KPMG

Regulatory Alert

Regulatory Insights for Financial Services



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Bank Merger Transactions: FDIC Proposed Rule

KPMG Regulatory Insights

Tailored Approach: *Introduces new merger transaction categories based on type, size, and complexity of potential risk (e.g., de minimis merger transaction) and ties processing and review timelines to the merger transaction type.*

Predictability and Speed: *Sets asset-based thresholds, definitive review timeframes, safe harbors for evaluations, and consideration of remediation plans, to increase clarity of the evaluation factors and process.*

Potential Increase in Merger Activity: *Potential for faster reviews and clear filing requirements to encourage FDIC-supervised merger applications; will the FRB and OCC make similar changes to their evaluations of bank mergers under the Bank Merger Act?*

The Federal Deposit Insurance Corporation (FDIC) issued a proposed rule to revise its review framework for bank merger transactions subject to FDIC approval under the Bank Merger Act (BMA). The proposal follows a July 2025 rule that rescinded the FDIC's 2024 Statement of Policy on Bank Merger Transactions (2024 SOP) and reinstated the SOP that was previously in effect. The FDIC notes that public comments received on this action supported reinstatement of the prior SOP as an interim measure while the FDIC considered ways to improve the BMA framework.

The current proposal responds in part to the issues and concerns raised by the comments and seeks to "comprehensively reform" the FDIC's framework for processing and evaluating bank merger transactions.

Changes may be grouped into the following categories and would include:

1. Transaction Categories: New categories based on type, size, and complexity of risk (e.g., d*e minimis* merger transactions, mergers in substance.)
2. Procedures and Timelines: Revised processing procedures and faster timelines tailored to the merger transaction category (e.g., rapid, expedited, standard.)
3. Merger Reviews: Reduced complexity in the merger filing review process (e.g., fewer public notice requirements, "substantially complete" determinations.)
4. Competitive Effects Analysis: Revisions to analysis under the BMA (e.g., Herfindahl-Hirschman Index (HHI) analysis, evaluation of statutory factors.)

Comments on the proposed rule must be received on or before November 23, 2026.

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1. Transaction Categories

The proposal would define new categories of merger transactions, including:

***De minimis* merger transactions:** A new subcategory of merger transactions that would subject transactions to three levels of qualifying criteria. First, the transactions would be required to be either one of two types, including:

- Merger transaction in which the amount of assets acquired by an insured depository institution (IDI) would be less than both the adjusted lower threshold under the Clayton Act, as amended by the Hart-Scott-Rodino Act (currently $133.9 million), and 5 percent of the acquiring IDI's assets.
- Corporate reorganization ("roll-up" transaction) in which an IDI acquires one or more operating subsidiaries and the legal and financial risk the IDI is exposed to is substantially identical before and after the transaction.

Second, all institutions involved in the transaction, to the extent applicable, would be required to:

- Have received an FDIC-assigned composite rating of 3 or better under the Uniform Financial Institutions Rating System (UFIRS or CAMELS) at its most recent federal or state examination.
- Have received a satisfactory or better Community Reinvestment Act (CRA) rating at its most recent examination.
- Have received a compliance rating of 1, 2, or 3 from its primary federal regulator at its most recent examination.
- Be "well-capitalized" under the applicable capital rules and guidance.
- Not be subject to a cease-and-desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its primary federal regulator or chartering authority.

Third, the resulting institution would be required to be "well capitalized" immediately following the transaction.

Mergers in substance: To replace the current qualitative, facts and circumstances-based approach for identifying mergers in substance, the FDIC proposes to define a merger in substance as any merger transaction or series of merger transactions over a rolling 12-month period in which an IDI acquires, directly or indirectly, all or substantially all (80 percent or more) of the assets of another IDI, noninsured bank, or other institution.

Significant asset transfers: Not considered to be a merger transaction, the proposal would define a significant asset transfer as a transaction or series of transactions with the same counterparty or one or more affiliated counterparties, that would increase the size of the acquiring FDIC-supervised institution's assets by 25 percent or more over a rolling 12-month period. The definition would not include a change in assets of an FDIC-supervised institution that is otherwise subject to FDIC approval or filing requirements, including a merger transaction subject to BMA approval.

> "…we should continue our efforts to (1) reinvigorate the pipeline for new bank entrants and (2) streamline excess regulation and supervision so that small banks can remain competitive in today's environment."
>
> **— Travis Hill, Chairman of the FDIC**

2. Procedures and Timelines

The proposed rule would establish a new procedural framework for processing merger filings to implement more consistency, timeliness, and discipline regarding the FDIC's review of and decisions concerning merger filings. The FDIC would be required to render a decision on a "substantially complete" merger filing (as defined, see "Merger Reviews" below) within new processing timelines (rapid, expedited, and standard) that would vary by merger transaction type.

See table on the next page for merger transaction types.

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Merger Transaction Types

	De minimis transactions	*Corporate Reorganizations (non-de minimis)*	*Other transactions of eligible depository institutions*	*Transactions with resulting institution < $50B in assets*	*All other merger transactions*
Processing Timeline	**Rapid Processing "routine, nearly automated approval"**	**Expedited Processing**	**Expedited Processing**	**Standard Processing**	**Standard Processing**
Key Qualifying Criteria	— Meets de minimis definition (per above) — No Attorney General objections on competitive grounds within the statutory timeframe	— Resulting institution is "well capitalized" immediately after transaction — All parties receive a composite CAMELS rating of 3 or better, or acquiring institution must be an eligible depository institution and the total assets to be acquired do not exceed 25 percent of acquirer's assets (up from 10 percent)	— Resulting institution is "well capitalized" immediately after transaction, and — All parties receive a composite CAMELS rating of 3 or better, or acquiring institution must be an eligible depository institution and the total assets to be acquired assets do not exceed 25 percent of acquirer's assets (up from 10 percent)	— Does not qualify for rapid or expedited processing — Authority to act on the merger filing is not reserved to the FDIC Board — No other federal regulator dependency	— Does not qualify for rapid or expedited processing
FDIC Approval Timeline, the latest of:	— Five business days after the FDIC's receipt of a "substantially complete" letter filing — Five business days after the receipt of a BMA competitive factors report confirming the Attorney General does not object to the transaction on competition grounds, or the expiration of the time frame permitted in section 18(c)(4) of the FDI Act (not for corporate reorganizations)	— 30 business days after the FDIC's receipt of a "substantially complete" filing — Terms for certain interstate merger transactions	— 45 business days after the FDIC's receipt of a "substantially complete" filing — 10 business days after the date of the last required notice publication, or — Five business days after receipt of a BMA competitive factors report confirming the Attorney General does not object to the transaction on competition grounds, or expiration of the timeframe permitted — Terms for certain interstate merger transactions	— 90 days after the FDIC's receipt of a "substantially complete" filing	— 150 days after the FDIC's receipt of a "substantially complete" filing
Interstate Merger Transaction	— Not addressed	— Five business days after the FDIC receives confirmation from the host State that the applicant has both complied with the filing requirements of the host State and submitted a copy of the filing to the host State's bank supervisor	— Five business after the FDIC receives confirmation form the host State that the applicant has both complied with the filing requirements of the host State and submitted a copy of the filing to the host State's bank supervisor	— Not addressed	— Not addressed
Permitted Extensions	— None	— None	— None	— 90 days (maximum of 180 days in total) given "extenuating circumstances" — Single extension for "extenuating circumstances" only (e.g., credit/liquidity issues) — Extensions related to delays internal to the FDIC, such as workload-related delays, would not be allowed.	— 90 days (maximum of 240 days in total) given "extenuating circumstances" — Single extension for "extenuating circumstances" only (e.g., credit/liquidity issues) — Extensions related to delays internal to the FDIC, such as workload-related delays, would not be allowed
Removal from Expedited Processing	— Not applicable	— An adverse comment or CRA protest would not cause automatic removal — FDIC could remove for significant CRA concerns, significant compliance or supervisory concerns, significant legal or policy issues, or other good cause - as documented in the supervisory record or other available information	— An adverse comment or CRA protest would not cause automatic removal — FDIC could remove for significant CRA concerns, significant compliance or supervisory concerns, significant legal or policy issues, or other good cause - as documented in the supervisory record or other available information	— Not applicable	— Not applicable

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3. Merger Reviews

Aspects of the proposed rule are focused on reducing complexity in the merger filing review process. Key changes include:

- **Reduced public notice requirements:** Applicants for merger transactions other than corporate reorganizations would be required to publish notice of the merger transaction on at least two occasions (reduced from three in the current rule) in a newspaper of general circulation. Applicants for corporate reorganizations would be required to publish notice on at least one occasion (rather than the current three). If the FDIC determines that an emergency requiring expeditious action exists, one public notice (rather than two) would be required.
- **Reduced or eliminated public comment periods:** The public comment period for corporate reorganizations that are not de minimis merger transactions would be reduced from 30 to 15 days. There would be no public comment period for *de minimis* merger transactions.
- **Substantially complete filings:** For an incomplete merger filing, the FDIC would be required to notify the applicant within 21 days after receipt and provide a written explanation regarding the information or materials needed to render the merger filing substantially complete. If the FDIC does not provide notice within 21 days after receipt, the merger filing would be deemed substantially complete as of the date of receipt. Applicants would be required to provide the requested information or materials within 30 days after receipt of the notice. If an applicant fails to provide the required information within 30 days, the FDIC could return the filing as incomplete without rendering a decision.
- **Streamlined letter filing for *de minimis* merger transactions:** *De minimis* merger transactions would use a new streamlined letter filing process, which would require information and documents outlined in the rule (e.g., merger agreement, board resolution, financial statements, public notice). A letter filing for a *de minimis* merger transaction that contains all the required information would be considered substantially complete.

4. Competitive Analysis

Consistent with the BMA, the FDIC currently evaluates a variety of factors when reviewing a merger transaction, including:

- Financial and managerial resources, and future prospects of the existing and proposed institutions.
- Convenience and needs of the community to be served.
- Effectiveness of the parties in combatting money laundering activities.
- Risks to the stability of the U.S. financial system.

The proposal would reform the FDIC's current framework for evaluating the BMA's statutory factors and codify the revised approach, which would include i) a tailored review of each merger filing based on the facts and circumstances, giving consideration to the structure, scale, and materiality of the merger transaction; ii) consider the applicant's plans to timely remediate any previously unresolved deficiencies identified in the supervisory record of the acquiring institution, institution being acquired, or resulting institution; and iii) focus on the resulting institution and the cumulative benefits and impact of the merger transaction.

Key changes to the analysis include:

Competition scope: The proposal would expand the scope of deposits incorporated into the Herfindahl-Hirschman Index (HHI) calculation. For each geographic market, the initial HHI analysis would include:

- The entirety of the deposits of a bank branch and a thrift institution branch.
- The entirety of a credit union's shares when all branches of the credit union are located in the relevant geographic market. When some but not all branches of a credit union are located in the relevant geographic market, the screen would include a representative portion of the credit union's shares.
- A representative portion of the centrally booked deposits of a bank or thrift institution estimated based on the total population of a relevant geographic market and the total U.S. population.

Competition safe harbor: The proposal would codify and strengthen the FDIC practice of not denying a merger transaction on competition grounds, by prohibiting denial of a transaction if it is a corporate reorganization, or if, absent objection from the Attorney General, i) the initial HHI screen were 1,800 points or less in each relevant geographic market after consummation of the merger transaction; or ii) the initial HHI screen were more than 1,800 points in a relevant geographic market after consummation of the merger transaction and the increase was less than 200 points from the HHI in the relevant geographic market prior to the merger transaction.

To the extent that the initial HHI screen exceeds the safe harbor thresholds, the FDIC would consider, as outlined in the rule, other factors related to the impact of the transaction on competition.

Financial stability safe harbor: The proposal would introduce a safe harbor for concluding that a merger transaction does not present a financial stability concern, which would apply when:

- The resulting institution would not be a subsidiary of any Category I – IV banking organization.

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- The institution being acquired is an IDI with less than $20 billion in total consolidated assets, as reported in its Call Report for the quarter immediately preceding the filing.
- The merger transaction is a corporate reorganization in which all institutions involved are organized under the laws of the United States, all have been affiliates for longer than 12 months, and the institution being acquired has less than $20 billion in total consolidated assets.
- The merger transaction is a *de minimis* merger transaction.

If a merger transaction does not satisfy the safe harbor, the FDIC would be required to evaluate its impact on financial stability through a balancing test, considering elements of the resulting institution such as systemic importance; substitute providers; interconnectedness; complexity; and cross-border activities. The FDIC would also compare the applicant before and after the merger transaction based on the factors and consider the extent to which the transaction would support financial stability.

Convenience and needs: The FDIC would be required to consider the supervisory records of the applicant and institution being acquired for compliance with applicable laws and regulations, including the CRA. If the resulting institution would have more than $50 billion in assets, the FDIC would also consider fair banking concerns.

The FDIC states that "if the acquiring institution has received a rating of 1 or 2 on its most recent consumer compliance examination and received a satisfactory or outstanding on its most recent CRA examination, there is a very high probability the FDIC would find favorably on the convenience and needs statutory factor, assuming there were no fair banking concerns. The FDIC also expects that the agency would generally find favorably on the convenience and needs statutory factor for acquiring institutions that have received a 3 rating on its most recent consumer compliance examination and received a satisfactory or outstanding on its most recent CRA examination, depending on the reasoning for the 3 rating and other considerations relevant to fair banking and the convenience and needs of the community."

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