



On January 29, 2024, the Office of the Comptroller of the Currency (OCC) released a notice of proposed rulemaking (NPR) that would (i) amend the OCC’s bank merger review procedures and (ii) add a policy statement summarizing the principles the agency uses when it reviews proposed bank merger transactions under the Bank Merger Act.¹ The proposal would eliminate streamlined business combination applications and the possibility that a bank merger application can be approved by the passage of time rather than by OCC action. The OCC policy statement sets forth the features of applicants and indicators that are generally consistent with OCC approval under the Bank Merger Act, as well as features and indicators that raise supervisory or regulatory concerns and may be inconsistent with OCC approval.

5 insights you should know

Elimination of streamlined applications and automatic merger approval: The proposal would eliminate streamlined applications, expedited review, and the possibility that merger applications will be deemed approved solely by the passage of time. Under 12 CFR 5.33(i), adopted in 1996, certain merger applications are deemed approved by the OCC on the 15th day after the close of the comment period unless the OCC takes action to remove the filing from the expedited processing.

New policy statement intended to improve transparency: As part of the NPR, the OCC proposed a policy statement that sets forth the features of applicants or indicators that are generally consistent, or inconsistent, with OCC approval under the Bank Merger Act. The OCC is telegraphing factors that will more likely lead to merger approvals, appearing to favor smaller institutions that are well capitalized and have satisfactory supervisory ratings. On the flipside, global systemically important banks (G-SIBs), larger transactions (resulting bank greater than \$50 billion), and institutions with weak supervisory ratings or outstanding enforcement actions appear to be disfavored.

Supervisory assessment of acquiring bank critical to timely approval: The proposed policy statement notes that applications where the acquiring bank has satisfactory supervisory ratings, no open enforcement actions, and no fair lending, Community Reinvestment Act (CRA), Bank Secrecy Act (BSA), or consumer compliance concerns are consistent with timely approval. In contrast, applications where the acquirer has unsatisfactory supervisory ratings or other supervisory concerns are highly unlikely to receive approval until those concerns are resolved.

Balancing test for financial stability considerations: The proposed policy statement includes a balancing test to compare the financial stability risks of approving vs denying a proposed transaction. The OCC would consider each factor individually and in combination. To mitigate financial stability concerns, the OCC may impose conditions such as asset divestitures or higher minimum capital requirements.

Expanded detail on ‘convenience and needs’ assessment: The proposed policy statement provides additional detail on the OCC’s consideration for probable effects of bank mergers on the community to be served, including impacts to branch services, cost and availability impacts to banking products and services, and job losses or opportunities.

5 considerations to evaluate

Prepare more diligent merger applications: The elimination of streamlined applications and expedited review will require all bank mergers to go through the full interagency Bank Merger Act application process. Coupled with the elimination of default approval, these changes reflect the OCC’s view that all bank mergers warrant careful review and a definitive OCC decision. In light of these heightened regulatory standards, banks should exercise increased diligence in preparing their applications and expect more effort to demonstrate alignment with Bank Merger Act factors.

Incorporate policy statement indicators into strategic planning: To enhance the likelihood of OCC merger approval and expedite the application process, banks are advised to embed the features and indicators set forth in the policy statement into their strategic planning process. This will likely include more up-front analysis and business case development incorporating new factors into the bank’s evaluations of potential acquisition candidates.

Direct resources towards closing outstanding supervisory findings: Banks planning to merge with or acquire another financial institution should consider directing additional resources towards closing any outstanding supervisory findings, particularly for those related to fair lending, anti-money laundering (AML) and consumer compliance. Resolving supervisory issues and demonstrating robust and sustainable controls are in place may now more than ever be table stakes before a merger application is initiated.

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 factor in the policy statement, both individually and in combination. Banks should develop contingency plans to address potential OCC conditions, such as preparing for asset divestitures or meeting higher minimum capital requirements.

Analyze impacts on communities served and develop potential mitigation strategies: Banks should carefully evaluate the potential impacts of any proposed merger on the communities they serve, considering the factors discussed in the OCC’s policy statement. To reduce risk of OCC objection, banks should consider developing a mitigation strategy for any probable harmful effects, such as changes in availability of banking services (including through branch closures) or job losses.

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- 1 The acquirer is well capitalized under 12 CFR § 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 CRA rating of Outstanding or Satisfactory
- 4 The acquirer has composite and management ratings of 1 or 2 under the 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
- 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 combined total assets are less than or equal to 50% of the acquirer's total assets
- 10 The target is an eligible depository institution as defined in 12 CFR § 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
- 13 No adverse comment has raised a significant CRA or consumer compliance concern

The policy statement sets out six factors that would make it “unlikely” that a proposed transaction is consistent with approval, “unless and until the applicant has adequately addressed or remediated the concern.”



- 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 G-SIB or one of its subsidiaries
- 5 The acquirer has open or pending BSA/AML enforcement or fair lending actions, including referrals and notifications to other agencies
- 6 Failure by the acquirer 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

The policy statement expands upon some of the statutory factors that the OCC must consider when it reviews applications subject to the Bank Merger Act



Factors	Analysis
Financial stability	- Will the proposed transaction: - 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.
Financial and managerial resources and future prospects	- Whether the acquirer: - possesses a satisfactory supervisory record, encompassing its financial and managerial resources; - 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; - 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. - Whether the resultant depository institution: - 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; and - has a business plan or strategy that would align with safe and sound operation.
Convenience and needs	- 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.