



On March 21, 2024, the Federal Deposit Insurance Corporation (FDIC) approved a Proposed Statement of Policy on Bank Merger Transactions (SOP), which would significantly increase the scrutiny applied to bank mergers and potentially raise the standard for approving such transactions.¹ The FDIC has jurisdiction over bank mergers involving solely FDIC-supervised institutions and those involving an FDIC-insured bank and non-insured entity. The proposed SOP follows a [2021 executive order](#) that encouraged federal banking agencies to update their bank merger guidelines. In January 2024, the Office of the Comptroller of the Currency (OCC), which is responsible for mergers of national-chartered banks, [amended its merger review procedures](#). With interagency efforts to draft joint guidelines appearing to have stalled, market participants continue to wait for actions by the Federal Reserve. The SOP will be open for comment 60 days after publication in the *Federal Register*.

5 insights you should know

More expansive jurisdictional view: The proposed SOP states the scope of mergers subject to FDIC approval encompasses transactions that take other forms that are “mergers in substance,” such as when an IDI assumes (substantially) all of another entity’s assets and the selling entity would no longer compete in the market. This expansive view may lead to FDIC regulatory approval for transactions market participants may not otherwise consider a merger.

Expanded competition evaluation and approval conditions: While the standard measure of market concentration has been the Herfindhal-Hirschman Index (HHI), the proposed SOP appears to deemphasize HHI and expand competitive considerations beyond deposits to include “any specific products or customer segments.” Furthermore, to mitigate competitive effects, the FDIC may require divestiture *before* the merger is consummated and prohibit non-compete agreements with employees of the divested entity.

More demanding ‘convenience and needs’ assessment: The proposed SOP sets forth an affirmative duty to demonstrate to the FDIC that the resulting insured depository institution (IDI) would *better* meet the convenience and needs of the community than would occur absent the merger. The FDIC will also closely review the Community Reinvestment Act (CRA) and consumer protection record of both merging IDIs; a less than “Satisfactory” historical rating in either or significant deterioration in CRA performance will likely result in unfavorable findings.

Key financial stability considerations: The FDIC will evaluate the size of the entities involved, the availability of substitute providers, the degrees of interconnectedness, the extent of cross-border activities, and the complexity of the resulting IDI, particularly with regard to resolution. However, the proposed SOP does not provide guidance on how the potential risks and benefits will be balanced or weighed against each other beyond stating that mergers resulting in an IDI of \$100 billion or more in total assets will warrant additional scrutiny.

Increased transparency: The FDIC generally expects to hold public hearings for any merger application that will result in an IDI greater than \$50 billion in total assets, or for which a significant number of CRA protests are received. Furthermore, in situations where staff recommend denial of the application and applicants choose to withdraw the filing, the Board of Directors may release a statement regarding concerns with the transaction for the public and future applicants.

5 considerations to evaluate

1 Prepare for longer, more complex review process: The expanded considerations laid out in the proposed SOP will likely require greater diligence in applications and place a higher bar on acquirers to receive approval – both of which is expected to lead to longer review periods. Banks should prioritize developing detailed integration plans focusing on transition of roles and responsibilities, operations, and compliance, and be able to demonstrate management is prepared for day 1.

2 Undertake broad concentration analysis: Banks should consider undertaking an analysis of post-merger market concentrations, beyond deposits, to both geographic and product levels. For products or customer segments, banks may consider the volume of small business or residential loan originations or activities requiring specialized expertise. Banks should be prepared to share analyses and reports, including those prepared by or for officers, directors, or deal team leads. It will be key to demonstrate to regulators that consumers would retain meaningful choices after the merger.

3 Prepare to demonstrate how the merger will benefit the public: Given the affirmative expectation to not only meet the convenience and needs of the community to be served, but improve them post-merger, banks interested in pursuing a combination should prepare to demonstrate public benefits, such as higher lending limits, greater access to existing products and services, introduction of new or expanded products or services, reduced prices and fees, increased convenience in utilizing the credit and banking services and facilities of the resulting institution, or other relevant means.

4 Conduct assessment of merger financial stability impacts: During the preparation of any merger application, banks should undertake a financial stability impact assessment that addresses each statutory factor in the BMA. For large mergers that would result in IDIs of \$100 billion or more in total assets, special attention should be paid to addressing FDIC concerns regarding the resolvability of the resulting IDI and demonstrating how the merged IDI will enhance financial stability.

5 Direct resources towards CRA and consumer protection efforts: The IDI’s record of meeting the credit needs of its community, including low- and moderate-income neighborhoods, will be a key consideration for FDIC review and, under the proposed SOP, likely to play a significant role in determining whether the agency will hold a public hearing. Banks should direct the necessary resources towards closing any outstanding CRA or consumer-related supervisory findings in advance of a merger application and be able to demonstrate a sustainable compliance program.

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The proposed SOP expands upon some of the statutory factors that the OCC and FDIC must consider when they reviews applications subject to the Bank Merger Act.



Factors	OCC (where they are primary regulator)	FDIC (where they are primary regulator or a bank is acquiring a non-bank)	Level of change		Key differences
	<i>*Bolded text indicates key proposal difference</i>		OCC	FDIC	
Monopolistic or Anticompetitive Effects¹	[Not elaborated in the rule – referred through footnote 1]	✓ Describes Competitive impact assessment for bank merger: deposit share, market share, concentration, new competitors, pricing and expansion of products and services			<ul style="list-style-type: none"> While the OCC's approach to considering factors related to competition may not be explicitly stated in the rule, the FDIC provides a more structured framework that includes specific factors such as deposit share, market share, concentration, new competitors, pricing, and expansion of products and services, and goes well beyond existing guidance.
Financial stability	<ul style="list-style-type: none"> ✓ Size, complexity and interconnectedness with other financial system participants ✓ Availability of substitute providers ✓ Extent of the cross-border activities ✓ Increased difficulty in resolvability 	<ul style="list-style-type: none"> ✓ Size, complexity and interconnectedness with other financial system participants ✓ Availability of substitute providers ✓ Extent of the cross-border activities 			<ul style="list-style-type: none"> While both the OCC and FDIC give careful attention to the resolvability of the resulting institution and are both very focused on whether the transaction increases financial stability risks, the OCC frames the analysis as to whether the proposed transaction would increase the <i>relative</i> degree of difficulty of resolving the resulting institution. By comparison, the FDIC appears to take a more <i>de novo</i> view of the resulting institution's resolvability. In both cases it is clear that the topic of financial stability impacts will be critical – with the FDIC appearing slightly more skeptical.
Financial and managerial resources and future prospects	<ul style="list-style-type: none"> ✓ Adequate capital and liquidity standards ✓ Acquirer's satisfactory supervisory record ✓ Governance structure of resulting entity ✓ Robust earnings prospects post merger ✓ Consumer compliance rating ✓ Growth and Strategy ✓ Due diligence of target IDI by acquirer 	<ul style="list-style-type: none"> ✓ Adequate capital and liquidity standards ✓ Acquirer's satisfactory supervisory record ✓ Management skills, expertise & capabilities ✓ Robust earnings prospects post merger ✓ Compliance Management System/CRA rating and Fair lending ✓ Regulatory Remediation 			<ul style="list-style-type: none"> FDIC is prescriptive in certain areas on what it expects of the acquirer across a range of topics including regulatory remediation, Managerial capabilities and compliance management system. As an example, the FDIC has gone as far as to articulate "Adequate resources to ensure full and timely compliance with any outstanding corrective programs or supervisory recommendations." Notably, the OCC appears more focused on what level of analysis and diligence has been performed on the acquirer. In both cases, the bar has moved quite a bit in our view on what analysis, documentation and support needs to be provided both in the application and post application period.
Convenience and needs	<ul style="list-style-type: none"> ✓ Plans related to availability, accessibility and cost of bank operations, services and products ✓ CRA performance record ✓ Job losses or lost job opportunities from branch staffing changes 	<ul style="list-style-type: none"> ✓ Plans related to banking operations, services and products ✓ CRA performance record ✓ Job losses or lost job opportunities from branch staffing changes ✓ Benefit the public. 			<ul style="list-style-type: none"> The FDIC goes much further than what is required by other agencies under the BMA by imposing an affirmative obligation on applicants to demonstrate how the transaction will <i>better</i> meet the convenience and the needs of the community to be served than would occur absent the merger. This will substantially increase documentation, analysis and work to demonstrate "benefits."
Effectiveness in Combatting Money Laundering Activities²	[Not elaborated in the rule – referred through footnote 2]	✓ Describes strong anti-money laundering (AML) and counterterrorism financing (CFT) initiatives and assessment factors			<ul style="list-style-type: none"> While the OCC's approach to considering factors related to competition may not be explicitly stated in the rule, the FDIC considers specific factors for the resulting entity such as programs for combating AML/CFT, comprehensive evaluation of such programs and remediation efforts pursuant to an outstanding corrective program.

¹ OCC's review of the competition factor is guided by the process described in the interagency document, [Bank Merger Competitive Review—Introduction and Overview \(1995\)](#), Department of Justice, Antitrust Division

² The Federal Financial Institution Examination Council's [Bank Secrecy Act/Anti-Money Laundering Examination Manual](#) details the OCC's examination of institutions' anti-money laundering activities.

Legend



The proposed SOP expands upon some of the statutory factors that the OCC and FDIC must consider when they reviews applications subject to the Bank Merger Act.



Factors	OCC	FDIC
Monopolistic or Anticompetitive Effects	<ul style="list-style-type: none"> OCC’s review of the competition factor is guided by the process described in the interagency document, Bank Merger Competitive Review—Introduction and Overview (1995), Department of Justice, Antitrust Division 	<ul style="list-style-type: none"> Concentrations with respect to both geographic and product markets, in any specific products or customer segments Measurement of shares of total deposits held by the merging entities and the participants in market Concentrations in any product or customer sector, such as the volume of loans from small businesses or residents, or any activity requiring specialized expertise Emergence of new competitors in pertinent markets, as well as the expansion of the offerings of the merging companies and other market players Information on pricing of products and services of the proposed merger Summary of Deposits data to confirm the nationwide deposit share of the resulting IDI the proposed transaction that involve one or more IDIs in default or in danger of default for consistent competitive effects review
Financial stability	<ul style="list-style-type: none"> Will the proposed transaction: <ul style="list-style-type: none"> result in a material increase in risks to financial system stability due to an increase in size of the combining institutions result in a reduction in the availability of substitute providers for the services offered by the combining institutions materially increase the extent to which the combining institutions contribute to the complexity of the financial system materially increase the extent of cross-border activities of the combining institutions, and increase the relative degree of difficulty of resolving or winding up the resulting institution’s business in the event of failure or insolvency. Will the resulting institution 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, and Any other factors that could indicate that the transaction poses a risk to the US banking or financial system. 	<ul style="list-style-type: none"> The evaluation is done based on: <ul style="list-style-type: none"> Size of the entities involved in the transaction Critical products or services to be offered by the resulting IDI, a substitute provider must be available Degree of interconnectedness Extent of contributing to the U.S. banking or financial system’s complexity including IDI’s business lines, products and services, and on- & off-balance sheet activities, branch network and delivery channels, number of account holders, extent of information technology systems and any material affiliate or third-party relationship Extent of the cross-border activities Nature and scope of operations of the target entity, the resulting IDI, and any other elements that may also influence the risk Degree to which the merging entities are engaged in transactions or relationships with IDIs, affiliates of banking organizations, or other financial service providers is considered



Factors	OCC	FDIC
<p>Financial and managerial resources and future prospects</p>	<p>Financial Resources</p> <ul style="list-style-type: none"> would possess adequate capital and liquidity, satisfactory management, and robust earnings prospects has capital levels that comply with the applicable capital ratios mandated by 12 CFR part 3 and the Prompt Corrective Action capital categories established by 12 CFR § 6.4 <p>Managerial</p> <ul style="list-style-type: none"> possesses a satisfactory supervisory record, encompassing its financial and managerial resources <p>Business Plan/Strategy</p> <ul style="list-style-type: none"> has a business plan or strategy that would align with safe and sound operation. has not been subject to rapid growth has refrained from engaging in multiple acquisitions with coinciding integration periods has adhered to any conditions that may have been stipulated in previous OCC licensing decisions is not essentially the target in the transaction. <p>Diligence/Planning</p> <ul style="list-style-type: none"> has conducted ample due diligence of the target depository institution to comprehend the business model, systems compatibility, and weaknesses of the target, including plans and capability to address the acquirer's previously identified weaknesses and remediate the target's weaknesses, and possesses credible plans to identify and manage systems compatibility and integration issues, such as information technology compatibility and the implications for business continuity resilience. 	<p>Financial Resources</p> <ul style="list-style-type: none"> Whether resultant IDI can meet applicable capital standards <ul style="list-style-type: none"> A non-standard condition of the FDIC could be the imposition of capital requirements beyond existing capital levels, contingent on the expected risk profile of the resulting IDI. Whether IDI can maintain sufficient liquidity and employ appropriate funding strategies IDI's current and projected financial impact of any related entities on the IDI, including the parent organization and any key affiliates <p>Managerial Resources:</p> <ul style="list-style-type: none"> Whether directors, executives, and primary shareholders, when applicable, will have the necessary skills and capabilities to administer IDI's affairs Background and expertise of each member of the management team, along with the managerial performance and supervisory record of affiliates and subsidiaries Supervisory assessments of the management and the nature and extent of the organizational relationship which are made by relevant regulatory authorities Consistency of the proposed merger with the resulting IDI's strategic (or business) plan Managerial and operational capacity to integrate the acquired entity <p>Regulatory</p> <ul style="list-style-type: none"> Adequate resources to ensure full and timely compliance with any outstanding corrective programs or supervisory recommendations <p>Compliance</p> <ul style="list-style-type: none"> Consumer compliance rating pursuant to the Uniform Interagency Consumer Compliance Rating System and the CRA rating Whether each of the IDIs and the resulting IDI have adequate CMS IDI's compliance record with applicable consumer laws and regulation including fair lending, consumer protection is to be evaluated <p>Business Plan and Financials</p> <ul style="list-style-type: none"> Operation in a safe and sound manner on a sustained basis following consummation of the merger Reviewing of the pro-forma financial projections done along with the underlying assumption and any accompanying valuations ensuring it demonstrates and support that the resulting IDI will maintain an acceptable risk profile

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Factors	OCC	FDIC
<p>Convenience and needs</p>	<ul style="list-style-type: none"> • Any plans to close, expand, consolidate, or limit branches or branching services, including in low- or moderate-income (LMI) areas • 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 • Credit availability throughout the community, including, for example, home mortgage, consumer, small business, and small farm loans • Job losses or reduced job opportunities from branch staffing changes, including branch closures or consolidations • Community investment or development initiatives, including, for example, community reinvestment, community development investment, and community outreach and engagement strategies, and • Efforts to support affordable housing initiatives and small businesses. 	<ul style="list-style-type: none"> • Applicants are expected to <ul style="list-style-type: none"> • demonstrate how the transaction will benefit the public through higher lending limits • greater access to existing products and services, introduction of new or expanded products or services • reduced prices and fees • increased convenience in utilizing the credit and banking services and facilities of the resulting IDI, and • provide specific and forward-looking information to enable the FDIC to evaluate the expected benefits of the merger on the convenience and needs of the community to be served. • CRA performance evaluation record review to meet the credit needs of its assessment areas, including low- and moderate-income neighborhoods, and record of community development activity, as applicable • Institution's record for adhering to consumer protection laws and establishing a solid and efficient CMS • Whether public or private meetings are to be held based on the issues brought up during the comment period and the merger transaction's importance to the public, the banking sector, and the impacted areas
<p>Effectiveness in Combatting Money Laundering Activities</p>	<ul style="list-style-type: none"> • <i>The Federal Financial Institution Examination Council's Bank Secrecy Act/Anti-Money Laundering Examination Manual details the OCC's examination of institutions' anti-money laundering activities.</i> 	<ul style="list-style-type: none"> • Strong anti-money laundering (AML) and counterterrorism financing (CFT) initiatives. • Comprehensive assessment of each organization's: <ul style="list-style-type: none"> • AML/CFT program along with its overseas branches • Policies, procedures and processes • Risk Management Programs • Supervisory records of each entity participating along with compliance with the Bank Secrecy Act (BSA) and its implementing regulations • Remediation actions carried out in accordance with the corrective program