

# Recent Regulatory Activity on Bank Merger Policy

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Bank mergers are generally approved by the federal banking agencies and the Department of Justice. In September 2024, the [Office of the Comptroller of the Currency \(OCC\)](#) and the [Federal Deposit Insurance Corporation \(FDIC\)](#) updated the way they evaluate bank merger applications. The OCC and FDIC policy statements [differ in some details](#), but the then-acting comptroller [characterized](#) them as “broadly consistent.” (The Federal Reserve did not update its approach.) On the same day, the Department of Justice (DOJ) [announced that it was withdrawing](#) its existing bank merger guidelines from 1995 and replacing them with a new addendum to its 2023 guidelines.

Congress has maintained a general interest in bank merger policy amidst a trend of consolidation. For example, in May 2024, the House Committee on Financial Services held a [subcommittee hearing](#) on bank merger policy. H.J.Res. 92 and [S.J.Res. 13](#) would use the [Congressional Review Act](#) to overturn the aforementioned rule and prevent the OCC from issuing substantially similar rules in the future. In March 2025, the FDIC issued a proposal to rescind its update. This In Focus provides an overview of the updated policies and recent relevant regulatory and legislative activity.

The bank merger process is based on a [statutory framework](#) that can be changed only by Congress. The recent policy statements by the OCC and FDIC are interpretations of how that framework can best be implemented. The agencies have significant discretion in how to interpret the broad statutory framework, and these policy statements were [viewed as](#) setting out a philosophy that was less likely to approve mergers involving, for example, large banks than was the case previously. Nevertheless, mergers are approved on a case-by-case basis based on the agency’s interpretation of the statutory factors with or without an existing policy statement. For background on the bank merger approval process, see CRS In Focus IF11956, [Bank Mergers and Acquisitions](#), by Marc Labonte and Andrew P. Scott.

## OCC Rule

In September 2024, the [OCC finalized a rule](#) on mergers that removed an automatic approval process for certain applications that were eligible for “expedited review.” The rule eliminates current regulatory provisions under which (1) certain applications are considered automatically approved as of 15 days after the close of the comment period unless the OCC notifies the applicant and (2) certain transactions can be filed under a streamlined application form. The OCC argued that the effect on regulatory burden of both

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changes would be minimal and that the first change would not have a practical effect because it was not aware of any application being automatically approved under this expedited review to date.

In addition, the rule adds a policy statement explaining its merger review process. (The OCC did not previously have a policy statement on the merger review process but had provided information through publications such as the [Business Combinations manual](#).) According to the 2024 statement, there are a number of indicators that, if met, suggest a bank merger application would be approved or denied. For example, mergers resulting in a bank with under \$50 billion in assets that is also well qualified on the other merger criteria would be expected to be approved expeditiously, while acquisitions involving global systemically important banks or acquirers that have grown rapidly and made multiple acquisitions are less likely to be approved. Other attributes that would affect the speed at which proposals are approved include:

- the acquirer’s rating for supervision, the Community Reinvestment Act, and prompt corrective action (capital) requirements;
- the acquirer’s effectiveness in combatting money laundering; and
- open enforcement actions against the acquirer.

## FDIC Rule

In September 2024, the FDIC issued a final rule that adds a [policy statement](#) on how the FDIC interprets the statutory requirements for merger approval. The statement superseded a similar statement from 2008. The new statement mostly hews to long-standing policy but has a few notable policy changes related to the statutory factors:

- Proposed mergers that would result in banks with over \$100 billion in assets would be subject to heightened scrutiny for the merger’s effects on financial stability.
- The competition analysis for proposed mergers in rural areas will include credit unions, thrifts, and Farm Credit System institutions.
- The FDIC expects a merger to *better* meet the convenience and needs of the community than would occur in the absence of the proposed merger.
- Proposed mergers resulting in banks with over \$50 billion in assets require a public hearing. (It is currently at the FDIC’s discretion whether a hearing is held for any size merger.)

In March 2025, the FDIC, under new leadership, issued a [proposal](#) to rescind the 2024 policy statement on the grounds that the 2024 statement has made the merger process “less transparent and less predictable.” The proposal would, if finalized, return the FDIC to its less detailed [1998](#) policy statement on the merger process. (There have been statutory changes to merger requirements since 1998, and the FDIC had made subsequent technical updates to the statement, most recently in 2008.) The March 2025 proposal does not propose updates to the earlier policy but states that the FDIC expects to seek comments on a comprehensive revision of merger policy in the future.

## Department of Justice Memorandum

DOJ reviews bank mergers specifically for antitrust issues. In 2023, DOJ and the Federal Trade Commission issued updated [guidelines for mergers](#) across all industries. In September 2024, DOJ issued an [addendum](#) to the 2023 framework specifically for banks, replacing its [1995 guidelines](#) for banks. Under the 1995 guidelines, DOJ evaluated mergers primarily under a concentration metric called the [Herfindahl-Hirschman Index](#). According to the then-Assistant Attorney General [Jonathan Kanter](#), “The 1995 Guidelines’ narrow focus on local market deposit concentration may ... be inadequate to assess the

likely competitive effects of a modern bank merger. It may also disproportionately focus enforcement on transactions involving small local banks and understate network concerns relating to large national and multi-national banks.” The 2024 addendum emphasizes that bank mergers will be evaluated for their effect on competition across products, services, networks, platforms, and distinct groups of customers.

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