

Overview of Notice of Proposed Rulemaking for Business Combinations Under the Bank Merger Act

Background

The Office of the Comptroller of the Currency (OCC) is inviting comment on a proposal to increase the transparency of the standards that apply to the agency's review of business combinations involving national banks and federal savings associations. A business combination can include bank mergers, consolidations or the assumption of deposits.

The proposal would amend the OCC's procedures and add a policy statement summarizing the principles the OCC uses when it reviews proposed bank merger transactions under the Bank Merger Act.

Regulatory Amendments

The OCC is proposing two substantive changes to its business combination regulation:

- **Remove provisions related to expedited review.** The OCC reviews business combination applications to determine whether procedural and substantive requirements are met. Any business combination subject to a filing is a significant corporate transaction requiring OCC decisioning, which should not be deemed approved solely due to the passage of time.
- **Remove the OCC's streamlined business combination application.** The Interagency Bank Merger Act Application provides the appropriate basis for the OCC to review a business combination application.

Policy Statement

To provide greater clarity to financial institutions and transparency to the public, the OCC is also proposing a policy statement that would outline general principles the agency uses in its review of applications under the Bank Merger Act and the OCC's consideration of the financial stability, financial and managerial resources and future prospects, and convenience and needs factors. The policy statement would also discuss the criteria informing the OCC's decision on whether to hold a public meeting on an application subject to the Bank Merger Act.

General Principles of OCC Review

Based on the OCC's experience, the proposed policy statement identifies certain indicators that applications consistent with approval generally feature. These include:

- attributes regarding the acquirer's financial condition and size.
- the acquirer's management, compliance and Community Reinvestment Act (CRA) ratings.

- the effectiveness of the Bank Secrecy Act/anti-money laundering program, and the absence of fair lending concerns of acquiring institution.
- attributes regarding target's size and ratings.
- no significant adverse effect on competition.
- absence of significant CRA or consumer compliance concerns.

The proposed policy statement also contains a list of indicators that raise supervisory concerns that, if present in an application, are unlikely to receive approval unless and until such concerns are resolved. These include if the acquirer:

- has a CRA rating of Needs to Improve or Substantial Noncompliance.
- has compliance or management ratings of 3 or worse.
- is a global systemically important banking organization, or subsidiary thereof.
- has open or pending Bank Secrecy Act/Anti-money Laundering enforcement or fair lending actions, including referrals or notifications to other agencies.
- has failed to adopt, implement, and adhere to all the corrective actions required by a formal enforcement action in a timely manner; or multiple enforcement actions against the acquirer executed or outstanding during a three-year period.

Financial Stability

The proposed policy statement articulates the factors the OCC would consider in assessing financial stability for bank combination applications including:

- whether the size of the combined institutions would result in material increases in risk to financial stability
- any potential reduction in the availability of substitute providers for the services offered by the combining institutions.
- 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.
- the extent to which the combining institutions contribute to the complexity of the financial system.
- the extent of cross-border activities of the combining institutions
- 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
- any other factors that could indicate that the transaction poses a risk to the U.S. banking or financial system.

The OCC would also apply a balancing test and weigh the financial stability risk of approving the proposed transaction against the financial stability risk of denying the proposed transaction, particularly if the proposed transaction involves a troubled target. The OCC may also impose conditions to address and mitigate financial stability concerns.

Financial and Managerial Resources and Future Prospects

The OCC would consider the managerial resources, financial resources, and future prospects of any proposed transaction for the combining and resulting institutions, both individually and holistically. These factors would be tailored to the institutions' size, complexity, and risk profile.

The OCC is less likely to approve an application when the acquirer:

- has a less than satisfactory supervisory record;
- has experienced rapid growth;
- has engaged in multiple acquisitions with overlapping integration period;
- has failed to comply with conditions imposed in prior OCC licensing decisions; or
- is functionally the target in the transaction.

Convenience and Needs

The proposed policy statement outlines the OCC's considerations of the probable effects of the business combination on the community to be served and includes but is not limited to:

- any plans to close, expand, consolidate, or limit branches or branching services, including in low- or moderate-income 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
- job losses or reduced job opportunities from branch staffing changes
- 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.

The OCC would also consider comments from public hearings or meetings, and the applicant's CRA record in evaluating a business combination application.

The proposed policy statement would clarify criteria informing the OCC's decision on whether to hold a public meeting. The criteria includes the:

- public's interest in the transaction;
- appropriateness of a public meeting to document or clarify issues raised during the public comment process;
- significance of the transaction to the banking industry;
- significance of the transaction to the communities affected;
- the potential value of any information that could be gathered and documented during a public meeting; and
- acquirer's and target's CRA, consumer compliance, and fair lending, or other pertinent supervisory records, as applicable.