

# Regulatory Alert

## Regulatory Insights for Financial Services

September 2024

### Bank Mergers: FDIC and OCC Policies/Amendments

#### **KPMG Insights:**

- **Principles-based:** Policy statements reiterate a principles-based standard to bank merger evaluations
- **Expanded Content:** Considers a broader range of financial institutions and transaction types (e.g., interstate transactions and applications involving non-banks)
- **Timeliness Concerns:** Industry continues to be concerned on the length of time for the bank merger process

The Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC) separately issue final policy statements on bank merger transactions under the Bank Merger Act (BMA). In both instances, the agencies statements highlight expectations relative to each statutory factor to be considered as part of a transaction review as well as example circumstances/indicators that may raise supervisory or regulatory concerns and could lead to an unfavorable finding.

The OCC additionally issues a final rule updating its regulations for business combinations involving national banks and federal savings associations; the OCC's policy statement is included as an appendix to the final rule.

Together, these issuances aim to update bank merger review processes and enhance transparency.

#### **FDIC Statement of Policy**

The Federal Deposit Insurance Corporation (FDIC) issues a [final](#) Statement of Policy on Bank Merger Transactions (referred to as "Final SOP"). The Final SOP supersedes the FDIC's prior Statement of Policy on Bank Merger Transactions ("Superseded Statement"); aiming to enhance transparency and provide a principled approach to the evaluation of bank mergers under the Bank Merger Act.

Notably, the Final SOP:

- Is organized around a discussion of the BMA's statutory factors that is intended to "provide greater clarity regarding what features of merger transactions may be consistent with a favorable finding on each respective statutory factor."
- Contains a non-exhaustive list of circumstances that could result in an unfavorable evaluation of one or more statutory factors.

Compared to the Superseded Statement, the FDIC states the Final SOP:

- Is more principles-based.
- Addresses jurisdiction and scope.
- Describes the FDIC's approach to statutory factors individually.
- Highlights other matters and considerations, including interstate mergers and unique aspects of applications from nonbanks, operating non-insured entities, and banks that are not traditional community banks.

#### **Application Process**

The FDIC encourages prospective applicants to engage in pre-filing discussions in order to discuss regulatory expectations. Further, the agency stresses the importance of submitted materials, including the financial

projections and any related analyses, to be sufficiently detailed and “supported by studies, surveys, analyses and reports, including those prepared by or for officers, directors, or deal team leads.”

### Statutory Factors

The FDIC considers statutory factors for evaluating bank mergers, including:

- **Competitive Effects:** Evaluates the merger's impact on market competition, ensuring no monopolistic outcomes.
- **Financial and Managerial Resources:** Assesses the financial health and managerial capability, expecting the merged entity to present less financial risk.
- **Future Prospects:** Expects the resulting IDI of a merger to operate in a safe and sound manner on a sustained basis following consummation of the merger.
- **Convenience and Needs of the Community Served:** Expects mergers between IDIs to “better meet the convenience and needs of the community to be served than would occur absent the merger.”
- **Stability of the U.S. Banking System:** Scrutinizes mergers resulting in large IDIs (\$100 billion in assets or more) for potential systemic risks; expects mergers resulting in an IDI over \$50 billion in total assets to be the subject of public hearings
- **Effectiveness in Combating Money Laundering:** Evaluates Anti-money laundering and counter the financing of terrorism (AML/CFT) programs' effectiveness post-merger.

**Effective Date:** The Final SOP supersedes the prior FDIC Statement of Policy on Bank Merger Transactions 30 days following publication in Federal Register.

### OCC Final Rule and Policy Statement

The Office of the Comptroller of the Currency [issues](#) a final rule to amend its procedures for reviewing business combination applications under the Bank Merger Act. Specifically, the adopted amendments remove the OCC's expedited review procedures and eliminate the streamlined business combination form.

The final rule also adds a policy statement as an appendix to the rule. The policy statement summarizes the general principles the OCC uses for its review of applications under the BMA, including:

- Indicators for applications that are more likely to withstand scrutiny and be approved expeditiously
- Indicators for applications that may raise supervisory or regulatory concerns, which will likely need to be resolved before receiving approval from the OCC.
- Consideration of the statutory factors under the BMA for financial stability, managerial and financial resources and future prospects, and convenience and needs.
- The process employed in agency's decision to prolong the public comment period or to conduct a public hearing.

**Effective date.** The OCC's final rule goes into effect on January 1, 2025.

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