

Memorandum

FDIC Proposes Modernized Bank Merger Review Framework *Interagency Uncertainty Remains*

October 2, 2026

On September 17, 2026, the Federal Deposit Insurance Corporation (“FDIC”) published [a notice of proposed rulemaking](#) that would substantially revise its review processes for transactions requiring prior approval under the Bank Merger Act (the “Bank Merger Act” or “BMA”). If finalized, the proposed rule (the “Proposed Rule”) would introduce materially shorter processing timelines and new transaction categories with expedited processing and modernize the competitive effects analysis for bank merger transactions. Although the Proposed Rule would mark a significant shift in the FDIC’s approach, its practical impact may depend in large part on whether the Department of Justice (“DOJ”), Board of Governors of the Federal Reserve System (“Federal Reserve”) and Office of the Comptroller of the Currency (“OCC”) move toward a consistent approach to timing and competition analysis, among other statutory factors.

The Proposed Rule is the latest reversal of FDIC bank merger policy. In 2024, the FDIC finalized a Statement of Policy (the “2024 SOP”) that took a skeptical view of bank mergers, imposed heightened evidentiary and administrative burdens, and contemplated broader antitrust review aligned with the DOJ’s 2023 Merger Guidelines.¹ In 2025, the FDIC rescinded its 2024 SOP and reverted to prior guidance from the 1990s. The Proposed Rule would now go further, replacing the pre-2024 guidance with a more structured and comparatively transaction-friendly framework for application processing, competitive effects analysis and financial stability review.

Key Takeaways

- The Proposed Rule would meaningfully recalibrate the FDIC’s bank merger review framework, replacing the more skeptical posture reflected in the 2024 SOP with a more structured and, in several respects, more transaction-facilitative approach.
- The most significant substantive changes are in the competitive effects analysis, including standardized full thrift weighting, credit union inclusion and the reallocation of centrally booked deposits.
- New processing categories, shorter timelines and a codified and expanded financial stability safe harbor could materially improve predictability for routine transactions, internal reorganizations and smaller acquisitions.

¹ Our previous Client Alert discussing the 2024 SOP, a similar proposal by the OCC, and the DOJ’s 2023 Merger Guidelines can be found [here](#).

- The practical effect of the timing reforms will depend on agency discipline, particularly with respect to completeness determinations and follow-up information requests.
- Broader interagency uncertainty remains: the DOJ, Federal Reserve and OCC have not indicated that they will align with the FDIC's proposed framework, particularly with respect to competitive effects.

Competitive Effects: Reform for Banks of All Sizes

The competitive effects provisions of the Proposed Rule represent a significant attempt to modernize the traditional local deposit-based bank merger antitrust analysis. While there is broad consensus that the current methodology for calculating HHI thresholds should be updated, there remains a significant divide over how that methodology should be modified.

During the Biden Administration, the DOJ adopted updated 2023 Merger Guidelines that reflected a more expansive and aggressive antitrust agenda, including consideration of factors well beyond local branch deposit data. The DOJ's intention was for the 2023 Merger Guidelines to apply across all industries, including banking, and replace the interagency 1995 Bank Merger Guidelines. Although the DOJ's 2023 Merger Guidelines remain in effect, none of the banking agencies formally withdrew the 1995 Bank Merger Guidelines. This inconsistency has left uncertainty about potentially diverging results between banking agency and DOJ antitrust reviews of bank merger transactions.

In addition, although the bank regulatory agencies have continued to use the traditional 1995 Bank Merger Guidelines, the methodology has well-known limitations reflecting its origins in a banking market that predates online banking, fintechs and other deposit competitors. As the market for banking products has modernized, the current methodology may overstate local deposit-market concentration, which can impede otherwise attractive merger transactions. The Proposed Rule attempts to address these well-known gaps.

- Full Thrift Weighting: Thrift deposits would be counted at 100%, regardless of the thrift's level of commercial lending, rather than the historical presumption of 50% weighting.
- Credit Union Inclusion: The Proposed Rule would automatically incorporate credit union deposit shares into the HHI calculation. Currently, the Federal Reserve may include credit union deposits at a 50% (or theoretically more) weight if the credit union has a broad field of membership, street-level branches and products and services that compete with those of a bank. Under the Proposed Rule, if all of a credit union's branches are located within the relevant banking market, the FDIC would count 100% of that credit union's shares. If only some branches are in the market, the FDIC's calculation would include a representative portion based on branch count, rather than actual deposit distribution by branch, because that data is not available to the public or to regulators. For community banks operating in rural or concentrated markets where credit unions are major competitors, this change could materially reduce measured HHI and allow some transactions that do not qualify under the current methodology to fall within the traditional safe harbor. For larger banks, including credit unions across their multi-market footprints may lower measured concentration in many markets.

- **Centrally Booked Deposits:** The Proposed Rule would distribute centrally booked deposits across markets based on market population as a percentage of total U.S. population, rather than solely in the market in which the deposits are booked for FDIC data purposes. The Proposed Rule does not provide detail about exactly which parties would be included in this expanded methodology or how parties outside the regulatory agencies could replicate the calculation effectively. Although the Proposed Rule is sparse on details, Chairman Hill’s public statement accompanying the rulemaking suggested that this provision “would generally include, for example, deposits placed at banks by fintech companies and various other third parties.” This would represent a material departure from current practice. For large banks with significant online banking, treasury management, or institutional deposit platforms, this approach would distribute deposits previously concentrated at a single headquarters location across the national footprint, diluting concentration in any single market. For community banks competing against large institutions with substantial centrally booked deposits, including those deposits in the denominator in each local market should also reduce the total market HHI concentrations.

Importantly, the FDIC’s proposed changes to the competitive analysis would not bind the DOJ (which in theory continues to follow the 2023 Merger Guidelines) or the Federal Reserve (which continues to follow the 1995 Bank Merger Guidelines) where Bank Holding Company Act approval is required. Parties to larger or competitively sensitive transactions therefore may still need to manage parallel review processes and potential divergence among federal banking agencies and the DOJ.

New Categories and Timelines for Application Processing

The Proposed Rule would establish several new application processing categories, shorter processing periods and truncated publication requirements. If finalized, the FDIC would introduce a new Rapid application processing period for de minimis merger transactions that would be deemed approved after a five-day prior notice process. A separate expedited category would provide a 30-day period for qualifying corporate reorganizations. Qualifying mergers involving eligible depository institutions would receive a 45-day period. Each pathway would be subject to transaction size, structural, and supervisory status conditions summarized in the [Appendix](#).

Similar to the FDIC’s current process, under the Proposed Rule, all time periods would begin when an application is “deemed substantially complete,” except for the new Rapid processing category. The time period between filing and the point at which an application is deemed substantially complete has historically been a major source of delay in application processing at the FDIC. The FDIC uses this period to request additional information from applicants, and there have been no limits on the amount of time taken or number of additional information requests. Under the Proposed Rule, the FDIC must notify the applicant within 21 days of filing if the application is not substantially complete. If no such notice is provided, the filing is deemed substantially complete, and all processing timelines run from that date. If a deficiency notice is provided, the applicant then has 30 days to cure any identified deficiencies, or the FDIC may return the application as incomplete.

The Rapid and Expedited categories could provide meaningful relief for many routine transactions and reorganizations. Applicants would need to pre-position review by the Federal Reserve in connection with any

related bank holding company approval or Regulation W waiver, as well as by the DOJ with respect to any required competitive review (if possible), to take full advantage of the faster timing. For more traditional bank merger transactions that fall outside the Rapid or Expedited categories, however, these changes will require substantial agency discipline in practice and may do little to limit extended processing periods where agency leadership or staff determine that additional information is necessary. In practice, review periods may be extended through pre-filing engagement, completeness determinations, supplemental information requests, or coordination with other regulators. In 2024, to encourage additional discipline in application processing, the FDIC adopted a resolution proposed by now-Chairman Travis Hill requiring staff to brief the FDIC Board on any application pending 270 days after receipt. To our knowledge, this requirement remains in place and is an important backstop for extended processing periods.

Financial Stability Safe Harbor

For some time, the federal banking agencies have applied a presumption that an acquisition of less than \$10 billion in assets, or a transaction that results in an organization with less than \$100 billion in assets, does not raise material financial stability concerns. The Proposed Rule would codify this presumption but would double the acquisition threshold to less than \$20 billion in assets acquired. Notably, under the Proposed Rule, a GSIB or Category II–IV institution could acquire a target with less than \$20 billion in total assets without enhanced financial stability analysis. This framework represents a significant departure from the 2024 SOP, under which any merger resulting in a bank with more than \$100 billion in total assets received enhanced financial stability scrutiny.

For transactions outside the safe harbor, the FDIC will apply a balancing test consistent with the banking agencies' current practice that considers: (1) systemic importance indicators (size, substitutability, interconnectedness, complexity, and cross-border activity); (2) a before-and-after comparison—where a modest incremental increase weighs in favor of approval, and the FDIC notes that two regional banks of equal size merging would not “necessarily by itself raise financial stability concerns”; and (3) whether the merger supports financial stability (rescue and stabilizing mergers receive credit, and the absence of a stability benefit is not held against the applicant).

Other Significant Provisions

- **“Merger in Substance”:** The Proposed Rule would codify the concept of a “merger in substance.” If an insured depository institution acquires 80% or more of another institution’s assets within a 12-month period, the transaction will be treated as a merger requiring a full application. This replaces the informal “de facto merger” doctrine, which lacked a clear threshold and created uncertainty for banks structuring asset acquisitions from non-insured entities.

- **“Significant Asset Transfers”:** The Proposed Rule would create a new application obligation for acquisitions of 25% or more of another institution’s assets, whether or not deposit-related. This new requirement is similar to the OCC’s existing prior approval requirement for “substantial asset changes.” Significant asset transfers would require a 30-day notice-and-non-objection process rather than a full merger application. The FDIC may extend the 30-day period for an additional 60 days. In reviewing the notice, the FDIC would consider the capital level of the resulting institution, the purpose of the transaction, the impact on safety and soundness and conformity with applicable laws, regulations and guidance.
- **Convenience and Needs:** The Proposed Rule would take a more balanced approach to the convenience and needs factor, focusing on changes to branches, products, and services that would result from the transaction, as compared to the 2024 SOP. For resulting institutions with more than \$50 billion in assets, the FDIC, consistent with Executive Order 14331, will also consider fair banking practices, including whether customers are treated less favorably based on political, social, cultural, or religious considerations in connection with reviewing BMA applications. Notably, the Proposed Rule drops the 2024 SOP’s requirement that applicants demonstrate the combined institution would “better” meet community needs with “specific and forward-looking information,” and does not require three-year branch plans or three-year retail banking commitments. The Proposed Rule also confirms that the FDIC does not expect to remove an applicant from an Expedited Category solely as a result of receiving a public comment.
- **Expanded Financial and Managerial Requirements:** The Proposed Rule would include a materially expanded financial adequacy factor that would evaluate the capital adequacy and liquidity of the pro forma bank on a stand-alone and consolidated basis, including any revised business plans, at multiple time points under various scenarios. The FDIC noted that it would take into consideration additional key financial metrics, including net interest margin, return on assets and Z-Score (a formula that measures an entity’s risk of insolvency). In its discussion of both the financial and managerial factors, the FDIC emphasized the importance of integration planning under a range of scenarios.

Conclusion

The Proposed Rule would represent a meaningful recalibration of the FDIC’s bank merger review framework, moving away from the more skeptical posture reflected in the 2024 SOP toward a more structured and, in several respects, more transaction-facilitative approach. Its proposed timelines, new processing categories, revised competitive effects methodology and financial stability safe harbor could improve predictability for many transactions, particularly routine combinations, internal reorganizations and smaller acquisitions. At the same time, this proposal would only be applicable to transactions reviewed by the FDIC. The proposal does not resolve the broader interagency uncertainty that has long complicated bank merger review.

Appendix

SUMMARY OF PROPOSED FDIC APPLICATION PROCESSING CATEGORIES

Processing Category	Transaction Type	Timeline	Key Criteria	Public Comment
Rapid	De minimis merger transactions	5 business days (deemed approved)	All institutions must be “eligible depository institutions”: (1) Composite CAMELS rating 1–3, (2) Satisfactory CRA, (3) Compliance rating 1–3, (4) Well-capitalized, (5) No enforcement actions; AND (6) Resulting institution well-capitalized - Receipt of DOJ competitive factors report and expiration of required waiting period (if required) AND - Assets acquired below HSR threshold (~\$111.4M) AND <5% of acquirer’s assets OR - Corporate reorganization of operating subsidiary with substantially identical risk profile	None
Expedited Corporate Reorgs	Corporate reorganizations (solely IDI + affiliates) not qualifying as de minimis	30 days	- Resulting institution well-capitalized AND - All parties composite CAMELS rating 1–3 OR - Acquirer is “eligible depository institution” AND assets acquired ≤25% of acquirer’s assets	15 days (one newspaper publication)
Expedited Eligible DIs	Non-corp.-reorg. mergers by eligible depository institutions	45 days	- Resulting institution well-capitalized AND - All parties are “eligible depository institutions” OR acquirer is eligible and assets acquired ≤25% of acquirer’s assets	30 days (two newspaper publications)
Standard (Tier 1)	Non-expedited mergers; resulting institution <\$50B	90 days (one 90-day extension; 180 days max)	- Does not qualify for Rapid or Expedited processing categories - Resulting institution <\$50B - Not reserved to FDIC Board for determination - Consummation not dependent on action by another federal regulator	30 days (two newspaper publications)
Standard (Tier 2)	All other mergers (\$50B+ or Board-reserved)	150 days (one 120-day extension; 270 days max)	All other filings not qualifying for Rapid, Expedited, or Tier 1 Standard Processing	30 days (two newspaper publications)
Standard (Savings Associations)	All mergers involving state savings associations	60 days (one 30-day extension) or timing under Rapid or Expedited	All filings involving a state savings association	30 days (two newspaper publications)

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