse effect'' on competition, and no adverse public comments are inconsistent with the applicable standards under the BMA. Other commenters supported these indicators but had additional suggestions including urging the OCC to include language about coordinating with the Consumer Financial Protection Bureau regarding fair lending and consumer protection matters; barring applicants with records of noncompliance with fair lending, CRA, and other consumer protection laws from being acquired; and requiring merging parties to undergo new fair lending and CRA reviews under heightened scrutiny. The OCC does not require that all of these indicators are present for a transaction to be consistent with the BMA's statutory factors. Rather, the OCC can more quickly find that applications with all of these indicators are consistent with the BMA factors and approve the transactions. For example, a merger between two institutions without an overlapping footprint and few products in common will require less analysis with respect to competition compared to a merger between institutions with significant overlap. Similarly, the OCC approves mergers on which the public has commented after reviewing all comments. The OCC recognizes that while comments play an important role in the review process, some comments may fail to raise a significant supervisory, CRA, or compliance concern.[21] The OCC does not expect such comments, on their own, to warrant less expeditious processing of the application. Therefore, OCC is finalizing these indicators as proposed, as clarified by a modification of the prefatory language to the indicators.

With respect to the indicators of supervisory or regulatory concern, commenters expressed concern with any indication in the proposed appendix A that the acquirer is a G–SIB or subsidiary thereof would be unlikely to be consistent with approval. Some commenters noted that the indicator could restrict internal reorganizations by a G–SIB and its subsidiaries. Additionally, two commenters noted that Congress has already addressed large-bank concentration by prohibiting bank acquisitions based on deposit concentrations and that the OCC's use of the G–SIB designation was inconsistent with Congressional intent. Other commenters expressed concern that the indicator could be interpreted to include proposed business combinations involving U.S.-based bank subsidiaries of non-U.S. G–SIBs. These commenters assert that applications for combinations involving such entities could bring diversity to the U.S. banking system. On the other hand, another commenter supported increased scrutiny of transactions involving G–SIBs but asserted that transactions undertaken by large, non-G–SIBs should also trigger enhanced scrutiny.

The indicators of regulatory or supervisory concern do not preclude OCC approval of a BMA application by an institution that exhibits one or more of the indicators. For example, internal corporate reorganizations are frequently consistent with the BMA, notwithstanding many regulatory or supervisory concerns, particularly where the transaction enhances the resolvability of the institution. The OCC views these factors regarding size as independent from limits that Congress established in the BMA and the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal).[22] For certain interstate transactions, the BMA contains a national deposit cap, and Riegle-Neal has national and State deposit caps.[23] Similarly, there is a liability cap imposed by the Dodd-Frank Wall Street Reform and Consumer Protection Act[24] that applies to both holding companies and banks.[25] These are all limits that a bank may not exceed absent a specific statutory exception. In contrast, the G–SIB indicator in the proposal reflects the OCC's supervisory experience with organizations of that size and the impact of size and complexity on the review of a business combination.

Similarly, even though the U.S. operations of a foreign-based G–SIB may be smaller than those of domestic G–SIBs, the potential for supervisory issues remains high, particularly if the foreign G–SIB's U.S. operations are material. G–SIBs are among the most complex financial institutions and, in the OCC's supervisory experience, they often present supervisory issues such that inclusion of this indicator is warranted. The OCC recognizes, however, that G–SIB status is unlikely to be remediated. While the OCC continues to believe that the G–SIB indicator is appropriate, it will evaluate all applications from foreign and domestic G–SIBs on their individual merits and undertake a fulsome analysis under the BMA and other applicable law.

Another commenter noted that a less than ''Satisfactory'' CRA rating should not preclude an internal reorganization that would simplify the banking organization and make it safer and sounder. Congress has mandated that the OCC consider an institution's CRA rating when acting on any BMA application.[26] The OCC recognizes that internal reorganizations present facts and analysis distinguishable from many other BMA applications, and while the inclusion of this indicator does not indicate those applications will not be approved, additional scrutiny may be warranted. In some instances, the benefits of a reorganization may overcome the less than ''Satisfactory'' CRA rating. Nevertheless, the OCC regards a less than ''Satisfactory'' CRA rating as raising significant regulatory or supervisory concerns and warranting inclusion on the list of indicators. One commenter also praised the inclusion of instances where an acquirer has experienced rapid growth as an indicator of supervisory or regulatory concern.

The OCC is making one change to the indicator regarding open enforcement actions. Proposed appendix A was specific to Bank Secrecy Act/Anti-money Laundering or fair lending actions, including referrals or notifications to other agencies. The OCC is including all types of consumer compliance enforcement actions in final appendix A to reflect the seriousness of these types of enforcement actions. Accordingly, the OCC is generally finalizing these indicators as proposed, as clarified by a modification to the prefatory language to the indicators and the addition of consumer compliance enforcement actions.

Section III, *Financial Stability,* of proposed appendix A would have provided additional information about how the OCC considers ''the risk to the stability of the United States banking or financial system'' as required by the BMA, including (i) the factors the OCC considers (which are currently described in the ''Business Combinations'' booklet of the *Comptroller's Licensing Manual*); (ii) the balancing test that the OCC applies; and (iii) the OCC's ability to consider imposing conditions on the approval of any such transaction. The OCC's approach to considering the risk to the stability of the financial system set forth in proposed appendix A is consistent with longstanding OCC practice and

[21] *See* 12 CFR 5.13(a)(2)(ii) (describing comments that do not warrant removing a filing from expedited review).

[22] Public Law 103–328, 108 Stat. 2338 (Sept. 29, 1994).

[23] 12 U.S.C. 1828(c)(13), 1831u(b)(2).

[24] Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[25] *See* 12 U.S.C. 1852.

[26] 12 U.S.C. 2903(a)(2).

principles.[27] Specifically, the OCC considers (i) whether the size of the combined institutions would result in material increases in risk to financial stability; (ii) any potential reduction in the availability of substitute providers for the services offered by the combining institutions; (iii) whether the resulting institution would engage in any business activities or participate in markets in a manner that, in the event of financial distress of the resulting institution, would cause significant risks to other institutions; (iv) the extent to which the combining institutions contribute to the complexity of the financial system; (v) the extent of cross-border activities of the combining institutions; (vi) whether the proposed transaction would increase the relative degree of difficulty of resolving or winding up the resulting institution's business in the event of failure or insolvency; and (vii) any other factors that could indicate that the transaction poses a risk to the U.S. banking or financial system.

Section III, *Financial Stability,* of proposed appendix A would have clarified that the OCC applies a balancing test when considering the financial stability factor and weighs the financial stability risk of approving the proposed transaction against the financial stability risk of denying it, particularly if the proposed transaction involves a troubled target. Specifically, the OCC considers each factor individually and in combination. Even if only a single factor indicates a risk to the stability of the U.S. banking or financial system, the OCC may determine that the proposal would have an adverse effect on the stability of the U.S. banking or financial system.[28] The OCC also considers whether the proposed transaction would provide any stability benefits and the enhanced prudential standards that would be applicable as a result of the proposed transaction would offset any potential risks.[29]

Section III also would have noted that, consistent with current OCC practice,[30] the OCC's review of the financial stability factors may result in a decision to approve a proposed transaction, subject to conditions that are enforceable under 12 U.S.C. 1818. These conditions may include asset divestitures or higher minimum capital requirements and are intended to address and mitigate financial stability risk concerns.

Further, the OCC's review of the financial stability factors considers the impact of the proposed transaction in the context of any heightened standards applicable to the resulting institution pursuant to 12 CFR part 30, appendix D, ''OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches'' and the recovery planning standards applicable to the resulting institution pursuant to 12 CFR part 30, appendix E, ''OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches.'' Section III also would have stated that the OCC may consider the facts, circumstances, and representations of concurrent applications for related transactions, including the impact of the related transactions on the proposed transaction.[31]

Commenters generally supported the OCC's goal of providing additional transparency about how the OCC considers the effect of a transaction on financial stability. However, some commenters criticized the OCC's balancing test approach to evaluating financial stability as too lenient to protect financial institutions and the broader economy, especially for G–SIBs. These commenters noted that the OCC should not rely on enhanced prudential standards to offset risks. One commenter also objected to the OCC's consideration of the financial stability risk associated with denying an application in the balancing test and noted that the OCC should use the supervisory process and not business combinations to address concerns about troubled institutions. Some commenters suggested options including other, scored risk factors like the list of systemic risk factors used to calculate the G–SIB surcharge in 12 CFR part 217, subpart H. Additionally, commenters expressed concern that the OCC's review would consider the representations made in other pending applications and noted that applicants may not have detailed knowledge of pending or future applications. Another commenter suggested that the OCC revise proposed appendix A to promote more actively the acquisition of a troubled institution before it fails. One commenter suggested automatically categorizing transactions involving institutions below $10 billion in assets as low risk to financial stability unless specific factors suggest otherwise. Other commenters suggested that considerations of financial stability risks under the BMA must include an evaluation of climate-related financial risks and the impact of a resulting institution's activities on financial stability in that regard.

The proposed appendix A described the OCC's long-standing approach to considering the risk to the stability of the financial system and would have provided additional clarity on the factors considered, the balancing test applied, and the possibility that the OCC may impose conditions in certain situations. Although the OCC's considerations are not scored, the OCC considers each factor individually and in combination to develop a holistic view of the potential transaction's effect on financial stability. The OCC believes this balancing test allows it to consider all factors relevant to financial stability and results in determinations that fully incorporate the effect of the transaction on financial stability. Additionally, the OCC's review would have only considered the representations of other concurrent applications for related transactions, not unrelated applications that have no nexus to the application under consideration.

The OCC is removing the word ''requirements'' from the discussion of the OCC's consideration of the impact of the proposed transaction in light of the standards applicable to the resulting institution's recovery planning in Section III, *Financial Stability,* to more accurately describe the standards in 12 CFR part 30, appendix E, ''OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches''. The OCC is otherwise generally finalizing Section III, *Financial Stability,* as proposed.

Section IV, *Financial and Managerial Resources and Future Prospects,* of proposed appendix A would have discussed the BMA's requirement that the OCC consider the managerial resources, financial resources, and future prospects of any proposed transaction. Under the BMA, the OCC must consider each of these factors independently for both the combining and resulting institutions.[32] However, because these factors are directly related

[27] *See, e.g.,* OCC Conditional Approval #1298 (November 2022); OCC Corporate Decision #2012–05 (April 2012).

[28] *See, e.g.,* FRB Order No. 2012–2 (February 14, 2012) at 30.

[29] *See, e.g.,* FRB Order No. 2021–04 (May 14, 2021) at 24.

[30] *See, e.g.,* OCC Conditional Approval #1298 (November 2022).

[31] For example, many business combinations under the BMA are part of a larger transaction that requires a filing with the Board under the Bank Holding Company Act.

[32] 12 U.S.C. 1828(c)(5).

to one another, the OCC also considers these factors holistically. This section of proposed appendix A would have described the overarching considerations of the OCC's review of these factors and provide additional details about what the OCC considers while reviewing these factors. The overarching considerations of this proposed section would have noted that the OCC would consider the size, complexity, and risk profile of the combining and resulting institutions.

Further, proposed appendix A would have expanded the discussion in the *Comptroller's Licensing Manual* about the types of transactions the OCC would normally not approve to provide additional details about acquirer characteristics with respect to financial and managerial resources and future prospects that are less likely to result in an approval. Specifically, the OCC is less likely to approve an application when the acquirer (i) has a less than satisfactory supervisory record, including its financial and managerial resources; (ii) has experienced rapid growth; (iii) has engaged in multiple acquisitions with overlapping integration periods; (iv) has failed to comply with conditions imposed in prior OCC licensing decisions; or (v) is functionally the target in the transaction.[33] The OCC also normally does not approve a combination that would result in a depository institution with less than adequate capital, less than satisfactory management, or poor earnings prospects.

Finally, this subsection would have confirmed the OCC's practice of considering all comments on proposed transactions, including those on financial and managerial resources and future prospects. To the extent public comments address issues involving confidential supervisory information, however, the OCC generally would not discuss or otherwise disclose confidential supervisory information in public decision letters.

Section IV of proposed appendix A would have next discussed the OCC's consideration of the financial resources, managerial resources, and future prospects factors. With respect to financial resources, proposed appendix A would have discussed the OCC's review of pro forma capital levels. Additionally, the OCC is generally prohibited by statute from approving business combination applications filed by an institution that is undercapitalized as defined in 12 CFR 6.4.[34] Proposed appendix A also would have specified that the OCC closely scrutinizes transactions that increase the risk to the bank's financial condition and resilience, including risk to the bank's capital, liquidity, and earnings that can arise from any of the eight categories of risk included in the OCC's Risk Assessment System.[35] Further, with respect to the financial resources factor, the OCC considers the ability of management to address increased risks that would result from the transaction. Finally, proposed appendix A would have clarified that a transaction involving an acquirer with a strong supervisory record is more likely to satisfy the review factors. By contrast, a transaction involving an acquirer with a recent less than satisfactory supervisory record is less likely to satisfy this factor.

Section IV of proposed appendix A would have also discussed the OCC's approach to the managerial resources standard. The OCC considers the supervisory record and current condition of both the acquirer and target to determine if the resulting institutions will have sufficient managerial resources. For example, a significant number of matters requiring attention (MRA), or lack thereof, may impact the determination as to whether there are sufficient managerial resources. The OCC also reviews (i) both institutions' management ratings under the UFIRS or ROCA system, as well as their component ratings under the CC Rating System, Uniform Rating System for Information Technology, and Uniform Interagency Trust Rating System, as applicable; and (ii) relevant Risk Assessment System (RAS) conclusions for the applicant as well as the RAS conclusions for an OCC-supervised target. The OCC also considers the context in which the rating or RAS element was assigned and any additional information resulting from ongoing supervision. Finally, proposed appendix A would have noted that less than satisfactory ratings at the target do not preclude the approval of a transaction, provided that the acquirer can employ sufficiently robust risk management and financial resources to correct the weaknesses.

Proposed appendix A would have stated that the OCC considers whether the acquirer has conducted sufficient due diligence of the target depository institution to understand its business model, systems compatibility, and weaknesses. This consideration includes the acquirer's plans and ability to address its own previously identified weaknesses, remediate the target's weaknesses, and exercise appropriate risk management for the size, complexity, and risk profile of the resulting institution. Similarly, the OCC considers the acquirer's plans for and history of integrating combining institutions' operations, including systems and information security processes, products, services, employees, and cultures.

Proposed appendix A next would have discussed the OCC's consideration of the acquirer's plans to identify and manage systems compatibility and integration issues, such as information technology compatibility and implications for business continuity and resilience. A critical component of these plans includes identifying overreliance on manual controls, strategies for automating critical processes, and capacity and modernization of aging and legacy information technology systems. The OCC may conduct additional reviews where there are concerns with systems integration and, in some cases, the OCC may impose conditions that are enforceable pursuant to 12 U.S.C. 1818 to address those concerns. The OCC may deny an application if the integration or other issues present significant supervisory concerns, and the issues cannot be resolved through appropriate conditions or otherwise.[36]

Finally, with regard to managerial resources, proposed appendix A would have described the OCC's consideration of the proposed governance structure of the resulting institution. This includes consideration of (i) governance in decision-making processes, the board management oversight structure, and the risk management system, including change management; and (ii) the expansion of existing activities, introduction of new or more complex products or lines of business, and implications for managing existing and acquired subsidiaries and equity investments. When applicable, the resulting institution's governance is also

[33] For example, in a reverse triangular merger, a holding company may acquire an institution and merge its existing subsidiary into the newly acquired institution, which survives as a subsidiary of the holding company. *See Comptroller's Licensing Manual,* ''Business Combinations'' at 23 (January 2021).

[34] 12 U.S.C. 1831o(e)(4). The OCC may only approve a combination application by an undercapitalized institution if the agency has accepted the institution's capital restoration plan and determines that the proposed combination is consistent with and will further the achievement of the plan or if the Board of Directors of the Federal Deposit Insurance Corporation determines that the proposed combination will further the purposes of 12 U.S.C.1831o. 12 U.S.C. 1831o(e)(4)(A)–(B).

[35] These are credit, interest rate, liquidity, price, operational, compliance, strategic, and reputation risks. *See Comptroller's Handbook,* ''Bank Supervision Process'' at 26–28 (Version 1.1, September 2019).

[36] *See* 12 CFR 5.13(b).

considered in the context of the institution's relationship with its holding company and the scope of the holding company's activities.

Section IV of proposed appendix A also would have discussed how the OCC considers the future prospects factor. The OCC considers this factor in light of its assessment of the institutions' financial and managerial resources. The OCC also considers the proposed operations of the resulting institutions and the acquirer's record of integrating acquisitions. Specifically, the OCC considers whether the integrated institution will be able to function effectively as a single entity. The OCC also considers the resulting institution's business plan or strategy and management's ability to implement it in a safe and sound manner. Finally, the OCC considers the combination's potential impacts on the resulting institution's continuity planning and operational resilience.

One commenter highlighted the importance of assessing managerial resources and firm culture when considering an application under the BMA. This commenter urged the OCC to make it clear that, when considering the managerial resources factor, the OCC would take into consideration whether the acquirer and target have implemented governance solutions that generate outcomes that meet or exceed the OCC's expectations and suggested using artificial intelligence and machine learning tools to do so. Other commenters suggested that an assessment of financial and managerial resources and future prospects should include climate-related financial risk expertise. Several other commenters suggested the OCC include a requirement that banks describe their efforts to promote gender, racial, and ethnic diversity in their boards, senior management, and branch personnel, with some commenters suggesting that such information be considered under the managerial resources factor. One commenter also suggested that applicants submit an integration plan as part of their application. Given the varied nature of institutions' operations and proposed mergers, the OCC is declining to require these items as part of its review of all applications under the BMA. To the extent that it is relevant to any particular transaction, the OCC may, based on its supervisory expertise, request information on these or other items that are relevant to the financial and managerial and future prospects factors.

The OCC is thus generally finalizing section IV as proposed with one addition to make explicit a consideration that was implicit in the proposal. The OCC is adding a new overarching consideration in section IV of appendix A. Specifically, section IV will state that the OCC considers the financial and managerial resources and future prospects factors within the context of the prevailing economic and operating environment. The OCC recognizes that the financial resources and future prospects of institutions, and those of community institutions in particular, are likely to be highly dependent on the economic and other environments within which they operate. As such, a combined institution's financial resources and future prospects may in some cases be significantly greater than those of the individual institutions if no merger were to occur.

Section V of proposed appendix A would have expanded on the discussion in the *Comptroller's Licensing Handbook* of the OCC's consideration of the probable effects of the proposed business combination on the community to be served. Specifically, this section would have clarified that the OCC's consideration of the impacts of any proposed combination on the convenience and needs of the community is prospective and considers the likely impact on the community of the resulting institution after the transaction is consummated.[37] For this factor, the OCC considers, among other things (i) the proposed changes to branch locations, branching services, banking services or products, or credit availability offered by the target and acquirer, including in low- or moderate-income (LMI) communities; (ii) any job losses or lost job opportunities from branching changes; and (iii) any community investment or development initiatives, including particularly those that support affordable housing and small businesses. With respect to (i) above, the OCC also sought comment on whether to specify communities in addition to LMI communities as part of these considerations.

Finally, section V of proposed appendix A would have clarified that the OCC's forward-looking consideration of the convenience and needs factor under the BMA is separate and distinct from its consideration of an applicant's CRA record of performance in helping to meet the credit needs of the relevant community, including LMI neighborhoods.

[37] As the OCC's review of this factor is with respect to the resulting institution, it necessarily includes review of the record, products, and services of both the acquirer and target.

Commenters expressed varying viewpoints on Section V, *Convenience and Needs,* of proposed appendix A. Some commenters criticized the OCC's inclusion of job losses or reduced job opportunities, and one commenter stated that such consideration lacked a statutory basis and diverged from longstanding regulatory precedent. Other commenters encouraged the OCC to place greater emphasis on factors such as potential job losses; projected branch losses in LMI and majority-minority census tracts; impacts to communities of color and underserved census tracts, including small businesses in those communities; reduced reinvestment; increased fees; and other factors that could affect access to banking services when evaluating the community and needs factor. One commenter suggested the OCC consider past bank branch closures. Another commenter recommended that the OCC require applicants to submit a list of branch closures planned for the three years following the consummation of a merger and a discussion of the impact on local communities and stated that applicants should be prohibited from closing other branches for three years. Some commenters suggested that a merger should not be approved unless applicants can demonstrate that the transaction will better meet the convenience and needs of the community, with several commenters specifically noting that the OCC should only approve transactions that better serve vulnerable communities, including low-income communities and communities of color. Several commenters suggested that the OCC's review of the convenience and needs factor should include broad consideration of the climate-related impact of the transaction, including financial risk, impacts resulting from bank activities that may impact climate change, and the climate related transition plans. One commenter suggested that the OCC should provide additional clarity on how it weighs the various impacts it considers. Other commenters noted that the OCC should specifically consider how the impacts of the expansion of digital banking affects underserved communities in the context of merger reviews.

Several commenters emphasized the importance of community benefit agreements and plans and collaboration with community groups and urged the OCC to use its policy statement to elevate the importance of these agreements, plans, and collaborations. Suggestions included signaling that the OCC would enforce community benefit commitments made during merger applications or imposing a condition of approval on the acquirer requiring it to adhere to the elements of such commitments. Another commenter requested additional transparency with respect to conditional approvals for convenience and needs, CRA, or fair lending concerns.[38]

The OCC considers the convenience and needs factor in light of the specific facts of each transaction. The factors listed in proposed section V are indicators of whether the proposed transaction will enable the resulting institution to better meet the convenience and needs of its community. A net positive impact on its ability to meet the convenience and needs of community is, in the OCC's experience, generally consistent with approval with respect to this factor. Applicants need not make a showing with respect to any or all of these items for the application to be consistent with approval. The OCC agrees with commenters that the BMA does not require consideration of particular facts such as job losses with respect to the convenience and needs of the community. Consistent with the BMA, the OCC will evaluate the facts of each application and determine whether particular items are relevant to its consideration of convenience and needs of the specific community to be served. For example, job losses or reduced job opportunities may have an impact on the local community as a whole in certain circumstances. Additionally, the OCC will consider any plans regarding the availability or cost of banking services or products to the community in the context of the communities affected, including LMI communities. Based on its supervisory experience, including its review of business combination applications, the OCC believes that the existing information requirements in the Interagency Bank Merger Act Application provide the appropriate initial level of information. The OCC may request additional information regarding branch closures or other facts impacting the convenience and needs of the community to be served. Further, the OCC believes that the items listed in proposed section V are appropriately tailored to cover the full range of BMA applications it receives.

Another commenter suggested that unless material changes are expected post-consummation, the OCC should use the acquirer's and target's CRA ratings as the primary method of assessing a merger's impact on the convenience and needs of the community. Other commenters asserted that CRA alone is not sufficient for determining a merger's impact on the convenience and needs of the community. As discussed in the Business Combinations booklet of the *Comptroller's Licensing Manual,* a CRA rating is based on past performance, while the convenience and needs factor is prospective.[39] Accordingly, analysis of past CRA performance is not sufficient to analyze the prospective convenience and needs of the community. The OCC believes that section V correctly articulated this standard as proposed.

The OCC is making clarifying edits to section V of appendix A. The OCC is changing the order of the discussion of an institution's plans to close, consolidate, limit, or expand branches to have the activities in a more logical sequence. Likewise, with respect to credit availability, the OCC is specifying that it considers an institution's plans to maintain, reduce, or improvement credit availability, including access to specific types of loans. Accordingly, the OCC is finalizing section V generally as proposed.

Section VI, *Public Comments and Meetings,* of proposed appendix A would have provided additional details about the process and procedures relating to the OCC's receipt of public comments and considerations related to public meetings and clarified the information contained within 12 CFR part 5 and the ''Public Notice and Comments'' booklet of the *Comptroller's Licensing Manual.*[40] Specifically, the public comments subsection would have articulated the circumstances under which the OCC may extend the usual 30-day comment period[41] pursuant to § 5.10(b)(2).[42] It also would have provided additional clarity by noting that the OCC may find that additional time is necessary to develop factual information, and thus warrant extending the comment period. This could happen, for example, if a filer's response to a comment does not fully address the matters raised in the comment and the commenter requests an opportunity to respond. This subsection also would have provided examples of extenuating circumstances when the OCC may determine that an extension is needed, including if a public meeting is held, the transaction is novel or complex, or a natural disaster has occurred that affects the public's ability to timely submit comments.

With respect to the discussion of public comments, some commenters supported the proposal's discussion of how a comment period can be extended when a filer does not adequately respond to a commenter. However, other commenters expressed concern that the OCC's ability to extend the comment period based on the completeness of a filer's response to a comment may create a risk of commenters repeatedly filing comments in bad faith, which will result in delay. Two commenters suggested that the OCC consider extending the comment period in some instances, with one commenter suggesting that the OCC use an initial 60-day comment period for larger transactions. Other commenters also encouraged the OCC to minimize the negative impacts of prolonged review periods on affected communities and stakeholders. One commenter also requested that the OCC develop policies to address the abuse of the public comment process, including via the use of artificial intelligence.

The OCC did not propose any changes to its regulations regarding its acceptance and review of public comments, which are broadly applicable to transactions covered by 12 CFR part 5 and not only business combinations. The OCC periodically considers which of its regulations would benefit from proposed changes and will consider whether to propose changes to the public comment regulations at an appropriate time.[43] The OCC is mindful

[38] Additionally, one commenter recommended increased scrutiny of convenience and needs in transactions where credit unions acquire national banks because credit unions are not subject to CRA. The Federal Deposit Insurance Corporation, not the OCC, is the responsible agency for BMA transactions where national bank or Federal savings association assets and deposit liabilities are transferred to an institution that is not covered by the Deposit Insurance Fund, such as a credit union. *See* 12 U.S.C. 1828(c)(1)(C). To the extent an application with the OCC is required, such as a substantial asset change under 12 CFR 5.33, the OCC will examine the proposed transaction under all applicable standards.

[39] *See Comptroller's Licensing Manual,* ''Business Combinations'' (Jan. 2021) at 7.

[40] While the BMA does not require the OCC to hold meetings or hearings, 12 CFR 5.11 describes the consideration and procedures for public hearings and notes the availability of several other types of meetings. The OCC considers three options for seeking oral input: (1) public hearing, (2) public meeting, and (3) private meeting.

[41] *See* 12 CFR 5.10(b)(1).

[42] Specifically, part 5 notes that the OCC may extend the comment period when: (1) a filer fails to file all required publicly-available information on a timely basis or makes a request for confidential treatment not granted by the OCC; (2) a person requesting an extension demonstrates to the OCC that additional time is necessary to develop factual information the OCC determines is necessary to consider the filing; and (3) the OCC determines that other extenuating circumstances exist.

[43] For example, the OCC decennially reviews its regulations as required by the Economic Growth and Regulatory Paperwork Reduction Act. 12 U.S.C.

Continued

of the effects of the length of review periods on all relevant parties. The OCC uses the standard 30-day notice period prescribed by the BMA[44] and will extend the comment period pursuant to the factors discussed in section VI as appropriate. The OCC intends to act on applications in a timely fashion, consistent with a fulsome review of applications and safety and soundness. To clarify that the purpose of section VI is to address considerations regarding the public comment period and not the OCC's acceptance and review of public comments, the OCC is revising the headings in section VI to specifically reference the public comment period.

The proposed public meetings subsection of section VI would have stated that when determining whether to hold a public meeting, the OCC balances the public's interest in the transaction with the value or harm of a public meeting to the decision-making process. Proposed appendix A would also have clarified the criteria that inform the OCC's decision on whether to hold a public meeting. The criteria include (i) the public's interest in the transaction; (ii) the appropriateness of a public meeting to document or clarify issues raised during the public comment process; (iii) the significance of the transaction to the banking industry; (iv) the significance of the transaction to the communities affected; (v) the potential value of any information that could be gathered and documented during a public meeting; and (vi) the acquirer's and target's CRA, consumer compliance, fair lending, or other pertinent supervisory records, as applicable. Several commenters proposed additional triggers for holding public meetings, including when there is a significant overlap in branch networks, when CRA ratings are lower in affected geographies, when the resulting entity will exceed a certain asset size, or when there is a merger protest. These commenters also suggested several ways that the OCC could improve outreach to underserved communities and dialogue about the impact of potential mergers. These included adopting a public registry for CRA examinations and mergers, improving the format of public meetings, and providing clearer information on regulatory websites on how to engage with regulators on particular mergers. One commenter objected to what it characterized as the OCC's implication that input from the public could be harmful to the OCC's decision-making process. This commenter suggested a public meeting should be held when requested.

As discussed in proposed section VI, the OCC considers the significance of the transaction to the communities affected, as well as applicable CRA ratings. The OCC believes that these considerations are sufficiently broad to cover issues such as a significant overlap in branch networks. Further, the OCC believes that a decision to hold a public meeting should be based on the individual facts and circumstances of each proposed merger. For example, the considerations for whether to hold a public meeting on an internal corporate reorganization likely differ from those in a transaction between unaffiliated institutions. Additionally, the OCC believes that the fact that a comment is filed with respect to a proposed merger is insufficient alone to warrant a meeting. For example, through requests for additional information, the OCC can often obtain the information it needs to fully consider the comment without organizing a meeting. Consistent with applicable law, the OCC makes public all CRA performance evaluations on its website[45] and all applications under the BMA in its Freedom of Information Act Reading Room.[46] While the OCC may consider additional methods to provide information to the public it believes that this issue is outside the scope of appendix A. Similarly, 12 CFR 5.11(i) provides the OCC with broad discretion in the conduct of public meetings. The OCC may tailor the format and structure of public meetings as needed based on the specific circumstance. The OCC believes that the information contained in proposed section VI is appropriate for general consideration of public meetings. Accordingly, besides the revision to the headings in section VI to specifically reference the public comment period, the OCC is generally finalizing section VI as proposed.

IV. Regulatory Analysis

A. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[47] the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements in this rule have been submitted to OMB under OMB control number 1557–0014 (Licensing Manual).

The final rule amends 12 CFR 5.33 by removing the expedited review procedures in § 5.33(i), which currently allow an application to be deemed approved by the OCC as of the 15th day after the close of the comment period, unless the OCC notifies the filer that the filing is not eligible for expedited review or the expedited review process is extended. The final rule also removes the streamlined application in § 5.33(j), which removes the ability of eligible institutions to file for certain types of business combinations using a streamlined application form.

Title: Licensing Manual.

OMB Control Number: 1557–0014.

Frequency of Response: Occasional.

Affected Public: National banks and Federal savings associations.

The changes to the burden of the Licensing Manual are *de minis* and continue to be:

Estimated Number of Respondents: 3,694.

Estimated Total Annual Burden: 12,481.15.

Comments continue to be invited on:

a. Whether the collections of information are necessary for the proper performance of the agency functions, including whether the information has practical utility;

b. The accuracy of the agency estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Written comments and recommendations for the information collection should be sent within 30 days of publication of this notice. Comments on the collection of information should be sent to Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0014, 400 7th Street SW, Suite 3E–218, Washington, DC 20219. Comments may also be sent to *prainfo@occ.treas.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day

3311. *See, e.g.,* Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, 89 FR 8084 (February 6, 2024).

[44] *See* 12 U.S.C. 1828(c)(3).

[45] OCC, CRA Performance Evaluations, *https://occ.gov/publications-and-resources/tools/index-cra-search.html.*

[46] OCC, Freedom of Information Act, *https://foia-pal.occ.gov/.*

[47] 44 U.S.C. 3501–3521.

Review—Open for Public Comments'' or using the search function.

B. Regulatory Flexibility Act

The RFA [48] requires an agency, in connection with a proposal and final rule, to prepare and make available to the public a Regulatory Flexibility Analysis that describes the impact of the rule on small entities (defined by the SBA for purposes of the RFA to include commercial banks and savings institutions with total assets of $850 million or less and trust companies with total assets of $47 million or less). However, under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule. The OCC included an RFA certification in the **Federal Register** along with its proposal.

As discussed above, the SBA's Office of Advocacy and one other commenter stated that the proposal's RFA certification lacked a factual basis. The SBA's Office of Advocacy, along with other commenters, recommended that the OCC continue to allow expedited review for applications from small entities and allow those entities to continue to use the streamlined application form. Specifically, with respect to the proposal's RFA certification, the SBA's Office of Advocacy's comment and the other comment addressing the RFA stated that it lacked sufficient information about (1) the number of small entities that would be impacted because it only estimated the number of entities that would apply for business combinations in a given year and did not explain how many of those entities were small entities and (2) the basis for its conclusion that the impact on affected institutions would be *de minimis*.

The OCC currently supervises 1,040 institutions (commercial banks, trust companies, Federal savings associations, and branches or agencies of foreign banks),[49] of which approximately 636 are small entities.[50] As the SBA's Office of Advocacy noted, all of the 636 small entities may have been impacted by the proposed rule to the extent that they elected to submit applications to the OCC for approval of business combination activities. However, in practice and based on the number of merger applications that the OCC has received annually over the past five years, the agency expects the annual impact of the final rulemaking could be 78 OCC-supervised small institutions in a given year, assuming that all merger applications are submitted by small banks.

In terms of the potential economic impact of the final rule on affected institutions, the OCC does not expect that the changes will result in (1) a different outcome for merger applications or (2) additional burden on affected institutions. First, the final appendix A aims to provide transparency with respect to the OCC's BMA review process, including consideration of certain statutory factors under the BMA. This should provide regulated institutions with additional clarity and transparency about the OCC's decision-making process. Second, the removal of the expedited review process will likely not result in any change to the timing of the OCC's processing of licensing applications. The only benefit conferred by the expedited review provisions in § 5.33(i) is that applications are deemed approved as of the 15th day after the close of the comment period unless the OCC takes action to remove the application from expedited review or extends the process. However, the OCC is not aware of an application for a business combination being deemed approved due to the passage of time under § 5.33(i). Third, the OCC expects that the removal of the streamlined application form will not result in a substantive impact on affected institutions or on the information collected. Although the Interagency Bank Merger Act Application requires the submission of additional documentation and information with the initial application, that documentation and information is largely related to the same categories of information. Further, in practice, the OCC may request additional information from applicants to enable it to conclude on the applicable statutory factors. Eliminating the streamlined application may decrease the likelihood the OCC needs to request additional information from applicants, which could otherwise slow down the processing of an application. The agency also does not expect that the removal of the streamlined application will result in a material change to the time it takes to OCC to respond to submitting banks and, therefore, does not expect any subsequent impact on bank operations that could otherwise result from a delayed response from the OCC. Accordingly, the OCC expects these changes to have a *de minimis* impact on small entities.

In general, the OCC classifies the economic impact on an individual small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense. Furthermore, the OCC considers 5 percent or more of OCC-supervised small entities to be a substantial number. At present, 32 OCC-supervised small entities constitute a substantial number. Therefore, the final rule will potentially affect a substantial number of OCC-supervised small entities in any given year.

However, based on the thresholds for a significant economic impact, the OCC expects that, if implemented, the final rule will not have a significant economic impact on any small entities. For these reasons, the OCC certifies that the final rule would not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) [51] requires that the OCC prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation, currently $183 million) in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act [52] also requires the OCC to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The OCC estimates that the annual aggregate cost of the final rule once fully phased in will be *de minimis*. Furthermore, the rule's changes are not new substantive or information requirements for OCC-supervised institutions but rather describe

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[48] 5 U.S.C. 601 *et seq.*

[49] Based on data accessed using FINDRS on August 18, 2024.

[50] The estimate of the number of small entities is based on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $850 million and $47 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if it should classify an OCC-supervised institution as a small entity. The OCC uses December 31, 2023, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the SBA's *Table of Size Standards*.

[51] 2 U.S.C. 1532.

[52] 2 U.S.C. 1535.

considerations and principles that guide the OCC's review of applications under the BMA. Therefore, the OCC concludes that the final rule will not result in an expenditure of $183 million or more annually by State, local, and Tribal governments or by the private sector.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA) of 1994 [53] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC must consider, consistent with principles of safety and soundness and the public interest (1) any administrative burdens that the final rule would place on depository institutions, including small depository institutions and customers of depository institutions, and (2) the benefits of the final rule. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[54] The OCC considered the changes made by this final rule and believes that the effective date of January 1, 2025, will provide OCC-regulated institutions with adequate time to comply with the rule. The final rule will not impose any new administrative compliance requirements, and the administrative burdens from the removal of the Streamlined Application are *de minimis.*

E. Congressional Review Act

For purposes of the Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a ''major rule.'' [55] If a rule is deemed a ''major rule'' by OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[56]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in: (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[57]

As required by the Congressional Review Act, the OCC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

[53] 12 U.S.C. 4802(a).

[54] 12 U.S.C. 4802(b).

[55] 5 U.S.C. 801 *et seq.*

[56] 5 U.S.C. 801(a)(3).

[57] 5 U.S.C. 804(2).

List of Subjects in 12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Savings associations, Securities.

For the reasons set forth in the preamble, OCC amends 12 CFR part 5 as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24a, 35, 93a, 214a, 215, 215a, 215a–1, 215a–2, 215a–3, 215c, 371d, 481, 1462a, 1463, 1464, 1817(j), 1831i, 1831u, 2901 *et seq.,* 3101 *et seq.,* 3907, and 5412(b)(2)(B).

§ 5.33 [Amended]

■ 2. Section 5.33 is amended by removing and reserving paragraphs (d)(3), (i), and (j).

■ 3. Add appendix A to subpart C to read as follows:

Appendix A to Subpart C of Part 5—Policy Statement Regarding Statutory Factors Under the Bank Merger Act

I. Introduction

The purpose of this policy statement is to provide insured depository institutions (institutions) and the public with a better understanding of how the Office of the Comptroller of the Currency (OCC) considers certain statutory factors under the Bank Merger Act (BMA), 12 U.S.C. 1828(c). The matters discussed in this statement are intended to provide greater transparency, facilitate interagency coordination, and enhance public engagement.

II. General Principles of OCC Review

The OCC aims to act promptly on all applications. The agency's range of potential actions on applications includes approval, denial, and requesting that an applicant withdraw the application because any shortcomings are unlikely to be resolved in a timely manner. Applications that tend to withstand scrutiny more easily and are more likely to be approved expeditiously generally feature all of the following indicators:

1. The acquirer is well capitalized under § 5.3, and the resulting institution will be well capitalized;
2. The resulting institution will have total assets less than $50 billion;
3. The acquirer has a Community Reinvestment Act (CRA) rating of Outstanding or Satisfactory;
4. The acquirer has composite and management ratings of 1 or 2 under the Uniform Financial Institution Ratings System (UFIRS) or ROCA rating system;
5. The acquirer has a consumer compliance rating of 1 or 2 under the Uniform Interagency Consumer Compliance Rating System (CC Rating System), if applicable;
6. The acquirer has no open formal or informal enforcement actions;
7. The acquirer has no open or pending fair lending actions, including referrals or notifications to other agencies;
8. The acquirer is effective in combatting money laundering activities;
9. The target's total assets are less than or equal to 50% of acquirer's total assets;
10. The target is an eligible depository institution as defined in § 5.3;
11. The proposed transaction clearly would not have a significant adverse effect on competition;
12. The OCC has not identified a significant legal or policy issue; and
13. No adverse comment has raised a significant CRA or consumer compliance concern.

If certain indicators that raise supervisory or regulatory concerns are present, the OCC is unlikely to find that the statutory factors under the BMA are consistent with approval unless and until the applicant has adequately addressed or remediated the concern. The following are examples of indicators that raise supervisory or regulatory concerns:

1. The acquirer has a CRA rating of Needs to Improve or Substantial Noncompliance.
2. The acquirer has a consumer compliance rating of 3 or worse.
3. The acquirer has UFIRS or ROCA composite or management ratings of 3 or worse or the most recent report of examination otherwise indicates that the acquirer is not financially sound or well managed.
4. The acquirer is a global systemically important banking organization or subsidiary thereof.
5. The acquirer has open or pending Bank Secrecy Act/Anti-money Laundering, fair lending, or consumer compliance actions, including enforcement actions, referrals, or notifications to other agencies.
6. The acquirer has failed to adopt, implement, and adhere to all the corrective actions required by a formal enforcement action in a timely manner, or there have been multiple enforcement actions against the acquirer executed or outstanding during a three-year period.

III. Financial Stability

A. Factors Considered

The BMA requires the OCC to consider ''the risk to the stability of the United States banking or financial system'' when reviewing transactions subject to the Act. In reviewing a BMA application under this factor, the OCC considers the following 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 proposed transaction would result in a reduction in the availability of substitute providers for the services offered by the combining institutions.

3. Whether the resulting institution would engage in any business activities or participate in markets in a manner that, in the event of financial distress of the resulting institution, would cause significant risks to other institutions.

4. Whether the proposed transaction would materially increase the extent to which the combining institutions contribute to the complexity of the financial system.

5. Whether the proposed transaction would materially increase the extent of cross-border activities of the combining institutions.

6. Whether the proposed transaction would increase the relative degree of difficulty of resolving or winding up the resulting institution's business in the event of failure or insolvency.

7. Any other factors that could indicate that the transaction poses a risk to the U.S. banking or financial system.

B. Balancing Test

1. *In general:* The OCC applies a balancing test when considering the factors in section III.A. of this appendix in light of all the facts and circumstances available regarding the proposed transaction, including weighing the financial stability risk posed by the proposed transaction against the financial stability risk posed by denial of the proposed transaction, particularly if the proposed transaction involves a troubled target. The OCC considers each factor both individually and in combination with others. Even if only a single factor indicates that the proposed transaction would pose a risk to the stability of the U.S. banking or financial system, the OCC may determine that there would be an adverse effect of the proposal on the stability of the U.S. banking or financial system. Finally, the OCC also considers whether the proposed transaction would provide any stability benefits and whether enhanced prudential standards applicable as a result of the proposed transaction would offset any potential risks.

2. *Conditions:* The OCC's review of the financial stability factors will include, as appropriate, whether to impose conditions on approval of the transaction. The OCC may impose conditions, enforceable under 12 U.S.C. 1818, to address and mitigate financial stability risk concerns, such as requiring asset divestitures by the resulting institution, imposing higher minimum capital requirements, or imposing other financial stability-related conditions.

3. *Recovery planning and heightened standards:* The OCC's review of the financial stability factors will consider the impact of the proposed transaction in light of:

b. Standards applicable to the resulting institution pursuant to 12 CFR part 30, appendix D, ''OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches''; and

c. Standards applicable to the resulting institution's recovery planning pursuant to 12 CFR part 30, appendix E, ''OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches''.

4. *Concurrent filings:* the OCC's review of the financial stability factors may consider the facts, circumstances, and representations of concurrent filings for related transactions, including the impact of the related transactions to the proposed transaction under review by the OCC.

IV. Financial and Managerial Resources and Future Prospects

The OCC is required by the BMA to consider the managerial resources, financial resources, and future prospects of the combining and the resulting institutions. The OCC considers each of these factors independently for both the combining and resulting institutions. However, because these factors are directly related to one another, the OCC also considers these factors holistically.

A. Overarching Considerations

1. The OCC tailors its consideration of the financial and managerial resources and future prospects of the combining and resulting institutions to their size, complexity, and risk profile.

2. The OCC considers these factors within the context of the prevailing economic and operating environment.

3. The OCC is more likely to approve combinations where the acquirer has sufficient financial and managerial resources to ensure safe and sound operations of the resulting institution than when:

a. The acquirer has a less than satisfactory supervisory record, including its financial and managerial resources;

b. The acquirer has experienced rapid growth;

c. The acquirer has engaged in multiple acquisitions with overlapping integration periods;

d. The acquirer has failed to comply with conditions imposed in prior OCC licensing decisions; or

e. The acquirer is functionally the target in the transaction.

4. The OCC normally does not approve a combination that would result in a depository institution with less than adequate capital or liquidity, less than satisfactory management, or poor earnings prospects.

5. The OCC considers all comments received on proposed business combinations. However, the OCC's consideration of an institution's financial and managerial resources and future prospects are necessarily based on confidential supervisory information. While the OCC will provide an appropriate discussion of comments pertaining to the financial resources, managerial resources, and future prospects factors, it will generally not discuss or otherwise disclose confidential supervisory information in public decision letters.

B. Individual Factors

1. *Financial Resources:*

a. The OCC reviews the existing and proposed institutions' current and pro forma capital levels.

i. The OCC reviews for compliance with the applicable capital ratios required by 12 CFR part 3 and the Prompt Corrective Action capital categories established by 12 CFR 6.4.

ii. The OCC may not approve a combination application filed by an insured depository institution that is undercapitalized as defined in 12 CFR 6.4 unless it has approved the institution's capital restoration plan or the Board of Directors of the Federal Deposit Insurance Corporation has determined that the transaction would fulfill the purposes of 12 U.S.C. 1831o.

b. The OCC closely scrutinizes transactions that increase the risk to the bank's financial condition and resilience, including bank capital, liquidity, and earnings, that can arise from any of the eight categories of risk included in the OCC's Risk Assessment System: credit, interest rate, liquidity, price, operational, compliance, strategic, and reputation.

c. In relation to the financial resources factor, the OCC considers management's ability to address increased risks that would result from the transaction.

d. A transaction involving an acquirer with a strong supervisory record relative to capital, liquidity, and earnings is more likely to satisfy the review factors. By contrast, a transaction involving an acquirer with a recent less than satisfactory financial or supervisory record is less likely to satisfy this factor.

2. *Managerial Resources:* The OCC considers several factors when considering the managerial resources of the institutions.

a. The OCC considers the supervisory record and current condition of both the acquirer and target to determine if the resulting institutions will have sufficient managerial resources to manage the resulting institution.

i. A significant number of MRAs suggests there may be insufficient managerial resources. Additionally, the OCC considers both institutions' management ratings under the UFIRS or ROCA system and component ratings under the CC Rating System, Uniform Rating System for Information Technology, and Uniform Interagency Trust Rating System, as applicable.

ii. When applicable, the OCC also considers the relevant Risk Assessment System (RAS) conclusions for the combining institutions.

iii. The OCC considers the context in which a rating or RAS element was assigned and any additional information resulting from ongoing supervision.

iv. Less than satisfactory ratings at the target do not preclude the approval of a transaction provided that the acquirer can employ sufficiently robust risk management and financial resources to correct the weaknesses at the target.

b. The OCC considers whether the acquirer has conducted sufficient due diligence of the target depository institution to understand the business model, systems compatibility, and weaknesses of the target. To facilitate the OCC's review, the acquirer's management team should demonstrate its plans and ability to address the acquirer's previously identified weaknesses, remediate the target's weaknesses, and exercise appropriate risk management for the size, complexity, and risk profile of the resulting institution.

c. The OCC also considers the acquirer's analysis and plans to integrate the combining institutions' operations, including systems and information security processes, products, services, employees, and cultures. The OCC's consideration and degree of scrutiny reflects the applicant's track record with information technology governance, business continuity resilience, and, as applicable, integrating acquisitions.

d. The OCC considers the acquirer's plans to identify and manage systems compatibility and integration issues, such as information technology compatibility and the implications for business continuity resilience. Any combination in which the OCC identifies systems integration concerns may lead to additional review.

i. A critical component of these plans includes the acquirer's identification and assessment of overreliance on manual controls, strategies for automating critical processes, and the strategies and capacity for modernization of aging and legacy information technology systems.

ii. The OCC may impose conditions, enforceable pursuant to 12 U.S.C. 1818, if it determines that information technology systems compatibility and integration represent a supervisory significant concern. These conditions may include requirements and time frames for specific remedial actions and specific measures for assessing and evaluating the depository institution's systems integration progress.

iii. The OCC may deny the application if the integration issues or other issues present significant supervisory concerns, and the issues cannot be resolved through appropriate conditions or otherwise.

e. The OCC also considers the proposed governance structure of the resulting institution. This includes governance in decision-making processes, the board management oversight structure, and the risk management system, including change management. This also includes expansion of existing activities, introduction of new or more complex products or lines of business, and implications for managing existing and acquired subsidiaries and equity investments. When applicable, the resulting institution's governance is also considered in the context of the institution's relationship with its holding company and the scope of the holding company's activities.

3. *Future Prospects:*

a. The OCC considers the resulting institution's future prospects in light of its assessment of the institutions' financial and managerial resources.

b. The OCC also considers the proposed operations of the resulting institution. The OCC's consideration and degree of scrutiny reflects the acquirer's record of integrating acquisitions.

i. The OCC considers whether the integration of the combining institutions would allow it to function effectively as a single unit.

ii. The OCC considers the resulting institution's business plan or strategy and management's ability to implement it in a safe and sound manner.

iii. The OCC also considers the combination's potential impact on the resulting institution's continuity planning and operational resilience.

V. Convenience and Needs

A. The OCC considers the probable effects of the proposed business combination on the community to be served. Review of the convenience and needs factor is prospective and considers the likely impact on the community of the resulting institution after the transaction is consummated, including but not limited to:

1. Any plans to close, consolidate, limit, or expand branches or branching services, including in low- or moderate-income (LMI) areas;

2. Any plans to reduce the availability or increase the cost of banking services or products, or plans to provide expanded or less costly banking services or products to the community;

3. Any plans to maintain, reduce, or improve credit availability throughout the community, including, for example, access to home mortgage, consumer, small business, and small farm loans;

4. Job losses or reduced job opportunities from branch staffing changes, including branch closures or consolidations;

5. Community investment or development initiatives, including, for example, community reinvestment, community development investment, and community outreach and engagement strategies; and

6. Efforts to support affordable housing initiatives and small businesses.

B. The OCC considers comments received during the comment period and information provided during any public hearing or meeting related to the proposed business combination. To the extent public comments or discussions address issues involving confidential supervisory information, however, the OCC generally will not discuss or otherwise disclose that confidential supervisory information in public decision letters and forums.

C. The OCC considers the CRA record of performance of an applicant in evaluating a business combination application. The OCC's forward-looking evaluation of the convenience and needs factor under the BMA is separate and distinct from its consideration of the CRA record of performance of an applicant in helping to meet the credit needs of the relevant community, including LMI neighborhoods.

VI. Public Comment Period and Public Meetings

A. Public Comment Period

1. Unless an exception applies, a combination under the BMA is subject to a 30-day comment period following publication of the notice of the proposed combination. The OCC may extend the comment period in certain instances:

a. When a filer fails to file all required publicly available information on a timely basis or makes a request for confidential treatment not granted by the OCC;

b. When requested and the OCC determines that additional time is necessary to develop factual information necessary to consider the filing; and

c. When the OCC determines that other extenuating circumstances exist.

2. The OCC may find that additional time is necessary to develop factual information if a filer's response to a comment does not fully address the matters raised in the comment, and the commenter requests an opportunity to respond.

3. Examples of extenuating circumstances necessitating an extension include:

a. Transactions in which public meetings are held to allow for public comment after the meeting;

b. Unusual transactions (*e.g.,* novel or complex transactions); and

c. Natural or other disasters occurring in geographic regions affecting the public's ability to timely submit comments.

B. Public Meetings

1. While the BMA does not require the OCC to hold meetings or hearings, the OCC has three methods for seeking oral input: (1) public hearing, (2) public meeting, and (3) private meeting. Public meetings are the most-employed public option.

2. The OCC will balance the public's interest in the transaction with the value or harm of a public meeting to the decision-making process (*e.g.,* although there may be increased public interest in a transaction, a public meeting will not be held if it would not inform the OCC's decision on an application or would otherwise harm the decision-making process).

3. Criteria informing the OCC's decision on whether to hold public meetings include:

a. The extent of public interest in the proposed transaction.

b. Whether a public meeting is appropriate in order to document or clarify issues presented by a particular transaction based on issues the public raises during the public comment process.

c. Whether a public meeting would provide useful information that the OCC would not otherwise be able to obtain in writing.

d. The significance of the transaction to the banking industry. Relevant considerations may include the asset sizes of the institutions involved (*e.g.,* resulting institution will have $50 billion or more in total assets) and concentration of the resulting institution in one or more markets.

e. The significance of the transaction to the communities affected. Relevant considerations may include the effects of the transaction on the convenience and needs of the community to be served, including a consideration of a bank's CRA strategy and the extent to which the acquirer and target are currently serving the convenience and needs of their communities.

f. The acquirer's and target's CRA, consumer compliance, fair lending, and other pertinent supervisory records, as applicable.

Michael J. Hsu,

Acting Comptroller of the Currency.

[FR Doc. 2024–21560 Filed 9–24–24; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Docket No. R–183]

RIN 7100 AG–80

Regulation A: Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') has adopted final amendments to its Regulation A to reflect the Board's approval of a decrease in the rate for primary credit at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically decreased by formula as a result of the Board's primary credit rate action.

DATES:

Effective date: This rule (amendments to part 201 (Regulation A)) is effective September 25, 2024.

Applicability date: The rate changes for primary and secondary credit were applicable on September 19, 2024.

FOR FURTHER INFORMATION CONTACT: M. Benjamin Snodgrass, Senior Counsel (202–263–4877), Legal Division, or Heather Ford, Group Manager (202–452–3674), Division of Monetary Affairs; for users of telephone systems via text telephone (TTY) or any TTY-based Telecommunications Relay Services, please call 711 from any telephone, anywhere in the United States; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to review and determination of the Board.

On September 18, 2024, the Board voted to approve a 0.50 percentage point decrease in the primary credit rate, thereby decreasing the primary credit rate from 5.50 percent to 5.00 percent. In addition, the Board had previously approved the renewal of the secondary credit rate formula, the primary credit rate plus 50 basis points. Under the formula, the secondary credit rate decreased by 0.50 percentage points as a result of the Board's primary credit rate action, thereby decreasing the secondary credit rate from 6.00 percent to 5.50 percent. The amendments to Regulation A reflect these rate changes.

The 0.50 percentage point decrease in the primary credit rate was associated with a 0.50 percentage point decrease in the target range for the federal funds rate (from a target range of 5¼ percent to 5½ percent to a target range of 4¾ percent to 5 percent) announced by the Federal Open Market Committee on September 18, 2024, as described in the Board's amendment of its Regulation D published elsewhere in today's **Federal Register**.

Administrative Procedure Act

In general, the Administrative Procedure Act (''APA'') [1] imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to Congressionally delegated authority): (1) publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule's content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be ''unnecessary, impracticable, or contrary to the public interest.'' [2] Section 553(d) of the APA also provides that publication at least 30 days prior to a rule's effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds good cause for shortened notice and publishes its reasoning with the rule.[3] The APA further provides that the notice, public comment, and delayed effective date requirements of 5 U.S.C. 553 do not apply ''to the extent that there is involved . . . a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.'' [4]

Regulation A establishes the interest rates that the twelve Reserve Banks charge for extensions of primary credit and secondary credit. The Board has determined that the notice, public comment, and delayed effective date requirements of the APA do not apply to these final amendments to Regulation A. The amendments involve a matter relating to loans and are therefore exempt under the terms of the APA. Furthermore, because delay would undermine the Board's action in responding to economic data and conditions, the Board has determined that ''good cause'' exists within the meaning of the APA to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to the final amendments to Regulation A.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[5] As noted previously, a general notice of proposed rulemaking is not required if the final rule involves a matter relating to loans. Furthermore, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA'') of 1995,[6] the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending 12 CFR chapter II as follows:

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[1] 5 U.S.C. 551 *et seq.*

[2] 5 U.S.C. 553(b)(3)(A).

[3] 5 U.S.C. 553(d).

[4] 5 U.S.C. 553(a)(2).

[5] 5 U.S.C. 603, 604.

[6] 44 U.S.C. 3506; *see* 5 CFR part 1320, appendix A.1.

Federal Deposit Insurance Corporation – Statement of Policy on Bank Merger Transactions – Proposed Recission and Reinstatement of Statement of Policy

Federal Register
Vol. 90, No. 46
Tuesday, March 11, 2025

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064–ZA45

Statement of Policy on Bank Merger Transactions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rescission and reinstatement of statement of policy; request for comment.

SUMMARY: The FDIC is requesting public comment on a proposal to rescind the Statement of Policy on Bank Merger Transactions published in 2024 and reinstate its prior Statement of Policy on Bank Merger Transactions. The FDIC expects to request comment on all aspects of the regulatory framework governing the FDIC's review of bank merger transactions in connection with a future proposal to comprehensively revise its merger policy.

DATES: Comments must be received on or before April 10, 2025.

ADDRESSES: You may submit comments to the FDIC, identified by RIN 3064–ZA45, by any of the following methods:

• *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications.* Follow instructions for submitting comments on the FDIC's website.

• *Email: comments@FDIC.gov.* Include the RIN 3064–ZA45 in the subject line of the message.

• *Mail:* Jennifer Jones, Deputy Executive Secretary, Attention: Comments/Legal OES (RIN 3064–ZA45), Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivered/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m.

Public Inspection: Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-registerpublications/.* Commenters should submit only information they wish to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this notice will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Division of Risk Management Supervision: Thomas F. Lyons, Associate Director of Risk Management Policy, (202) 898–6850, *tlyons@fdic.gov;* George Small, Senior Examination Specialist, (347) 267–2453, *gsmall@fdic.gov.* Legal Division: Annmarie Boyd, Assistant General Counsel, (202) 898–3714, *aboyd@fdic.gov;* Benjamin Klein, Senior Counsel, (202) 898–7027, *bklein@fdic.gov;* Amanda Ledig, Counsel, (972) 761–5895, *aledig@fdic.gov;* Nicholas Simons, Counsel, (202) 898–6785, *nsimons@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 18(c) of the Federal Deposit Insurance Act (FDI Act), which codifies the Bank Merger Act (BMA), prohibits an insured depository institution (IDI) from engaging in a bank merger transaction except with the prior approval of the responsible Federal banking agency.[1] The FDIC has jurisdiction to act on merger transactions that solely involve IDIs in which the acquiring, assuming, or resulting institution is an FDIC-supervised institution.[2] The FDIC also has jurisdiction to act on merger transactions that involve an IDI and any non-insured entity, notwithstanding the IDI's charter.[3]

The FDIC published a request for comment on a proposed Statement of Policy on Bank Merger Transactions in the **Federal Register** on April 19, 2024,[4] and subsequently issued it as final on September 27, 2024 (the 2024 Statement).[5] The 2024 Statement superseded the FDIC's prior Statement of Policy on Bank Merger Transactions (Merger Policy Statement), which was initially adopted in 1998 and amended most recently in 2008.[6]

II. Overview of the Notice

A. Purpose

The FDIC is pursuing this action in light of concerns that implementation of the 2024 Statement has added considerable uncertainty to the merger application process. As an example, the 2024 Statement has led to a number of questions regarding when merger applications are required.[7] The 2024 Statement also deemphasizes the use of the Herfindahl-Hirschman Index (HHI) thresholds in the competitive effects analysis, which have long served as a predictable proxy for determining whether a proposed transaction is anticompetitive,[8] and replaces it with more subjective criteria. In addition, the 2024 Statement places an affirmative burden on applicants to demonstrate that a merger transaction will enable the resulting institution to better meet the convenience and needs of the community to be served than would otherwise occur in the absence of the merger without offering any objective or quantifiable criteria regarding how the FDIC will evaluate this factor.[9] The combined effect of these and several

[1] 12 U.S.C. 1828(c).

[2] 12 U.S.C. 1828(c)(2).

[3] 12 U.S.C. 1828(c)(1).

[4] 89 FR 29222 (April 19, 2024).

[5] 89 FR 79125 (Sep. 27, 2024).

[6] *See* 63 FR 44761 (Aug. 20, 1998), 67 FR 48178 (Jul. 23, 2002), 67 FR 79278 (Dec. 27, 2002), and 73 FR 8870 (Feb. 15, 2008).

[7] *See e.g., supra* n. 5 at 89 FR 79134 (''The applicability of the BMA will depend on the facts and circumstances of the proposed transaction. In addition to transactions that combine institutions into a single legal entity through merger or consolidation, the scope of merger transactions subject to approval under the BMA encompasses transactions that take other forms, including purchase and assumption transactions or other transactions that are mergers in substance, and assumptions of deposits or other similar liabilities.'').

[8] *See id.* at 89 FR 79136.

[9] *See id.* at 89 FR 79138.

other provisions of the 2024 Statement is that the FDIC's bank merger review process has become less transparent and less predictable, leaving prospective applicants unclear about their prospects for approval and the resources and time they will need to allocate to the merger application process. Accordingly, in the interim, the FDIC is proposing to return to the historical approach, which is well-understood by the public and market participants, while the agency develops future policy.

B. Summary of the Merger Policy Statement

The Merger Policy Statement was first published in 1998 and was subsequently amended several times,[10] most recently in 2008. The Merger Policy Statement is essentially[11] identical to the 2008 document. It includes a general introduction, followed by an overview of application procedures, a discussion of the FDIC's evaluation of merger applications based on the statutory factors required for consideration under the BMA,[12] and concludes with a list of related considerations. The discussion of the BMA statutory factors addresses the competitive factors, the prudential considerations related to financial and managerial resources and future prospects, the convenience and needs of the community to be served, and the effectiveness of each insured depository institution involved in the proposed merger transaction in combatting money-laundering activities.

Although the Merger Policy Statement does not directly address the BMA's statutory factor related to the risk to the stability of the United States banking or financial system, which was added to the BMA by the Dodd-Frank Act in 2010,[13] the FDIC has articulated its approach to evaluating this factor in the context of merger transactions in the FDIC's Applications Procedures Manual.[14]

III. Request for Comment

The FDIC seeks comment on the proposal to rescind the 2024 Statement and reinstate the Merger Policy Statement as an interim measure. The FDIC plans to issue a future proposal to comprehensively revise its merger policy at a later date, and will solicit further comments at that time.

IV. Administrative Law Matters

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),[15] the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The Merger Policy Statement does not create any new or revise any existing collections of information under the PRA. Therefore, no information collection request will be submitted to the OMB for review.

V. Merger Policy Statement

The text of the Statement of Policy is as follows:

FDIC Statement of Policy on Bank Merger Transactions

I. Introduction

Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), popularly known as the ''Bank Merger Act,'' requires the prior written approval of the FDIC before any insured depository institution may:

(1) Merge or consolidate with, purchase or otherwise acquire the assets of, or assume any deposit liabilities of, another insured depository institution if the resulting institution is to be a state nonmember bank, or

(2) Merge or consolidate with, assume liability to pay any deposits or similar liabilities of, or transfer assets and deposits to, a noninsured bank or institution.

Institutions undertaking one of the above described ''merger transactions'' must file an application with the FDIC. Transactions that do not involve a transfer of deposit liabilities typically do not require prior FDIC approval under the Bank Merger Act, unless the transaction involves the acquisition of all or substantially all of an institution's assets.

The Bank Merger Act prohibits the FDIC from approving any proposed merger transaction that would result in a monopoly, or would further a combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States. Similarly, the Bank Merger Act prohibits the FDIC from approving a proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade. An exception may be made in the case of a merger transaction whose effect would be to substantially lessen competition, tend to create a monopoly, or otherwise restrain trade, if the FDIC finds 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. For example, the FDIC may approve a merger transaction to prevent the probable failure of one of the institutions involved.

In every proposed merger transaction, the FDIC must also consider the financial and managerial resources and future prospects of the existing and proposed institutions, the convenience and needs of the community to be served, and the effectiveness of each insured depository institution involved in the proposed merger transaction in combating money-laundering activities, including in overseas branches.

II. Application Procedures

1. *Application filing.* Application forms and instructions may be obtained from the appropriate FDIC office. Completed applications and any other pertinent materials should be filed with the appropriate FDIC office. The application and related materials will be reviewed by the FDIC for compliance with applicable laws and FDIC rules and regulations. When all necessary information has been received, the application will be processed and a decision rendered by the FDIC.

2. *Expedited processing.* Section 303.64 of the FDIC rules and regulations (12 CFR 303.64) provides for expedited processing, which the FDIC will grant to eligible applicants. In addition to the eligible institution criteria provided for in § 303.2 (12 CFR 303.2), § 303.64 provides expedited processing criteria

[10] *See supra* n. 6.

[11] The only changes are technical edits updating a room number and a citation.

[12] *Supra* n. 1.

[13] 12 U.S.C. 1828(c)(5), as amended by Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203, 604(f), 124 Stat. 1376, 1602 (2010).

[14] *See* FDIC Applications Procedures Manual, pp. 4–22—4–23, available at: *https://www.fdic.gov/sites/default/files/2024-03/pr19111a.pdf.* (''In evaluating a merger application, the FDIC must consider the risk to the stability of the United States banking or financial system (Section 18(c)(5) of the FDI Act). [The FDIC] consider[s] both quantitative and qualitative metrics when evaluating a transaction's impact on financial stability. The following is a non-exhaustive list of quantitative metrics [the FDIC] consider[s]: the size of the resulting firm; the availability of substitute providers for any critical products and services offered by the resulting firm; the interconnectedness of the resulting firm with the banking or financial system; the extent to which the resulting firm contributes to the complexity of the financial system; and the extent of cross-border activities of the resulting firm. In addition to these quantitative metrics, qualitative factors should inform the evaluation of the financial stability factor. Such factors include those that are indicative of the relative degree of difficult in resolving the resulting firm, such as the opaqueness and complexity of the resulting institution's operations.'')

[15] 44 U.S.C. 3501 *et seq.*

specifically applicable to proposed merger transactions.

3. *Publication of notice.* The FDIC will not take final action on a merger application until notice of the proposed merger transaction is published in a newspaper or newspapers of general circulation in accordance with the requirements of section 18(c)(3) of the Federal Deposit Insurance Act. See § 303.65 of the FDIC rules and regulations (12 CFR 303.65). The applicant must furnish evidence of publication of the notice to the appropriate FDIC office following compliance with the publication requirement. See § 303.7(b) of the FDIC rules and regulations (12 CFR 303.7(b)).

4. *Reports on competitive factors.* As required by law, the FDIC will request a report on the competitive factors involved in a proposed merger transaction from the Attorney General This report must ordinarily be furnished within 30 days, and the applicant upon request will be given an opportunity to submit comments to the FDIC on the contents of the competitive factors report.

5. *Notification of the Attorney General.* After the FDIC approves any merger transaction, the FDIC will immediately notify the Attorney General. Generally, unless it involves a probable failure, an emergency exists requiring expeditious action, or it is solely between an insured depository institution and one or more of its affiliates, a merger transaction may not be consummated until 30 calendar days after the date of the FDIC's approval. However, the FDIC may prescribe a 15-day period, provided the Attorney General concurs with the shorter period.

6. *Merger decisions available.* Applicants for consent to engage in a merger transaction may find additional guidance in the reported bases for FDIC approval or denial in prior merger transaction cases compiled in the FDIC's annual ''Merger Decisions'' report. Reports may be obtained from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1005, Arlington, VA 22226. Reports may also be viewed at *http://www.fdic.gov.*

III. Evaluation of Merger Applications

The FDIC's intent and purpose is to foster and maintain a safe, efficient, and competitive banking system that meets the needs of the communities served. With these broad goals in mind, the FDIC will apply the specific standards outlined in this Statement of Policy when evaluating and acting on proposed merger transactions.

Competitive Factors

In deciding the competitive effects of a proposed merger transaction, the FDIC will consider the extent of existing competition between and among the merging institutions, other depository institutions, and other providers of similar or equivalent services in the relevant product market(s) within the relevant geographic market(s).

1. *Relevant geographic market.* The relevant geographic market(s) includes the areas in which the offices to be acquired are located and the areas from which those offices derive the predominant portion of their loans, deposits, or other business. The relevant geographic market also includes the areas where existing and potential customers impacted by the proposed merger transaction may practically turn for alternative sources of banking services. In delineating the relevant geographic market, the FDIC will also consider the location of the acquiring institution's offices in relation to the offices to be acquired.

2. *Relevant product market.* The relevant product market(s) includes the banking services currently offered by the merging institutions and to be offered by the resulting institution. In addition, the product market may also include the functional equivalent of such services offered by other types of competitors, including other depository institutions, securities firms, or finance companies. For example, share draft accounts offered by credit unions may be the functional equivalent of demand deposit accounts. Similarly, captive finance companies of automobile manufacturers may compete directly with depository institutions for automobile loans, and mortgage bankers may compete directly with depository institutions for real estate loans.

3. *Analysis of competitive effects.* In its analysis of the competitive effects of a proposed merger transaction, the FDIC will focus particularly on the type and extent of competition that exists and that will be eliminated, reduced, or enhanced by the proposed merger transaction. The FDIC will also consider the competitive impact of providers located outside a relevant geographic market where it is shown that such providers individually or collectively influence materially the nature, pricing, or quality of services offered by the providers currently operating within the geographic market.

The FDIC's analysis will focus primarily on those services that constitute the largest part of the businesses of the merging institutions. In its analysis, the FDIC will use whatever analytical proxies are available that reasonably reflect the dynamics of the market, including deposit and loan totals, the number and volume of transactions, contributions to net income, or other measures. Initially, the FDIC will focus on the respective shares of total deposits [16] held by the merging institutions and the various other participants with offices in the relevant geographic market(s), unless the other participants' loan, deposit, or other business varies markedly from that of the merging institutions. Where it is clear, based on market share considerations alone, that the proposed merger transaction would not significantly increase concentration in an unconcentrated market, a favorable finding will be made on the competitive factor.

Where the market shares of the merging institutions are not clearly insignificant, the FDIC will also consider the degree of concentration within the relevant geographic market(s) using the Herfindahl-Hirschman Index (HHI) [17] as a primary measure of market concentration. For purposes of this test, a reasonable approximation for the relevant geographic market(s) consisting of one or more predefined areas may be used. Examples of such predefined areas include counties, the Bureau of the Census Metropolitan-Statistical Areas (MSAs), or Rand-McNally Ranally Metro Areas (RMAs).

The FDIC normally will not deny a proposed merger transaction on antitrust grounds (absent objection from the Department of Justice) where the post-merger HHI in the relevant geographic market(s) is 1,800 points or less or, if it is more than 1,800, it reflects an increase of less than 200 points from the pre-merger HHI. Where a proposed merger transaction fails this initial concentration test, the FDIC will consider more closely the various competitive dynamics at work in the market, taking into account a variety of factors that may be especially relevant and important in a particular proposal, including:

[16] In many cases, total deposits will adequately serve as a proxy for overall share of the banking business in the relevant geographic market(s); however, the FDIC may also consider other analytical proxies.

[17] 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 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 competitors with equal market shares, the HHI would be: $20^2 + 20^2 + 20^2 + 20^2 + 20^2 = 2{,}000$.

- The number, size, financial strength, quality of management, and aggressiveness of the various participants in the market;
- The likelihood of new participants entering the market based on its attractiveness in terms of population, income levels, economic growth, and other features;
- Any legal impediments to entry or expansion; and
- Definite entry plans by specifically identified entities.

In addition, the FDIC will consider the likelihood that new entrants might enter the market by less direct means; for example, electronic banking with local advertisement of the availability of such services. This consideration will be particularly important where there is evidence that the mere possibility of such entry tends to encourage competitive pricing and to maintain the quality of services offered by the existing competitors in the market.

The FDIC will also consider the extent to which the proposed merger transaction likely would create a stronger, more efficient institution able to compete more vigorously in the relevant geographic markets.

4. *Consideration of the public interest.* The FDIC will deny any proposed merger transaction whose overall effect likely would be to reduce existing competition substantially by limiting the service and price options available to the public in the relevant geographic market(s), unless the anticompetitive effects of the proposed merger 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. For this purpose, the applicant must show by clear and convincing evidence that any claimed public benefits would be both substantial and incremental and generally available to seekers of banking services in the relevant geographic market(s) and that the expected benefits cannot reasonably be achieved through other, less anticompetitive means.

Where a proposed merger transaction is the least costly alternative to the probable failure of an insured depository institution, the FDIC may approve the merger transaction even if it is anticompetitive.

Prudential Factors

The FDIC does not wish to create larger weak institutions or to debilitate existing institutions whose overall condition, including capital, management, and earnings, is generally satisfactory. Consequently, apart from competitive considerations, the FDIC normally will not approve a proposed merger transaction where the resulting institution would fail to meet existing capital standards, continue with weak or unsatisfactory management, or whose earnings prospects, both in terms of quantity and quality, are weak, suspect, or doubtful. In assessing capital adequacy and earnings prospects, particular attention will be paid to the adequacy of the allowance for loan and lease losses. In evaluating management, the FDIC will rely to a great extent on the supervisory histories of the institutions involved and of the executive officers and directors that are proposed for the resultant institution. In addition, the FDIC may review the adequacy of management's disclosure to shareholders of the material aspects of the merger transaction to ensure that management has properly fulfilled its fiduciary duties.

Convenience and Needs Factor

In assessing the convenience and needs of the community to be served, the FDIC will consider such elements as the extent to which the proposed merger transaction is likely to benefit the general public through higher lending limits, new or expanded services, reduced prices, increased convenience in utilizing the services and facilities of the resulting institution, or other means. The FDIC, as required by the Community Reinvestment Act, will also note and consider each institution's Community Reinvestment Act performance evaluation record. An unsatisfactory record may form the basis for denial or conditional approval of an application.

Anti-Money Laundering Record

In every case, the FDIC will take into consideration the effectiveness of each insured depository institution involved in the proposed merger transaction in combating money-laundering activities, including in overseas branches. In this regard, the FDIC will consider the adequacy of each institution's programs, policies, and procedures relating to anti-money laundering activities; the relevant supervisory history of each participating institution, including their compliance with anti-money laundering laws and regulations; and the effectiveness of any corrective program outstanding. The FDIC's assessment may also incorporate information made available to the FDIC by the Department of the Treasury, other Federal or State authorities, and/or foreign governments. Adverse findings may warrant correction of identified problems before consent is granted, or the imposition of conditions. Significantly adverse findings in this area may form the basis for denial of the application.

Special Information requirement if applicant is affiliated with or will be affiliated with an insurance company.

If the institution that is the subject of the application is, or will be, affiliated with a company engaged in insurance activities that is subject to supervision by a state insurance regulator, the applicant must submit the following information as part of its application: (1) The name of insurance company; (2) a description of the insurance activities that the company is engaged in and has plans to conduct; and (3) a list of each state and the lines of business in that state which the company holds, or will hold, an insurance license. Applicant must also indicate the state where the company holds a resident license or charter, as applicable.

IV. Related Considerations

1. *Interstate bank merger transactions.* Where a proposed transaction is an interstate merger transaction between insured banks, the FDIC will consider the additional factors provided for in section 44 of the Federal Deposit Insurance Act, 12 U.S.C. 1831u.

2. *Interim merger transactions.* An interim institution is a state- or federally-chartered institution that does not operate independently, but exists, normally for a very short period of time, solely as a vehicle to accomplish a merger transaction. In cases where the establishment of a new or interim institution is contemplated in connection with a proposed merger transaction, the applicant should contact the FDIC to discuss any relevant deposit insurance requirements. In general, a merger transaction (other than a purchase and assumption) involving an *insured* depository institution and a *federal* interim depository institution will not require an application for deposit insurance, even if the federal interim depository institution will be the surviving institution.

3. *Branch closings.* Where banking offices are to be closed in connection with the proposed merger transaction, the FDIC will review the merging institutions' conformance to any applicable requirements of section 42 of the FDI Act concerning notice of branch closings as reflected in the Interagency Policy Statement Concerning Branch Closing Notices and Policies. See 64 FR 34844 (Jun. 29, 1999).

4. *Legal fees and other expenses.* The commitment to pay or payment of unreasonable or excessive fees and other expenses incident to an application reflects adversely upon the management of the applicant institution. The FDIC

will closely review expenses for professional or other services rendered by present or prospective board members, major shareholders, or other insiders for any indication of self-dealing to the detriment of the institution. As a matter of practice, the FDIC expects full disclosure to all directors and shareholders of any arrangement with an insider. In no case will the FDIC approve an application where the payment of a fee, in whole or in part, is contingent upon any act or forbearance by the FDIC or by any other federal or state agency or official.

5. *Trade names.* Where an acquired bank or branch is to be operated under a different trade name than the acquiring bank, the FDIC will review the adequacy of the steps taken to minimize the potential for customer confusion about deposit insurance coverage. Applicants may refer to the Interagency Statement on Branch Names for additional guidance. See FDIC, Financial Institution Letter, 46–98 (May 1, 1998).

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on March 3, 2025.

Jennifer M. Jones

Deputy Executive Secretary.

[FR Doc. 2025–03832 Filed 3–10–25; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2025–0340; Project Identifier MCAI–2024–00462–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2023–14–09, which applies to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2023–14–09 requires an inspection for missing or incorrectly applied sealant in the wing tanks, applicable corrective actions, and a modification to restore two independent layers of lightning strike protection. Since the FAA issued AD 2023–14–09, Airbus provided inspection instructions for a new inspection area of the upper and lower, front and rear spar corner fittings for certain airplanes. This proposed AD would continue to require the actions in AD 2023–14–09 and would require a one-time detailed inspection (DET) for missing or incorrectly applied sealant of the front and rear spars for certain airplanes and applicable on-condition actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 25, 2025.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

• *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.

• *Fax:* 202–493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2025–0340; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

• For EASA material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; website *easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*. It is also available at *regulations.gov* under Docket No. FAA–2025–0340.

• For Airbus material identified in this proposed AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com*; website *airbus.com*.

• You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2025–0340; Project Identifier MCAI–2024–00462–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan Rodina, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.