

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 5

[Docket ID OCC–2023–0017]

RIN 1557–AF24

### Business Combinations Under the Bank Merger Act

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The OCC is inviting comment on a proposed rule to increase the transparency of the standards that apply to the agency’s review of business combinations involving national banks and Federal savings associations. In particular, the proposed rule would amend the procedures and would add, as an appendix, a policy statement that summarizes the principles the OCC uses when it reviews proposed bank merger transactions under the Bank Merger Act.

**DATES:** Comments must be received by April 15, 2024.

**ADDRESSES:** Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title “Business Combinations under the Bank Merger Act” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—“Regulations.gov”:*

Go to <https://regulations.gov/>. Enter “Docket ID OCC–2023–0017” in the Search Box and click “Search.” Public comments can be submitted via the “Comment” box below the displayed document information or by clicking on the document title and then clicking the “Comment” box on the top-left side of the screen. For help with submitting effective comments, please click on “Commenter’s Checklist.” For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free)

Monday–Friday, 9 a.m.–5 p.m. ET, or email [regulationshelpdesk@gsa.gov](mailto:regulationshelpdesk@gsa.gov).

- *Mail:* Chief Counsel’s Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

*Instructions:* You must include “OCC” as the agency name and “Docket ID OCC–2023–0017” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by any of the following methods:

- *Viewing Comments Electronically—Regulations.gov:*

Go to <https://regulations.gov/>. Enter “Docket ID OCC–2023–0017” in the Search box and click “Search”. Click on the “Dockets” tab and then the document’s title. After clicking the document’s title, click the “Browse All Comments” tab. Comments can be viewed and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Comments Results” options on the left side of the screen. Supporting materials can be viewed by clicking on the “Browse Documents” tab. Click on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen checking the “Supporting & Related Material” checkbox. For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. ET, or email [regulationshelpdesk@gsa.gov](mailto:regulationshelpdesk@gsa.gov).

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

**FOR FURTHER INFORMATION CONTACT:** Valerie Song, Assistant Director,

Christopher Crawford, Special Counsel, Elizabeth Small, Counsel, Chief Counsel’s Office 202–649–5490; or Yoo Jin Na, Director for Licensing Activities 202–649–6260, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

## SUPPLEMENTARY INFORMATION:

### I. Background

The Bank Merger Act (BMA), section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), and the OCC’s implementing regulation, 12 CFR 5.33, govern the OCC’s review of business combinations of national banks and Federal savings associations with other insured depository institutions (institutions) that result in a national bank or Federal savings association.<sup>1</sup> Under the BMA, the OCC must consider the following factors: competition, the financial and managerial resources and future prospects of the existing and proposed institutions, the convenience and needs of the community to be served, the risk to the stability of the United States banking or financial system, and the effectiveness of any insured depository institution involved in combatting money laundering activities, including in overseas branches.<sup>2</sup> The BMA generally requires public notice of the transaction to be published for 30 days.<sup>3</sup> OCC regulations require the public notice include essential details about the transaction and instructions for public comment. The regulations incorporate the statutory 30-day public notice period and provide a 30-day public comment period, which the OCC may extend.<sup>4</sup> The OCC may also hold a public hearing, public meeting, or private meeting on an application.<sup>5</sup>

The OCC has issued several publications that provide additional information about the procedures that the OCC follows in reviewing and acting on proposed business combinations. For example, the “Business Combinations”

<sup>1</sup> A business combination for these purposes includes assumption of deposits in addition to mergers or consolidations.

<sup>2</sup> 12 U.S.C. 1828(c)(5), (11).

<sup>3</sup> 12 U.S.C. 1828(c)(4).

<sup>4</sup> 12 CFR 5.8(b), 5.10(b)(1).

<sup>5</sup> 12 CFR 5.11.

booklet of the *Comptroller's Licensing Manual* details the OCC's review of applications under the BMA. The "Public Notice and Comments" booklet of the *Comptroller's Licensing Manual* sets forth policies and requirements related to the public notice and comment process, including hearings and meetings. The *Comptroller's Licensing Manual* provides OCC staff, institutions, and the public with information about the procedures applicable to corporate applications filed with the OCC.

After completing a review of these materials, the OCC has determined that additional transparency regarding the standards and procedures that the agency applies to its review of bank business combinations may be helpful to institutions and to the public. For example, the *Comptroller's Licensing Manual* does not describe all of the OCC's considerations regarding the BMA statutory factors and its related processes such as the considerations for holding public meetings.

To better reflect the OCC's view that a business combination is a significant corporate transaction, the OCC is proposing amendments to 12 CFR 5.33 to remove provisions related to expedited review and the use of streamlined applications. Additionally, to provide additional clarity and guidance to national banks, Federal savings associations, other institutions, and the public, the OCC is proposing to add a policy statement as appendix A to 12 CFR part 5, subpart C, that would discuss general principles the OCC uses in its review of applications under the BMA and discuss the OCC's consideration of the financial stability, financial and managerial resources and future prospects, and convenience and needs factors. Proposed appendix A would also discuss the criteria informing the OCC's decision on whether to hold a public meeting on an application subject to the BMA.

## II. Description of the Proposed Policy Statement and Regulatory Amendments

### Regulatory Amendments

The OCC is proposing two substantive changes to its business combination regulation, 12 CFR 5.33. First, the OCC proposes to remove the expedited review procedures in § 5.33(i). Paragraph (i) currently provides that a filing that qualifies as a business reorganization as defined in paragraph (d)(3) or that qualifies as a streamlined application under paragraph (j) is deemed approved as of the 15th day after the close of the comment period, unless the OCC notifies the applicant

that the filing is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2).<sup>6</sup>

The OCC reviews business combination applications to determine whether applicable procedural<sup>7</sup> and substantive<sup>8</sup> requirements are met. The OCC believes that any business combination subject to a filing under § 5.33 is a significant corporate transaction requiring OCC decisioning, which should not be deemed approved solely due to the passage of time. The principles currently articulated by § 5.33(i), such as certain transactions possessing indicators that are likely to satisfy statutory factors and do not otherwise raise supervisory or regulatory concerns, are contained within section II of proposed appendix A and will continue to guide OCC processing of business combination applications. As the term "business reorganization" as defined in § 5.33(d)(3) is only used to define a class of applications eligible for expedited review under paragraph (i), the OCC also proposes to remove paragraph (d)(3).

Second, the OCC proposes to remove § 5.33(j). Paragraph (j) currently specifies four situations in which an applicant may use the OCC's streamlined business combination application rather than the full Interagency Bank Merger Act Application.<sup>9</sup> The streamlined

<sup>6</sup> The provisions in 12 CFR 5.13(a)(2) regarding adverse comments would no longer apply to business combination applications as these provisions are applicable only to filings qualifying for expedited review.

<sup>7</sup> See, e.g., 12 U.S.C. 215a (procedures for mergers resulting in a national bank).

<sup>8</sup> See, e.g., 12 U.S.C. 1828(c) (BMA).

<sup>9</sup> Paragraph (j) authorizes use of a streamlined application if: (i) At least one party to the transaction is an eligible bank or eligible savings association, and all other parties to the transaction are eligible banks, eligible savings associations, or eligible depository institutions, the resulting national bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the total assets of the target institution are no more than 50 percent of the total assets of the acquiring bank or Federal savings association, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application; (ii) The acquiring bank or Federal savings association is an eligible bank or eligible savings association, the target bank or savings association is not an eligible bank, eligible savings association, or an eligible depository institution, the resulting national bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the filers in a prefiling communication request and obtain approval from the appropriate OCC licensing office to use the streamlined application; (iii) The acquiring bank or Federal savings association is an eligible bank or eligible savings association, the target bank or

application requests information about similar topics as the Interagency Bank Merger Act Application, but it only requires an applicant to provide detailed information if the applicant answers yes to one of a series of yes or no questions. A transaction eligible for a streamlined application also currently qualifies for expedited review, which the OCC proposes to remove. Given the nature of review of business combinations, the factors for which are discussed in proposed appendix A, it appears that the fuller record provided through the Interagency Bank Merger Act Application provides the appropriate basis for the OCC to review a business combination application. Further, the removal of the streamlined business combination form should not significantly increase the burden on applicants because information requested in the Interagency Bank Merger Act Application may be tailored as appropriate. For example, there may be situations where discussion of all items in the Interagency Bank Merger Act Application may not be appropriate, such as purchase and assumption transactions from an insured depository institution in Federal Deposit Insurance Corporation receivership. In these circumstances, the OCC can use its discretion to reduce the information that the applicant needs to provide to the OCC.<sup>10</sup> As the entirety of paragraph (j) concerns the streamlined application, the OCC also proposes removing paragraph (j).

savings association is not an eligible bank, eligible savings association, or an eligible depository institution, the resulting bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank or acquiring Federal savings association, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application; or (iv) In the case of a transaction under § 5.33(g)(4) of this section, the acquiring bank is an eligible bank, the resulting national bank will be well capitalized immediately following consummation of the transaction, the filers in a prefiling communication request and obtain approval from the appropriate OCC licensing office to use the streamlined application, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank, as reported in the bank's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application.

<sup>10</sup> Under 12 CFR 5.2(b), the OCC may adopt materially different procedures for a particular filing, or class of filings as it deems necessary, for example, in exceptional circumstances or for unusual transactions, after providing notice of the change to the filer and to any other party that the OCC determines should receive notice. The OCC may use this authority, if appropriate, to reduce informational requirements in transactions involving a failing bank due to the short time for preparation of applications.

### Policy Statement

As discussed in Section I, *Introduction*, of proposed appendix A, the proposed policy statement would provide institutions and the public with a better understanding of how the OCC reviews applications subject to the BMA and thus provide greater transparency, facilitate interagency coordination, and enhance public engagement. To this end, proposed appendix A would expand upon the information currently included in the *Comptroller's Licensing Manual*. Specifically, proposed appendix A would outline general principles the OCC applies when reviewing applications and provide information about how the OCC considers the BMA statutory factors of financial stability, financial and managerial resources, and convenience and needs of the community.<sup>11</sup> Additionally, proposed appendix A would provide transparency regarding the public comment period and the factors the OCC considers in determining whether to hold public meetings.

Section II, *General Principles of OCC Review*, of proposed appendix A would discuss the OCC's review of an action on applications. Overall, the OCC aims to act promptly on all applications. This section of proposed appendix A would indicate that potential actions by the OCC include approval, denial, or requesting that an applicant withdraw the application because any shortcomings are unlikely to be resolved in a timely manner. Proposed appendix A identifies certain indicators that, in the OCC's experience, applications that are consistent with approval generally feature. These indicators include: (i) attributes regarding the acquirer's financial condition, size, Uniform Financial Institution Ratings System (UFIRS)<sup>12</sup> or risk management, operational controls, compliance, and asset quality (ROCA)<sup>13</sup> ratings, Uniform

<sup>11</sup> Proposed appendix A would not address the BMA statutory factors of competition and the effectiveness of any insured depository institution involved in combatting money laundering activities, including in overseas branches. 12 U.S.C. 1828(c)(5), (11). The OCC's review of the competition factor is guided by the process described in the interagency document, *Bank Merger Competitive Review—Introduction and Overview* (1995), Department of Justice, Antitrust Division. See <https://www.justice.gov/sites/default/files/atr/legacy/2007/08/14/6472.pdf>. The Federal Financial Institution Examination Council's *Bank Secrecy Act/Anti-Money Laundering Examination Manual* details the OCC's examination of institutions' anti-money laundering activities. See <https://bsaaml.ffiec.gov/manual>.

<sup>12</sup> UFIRS is also known as the CAMELS system.

<sup>13</sup> The ROCA System is the interagency uniform supervisory rating system for U.S. branches and agencies of foreign banking organizations.

Interagency Consumer Compliance Rating System (CC Rating System) rating, Community Reinvestment Act (CRA) rating, the effectiveness of the Bank Secrecy Act/anti-money laundering program, and the absence of fair lending concerns; (ii) the attributes regarding target's size and status as a eligible depository institution, as defined in § 5.3; (iii) the transaction clearly not having a significant adverse effect on competition; and (iv) the absence of significant CRA or consumer compliance concerns, as indicated in any comments or supervisory information.

The *General Principles of OCC Review* section of proposed appendix A would also recognize that there are indicators that raise supervisory or regulatory concerns. Based on the OCC's experience, if any of these indicators are present, the OCC is unlikely to find the statutory factors under the BMA to be consistent with approval unless and until the applicant has adequately addressed or remediated the concern. Proposed appendix A would state that these indicators include: (i) the acquirer has a CRA rating of Needs to Improve or Substantial Noncompliance; (ii) the acquirer has a UFIRS or ROCA composite or management rating of 3 or worse; (iii) a consumer compliance rating of 3 or worse; (iv) the acquirer is a global systemically important banking organization, or subsidiary thereof;<sup>14</sup> (v) the acquirer has an open or pending Bank Secrecy Act/Anti-money Laundering enforcement or fair lending action, including referrals or notification to other agencies;<sup>15</sup> (vi) 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 (vii) multiple enforcement actions against the acquirer executed or outstanding during a three-year period.

Section III, *Financial Stability*, of proposed appendix A would provide additional information about how the OCC considers "the risk to the stability of the United States banking or financial system" as required by the BMA, including (i) the factors the OCC considers, which are currently described in the "Business Combinations" booklet of the *Comptroller's Licensing Manual*; (ii) the balancing test the OCC applies; and (iii)

<sup>14</sup> The Basel Committee on Bank Supervision annually identifies banking organizations as global systemically important.

<sup>15</sup> For example, the OCC is required to institute an enforcement action or make a referral if it makes certain supervisory findings with respect to the Bank Secrecy Act or fair lending laws. See, e.g., 12 U.S.C. 1818(s)(3); 15 U.S.C. 1691e(g).

the OCC's ability to consider imposing conditions on the approval of any such transaction. The OCC's approach to considering the risk to the stability of the financial system that would be set forth in proposed appendix A is consistent with longstanding OCC practice and principles.<sup>16</sup> Specifically, the OCC considers (i) whether the size of the combined institutions would result in material increases in risk to financial stability; (ii) any potential reduction in the availability of substitute providers for the services offered by the combining institutions; (iii) whether the resulting institution would 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; (iv) the extent to which the combining institutions contribute to the complexity of the financial system; (v) the extent of cross-border activities of the combining institutions; (vi) whether the proposed transaction would increase the relative degree of difficulty of resolving or winding up the resulting institution's business in the event of failure or insolvency; and (vii) any other factors that could indicate that the transaction poses a risk to the U.S. banking or financial system.

Section III, *Financial Stability*, of proposed appendix A would clarify that the OCC applies a balancing test when considering the financial stability factor and weighs the financial stability risk of approving the proposed transaction against the financial stability risk of denying the proposed transaction, particularly if the proposed transaction involves a troubled target. Specifically, the OCC would consider each factor individually and in combination. Even if only a single factor indicates a risk to the stability of the U.S. banking or financial system, the OCC may determine that the proposal would have an adverse effect on the stability of the U.S. banking or financial system.<sup>17</sup> The OCC would also consider whether the proposed transaction would provide any stability benefits and whether enhanced prudential standards applicable as a result of the proposed transaction would offset any potential risks.<sup>18</sup>

Section III also would note that, consistent with current OCC practice,<sup>19</sup> the OCC's review of the financial

<sup>16</sup> See, e.g., OCC Conditional Approval #1298 (November 2022); OCC Corporate Decision #2012-05 (April 2012).

<sup>17</sup> See, e.g., FRB Order No. 2012-2 at 30

<sup>18</sup> See, e.g., FRB Order No. 2021-04 (May 14, 2021) at 24.

<sup>19</sup> See, e.g., OCC Conditional Approval #1298 (November 2022).

stability factors may result in a decision to approve a proposed transaction, subject to conditions that are enforceable under 12 U.S.C. 1818. These conditions, which may include asset divestitures or higher minimum capital requirements, are intended to address and mitigate financial stability risk concerns.

Further, the OCC's review of the financial stability factors considers the impact of the proposed transaction in the context of the recovery planning standards applicable to the resulting institution pursuant to 12 CFR 30, appendix D, "OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches" and any heightened standards requirements applicable to the resulting institution pursuant to 12 CFR 30, appendix E, "OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches." Section III also would state that the OCC may consider the facts, circumstances, and representations of concurrent applications for related transactions, including considering the impact of the related transactions on the proposed transaction under review by the OCC.<sup>20</sup>

Section IV, *Financial and Managerial Resources and Future Prospects* of proposed appendix A would discuss the BMA's requirement that the OCC consider the managerial resources, financial resources, and future prospects of any proposed transaction. Under the BMA, the OCC must consider each of these factors independently for both the combining and resulting institutions.<sup>21</sup> However, because these factors are directly related to one another, the OCC also considers these factors holistically. This section of proposed appendix A would describe the overarching considerations of the OCC's review of these factors and provide additional details about what the OCC considers while reviewing these factors. The overarching considerations of this proposed section would note that the OCC will consider the size, complexity, and risk profile of the combining and resulting institutions.

Further, proposed appendix A expands on the discussion in the *Comptroller's Licensing Manual* about the types of transactions the OCC would

normally not approve by providing additional details about acquirer characteristics with respect to financial and managerial resources and future prospects that are less likely to result in an approval. Specifically, the OCC is less likely to approve an application when the acquirer (i) has a less than satisfactory supervisory record, including its financial and managerial resources; (ii) has experienced rapid growth; (iii) has engaged in multiple acquisitions with overlapping integration periods; (iv) has failed to comply with conditions imposed in prior OCC licensing decisions; or (v) is functionally the target in the transaction.<sup>22</sup> The OCC also normally does not approve a combination that would result in a depository institution with less than adequate capital, less than satisfactory management, or poor earnings prospects.

Finally, this subsection would confirm the OCC's practice of considering all comments on proposed transactions, including those on financial and managerial resources and future prospects. To the extent public comments address issues involving confidential supervisory information, however, the OCC generally would not discuss or otherwise disclose confidential supervisory information in public decision letters.

Section IV of proposed appendix A would next discuss the OCC's consideration of the individual financial resources, managerial resources, and future prospects factors. With respect to financial resources, proposed appendix A would discuss the OCC's review of pro forma capital levels. Additionally, the OCC is generally prohibited by statute from approving business combination applications filed by an institution that is undercapitalized as defined in 12 CFR 6.4.<sup>23</sup> Proposed Appendix A also would specify that the OCC closely scrutinizes transactions that increase the risk to the bank's financial condition and resilience, including risk to bank capital, liquidity, and earnings that can arise from any of

<sup>22</sup> For example, in a reverse triangular merger, a holding company may acquire an institution and merge its existing subsidiary into the newly acquired institution, which survives as a subsidiary of the holding company. See *Comptroller's Licensing Manual*, "Business Combinations" at 23 (January 2021).

<sup>23</sup> 12 U.S.C. 1831o(e)(4). The OCC may only approve a combination application by an undercapitalized institution if the agency has accepted the institution's capital restoration plan and determines that the proposed combination is consistent with and will further the achievement of the plan or if the Board of Directors of the Federal Deposit Insurance Corporation determines that the proposed combination will further the purposes of 12 U.S.C. 1831o. 12 U.S.C. 1831o(e)(4)(A)–(B).

the eight categories of risk included in the OCC's Risk Assessment System.<sup>24</sup> Further, with respect to the financial resources factor, the OCC considers the ability of management to address increased risks that would result from the transaction. Finally, proposed appendix A would clarify that a transaction involving an acquirer with a strong supervisory record is more likely to satisfy the review factors. By contrast, a transaction involving an acquirer with a recent less than satisfactory supervisory record is less likely to satisfy this factor.

Section IV of proposed appendix A would discuss the OCC's approach to considering the managerial resources standard. The OCC would consider the supervisory record and current condition of both the acquirer and target to determine if the resulting institutions will have sufficient managerial resources. For example, a significant number of matters requiring attention (MRA), or lack thereof, may impact the determination as to whether there are sufficient managerial resources. The OCC also reviews (i) both institutions' management ratings under the UFIRS or ROCA system, and component ratings under the CC Rating System, Uniform Rating System for Information Technology, and Uniform Interagency Trust Rating System, as applicable; and (ii) relevant the Risk Assessment System (RAS) conclusions for the applicant as well as the RAS conclusions for an OCC-supervised target. The OCC would consider the context in which the rating or RAS element was assigned and any additional information resulting from ongoing supervision. Finally, proposed appendix A would note that less than satisfactory ratings at the target do not preclude the approval of a transaction, provided that the acquirer can employ sufficiently robust risk management and financial resources to correct the weaknesses.

Proposed appendix A would state that the OCC considers whether the acquirer has conducted sufficient due diligence of the target depository institution to understand the business model, systems compatibility, and weaknesses of the target. This includes the acquirer's plans and ability to address its previously identified weaknesses, remediate the target's weaknesses, and exercise appropriate risk management for the size, complexity, and risk profile of the resulting institution. Similarly, the OCC considers the acquirer's plans for and

<sup>24</sup> These are credit, interest rate, liquidity, price, operational, compliance, strategic, and reputation risks. See *Comptroller's Handbook*, "Bank Supervision Process" at 26–28 (Version 1.1, September 2019).

<sup>20</sup> For example, many business combinations under the BMA are part of a larger transaction requiring a filing with the Board under the Bank Holding Company Act.

<sup>21</sup> 12 U.S.C. 1828(c)(5).

history of integrating combining institutions' operations, including systems and information security processes, products, services, employees, and cultures.

Proposed appendix A next would discuss the OCC's consideration of the acquirer's plans to identify and manage systems compatibility and integration issues, such as information technology compatibility and implications for business continuity resilience. A critical component of these plans includes the identification of overreliance on manual controls, strategies for automating critical processes, and capacity and modernization of aging and legacy information technology systems. Additional OCC review may be required where there are concerns with systems integration, and, in some cases, the OCC may impose conditions, enforceable pursuant to 12 U.S.C. 1818, to address those concerns. The OCC may deny an application if the integration issues or other issues present significant supervisory concerns, and the issues cannot be resolved through appropriate conditions or otherwise.<sup>25</sup>

Finally, with regard to managerial resources, proposed appendix A would describe the OCC's consideration of the proposed governance structure of the resulting institution. This includes consideration of (i) governance in decision-making processes, the board management oversight structure, and the risk management system, including change management; and (ii) the expansion of existing activities, introduction of new or more complex products or lines of business, and implications for managing existing and acquired subsidiaries and equity investments. When applicable, the resulting institution's governance is also considered in the context of the institution's relationship with its holding company and the scope of the holding company's activities.

Section IV of proposed appendix A also would discuss how the OCC considers the future prospects factor. The OCC would consider this factor in light of its assessment of the institutions' financial and managerial resources. The OCC also would consider the proposed operations of the resulting institutions and the acquirer's record of integrating acquisitions. Specifically, the OCC would consider whether the integrated institution will be able to function effectively as a single entity. The OCC also would consider the resulting institution's business plan or strategy and management's ability to implement it in a safe and sound

manner. Finally, the OCC would consider the combination's potential impacts on the resulting institution's continuity planning and operational resilience.

Section V, *Convenience and Needs* of proposed appendix A would expand on the discussion in the *Comptroller's Licensing Handbook* of the OCC's consideration of the probable effects of the proposed business combination on the community to be served. Specifically, this section would clarify that the OCC's consideration of the impacts of any proposed combination on the convenience and needs of the community is prospective and considers the likely impact on the community of the resulting institution after the transaction is consummated.<sup>26</sup> For this factor, the OCC considers, among other things (i) the proposed changes to branch locations, branching services, banking services or products, or credit availability offered by the target and acquirer, including in low- or moderate-income (LMI) communities, (ii) any job losses or lost job opportunities from branching changes, and (iii) any community investment or development initiatives, including particularly those that support affordable housing and small businesses. With respect to (i) above, the OCC is also considering, and welcomes comment on, whether to specify communities in addition to LMI communities as part of these considerations.

Finally, Section V of proposed appendix A would clarify that the OCC's forward-looking consideration of the convenience and needs factor under the BMA is separate and distinct from its consideration of the CRA record of performance of an applicant in helping to meet the credit needs of the relevant community, including LMI neighborhoods.

Section VI, *Public Comments and Meetings*, of proposed appendix A would provide additional details about the process and procedures relating to the OCC's receipt of public comments and the OCC's considerations related to public meetings and clarifies the information contained within 12 CFR part 5 and the "Public Notice and Comments" booklet of the *Comptroller's Licensing Manual*.<sup>27</sup> Specifically, the

<sup>26</sup> As the OCC's review of this factor is with respect to the resulting institution, it necessarily includes review of the record, products, and services of both the acquirer and target.

<sup>27</sup> While the BMA does not require the OCC to hold meetings or hearings, 12 CFR 5.11 describes the consideration and procedures for public hearings and notes the availability of several other types of meetings. The OCC considers three options for seeking oral input: (1) public hearing, (2) public meeting, and (3) private meeting.

public comments subsection would articulate the circumstances under which the OCC may extend the comment period from the usual 30-day comment period<sup>28</sup> pursuant to § 5.10(b)(2).<sup>29</sup> It also would provide additional clarity by noting that the OCC may find that additional time is necessary to develop factual information, and thus warrant extending the comment period, if a filer's response to a comment does not fully address the matters raised in the comment, and the commenter requests an opportunity to respond. This subsection also would provide examples of extenuating circumstances when the OCC may determine that an extension is needed, including, for example, if a public meeting is held, the transaction is novel or complex, or a natural disaster has occurred affecting the public's ability to timely submit comment.

The public meetings subsection of Section VI would state that when determining whether to hold a public meeting, the OCC balances the public's interest in the transaction with the value or harm of a public meeting to the decision-making process. Proposed appendix A would also clarify criteria informing the OCC's decision on whether to hold a public meeting. The criteria include (i) the public's interest in the transaction; (ii) the appropriateness of a public meeting to document or clarify issues raised during the public comment process; (iii) the significance of the transaction to the banking industry; (iv) the significance of the transaction to the communities affected; (v) the potential value of any information that could be gathered and documented during a public meeting; and (vi) the acquirer's and target's CRA, consumer compliance, and fair lending, or other pertinent supervisory records, as applicable.

### III. Request for Comments

The OCC encourages comment on any aspect of this proposal and especially on the specific issues discussed in this **SUPPLEMENTARY INFORMATION** section.

<sup>28</sup> See 12 CFR 5.10(b)(1).

<sup>29</sup> Specifically, part 5 notes that the OCC may extend the comment period when: (1) a filer fails to file all required publicly available information on a timely basis or makes a request for confidential treatment not granted by the OCC; (2) a person requesting an extension demonstrates to the OCC that additional time is necessary to develop factual information the OCC determines is necessary to consider the filing; and (3) the OCC determines that other extenuating circumstances exist.

<sup>25</sup> See 12 CFR 5.13(b).

#### IV. Regulatory Analysis

##### A. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),<sup>30</sup> the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements in this proposed rule have been submitted to OMB under OMB control number 1557-0014 (Licensing Manual).

The proposal would amend 12 CFR 5.33, by removing the expedited review procedures in section 5.33(i), which currently allow an application to be deemed approved by the OCC as of the 15th day after the close of the comment period, unless the OCC notifies the filer that the filing is not eligible for expedited review, or the expedited review process is extended. The proposal also removes the streamlined application in section 5.33(j), which would remove the ability of eligible institutions to file for certain types of business combinations using a streamlined application form.

*Title:* Licensing Manual.

*OMB control number:* 1557-0014.

*Frequency of Response:* Occasional.

*Affected Public:* National banks and Federal savings associations.

The changes to the burden of the Licensing Manual are *de minimis* and continue to be:

*Estimated Number of Respondents:* 3,694.

*Estimated Total Annual Burden:* 12,481.15.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the agency functions, including whether the information has practical utility;

(b) The accuracy of the agency estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

##### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of \$850 million or less and trust companies with total assets of \$47 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. However, under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule.

The OCC currently supervises 1,057 institutions (commercial banks, trust companies, federal savings associations, and branches or agencies of foreign banks) of which approximately 661 are small entities.<sup>31</sup> The OCC estimates that on average, 38 OCC-supervised institutions could be impacted by the rule in a given year. This is based on a five-year average of the number of business combination applications submitted to the OCC from 2019 through 2023.<sup>32</sup>

In terms of the potential impact of the proposed changes on affected institutions, the OCC does not expect that the changes would: (1) result in a different decision outcome for the

<sup>31</sup> The OCC's estimate of the number of small entities is based on the Small Business Administration's size thresholds for commercial banks and savings institutions, and trust companies, which are \$850 million and \$47 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution as a small entity. The OCC used December 31, 2022, to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards*.

<sup>32</sup> The OCC received 51 merger applications in 2019, 36 in 2020, 46 in 2021, 36 in 2022, and 18 in 2023. For further details, see <https://www.occ.gov/publications-and-resources/publications/annual-report/files/2023-annual-report.pdf>, <https://www.occ.gov/publications-and-resources/publications/annual-report/files/2022-annual-report.pdf>, <https://www.occ.gov/publications-and-resources/publications/annual-report/files/2021-annual-report.pdf>, <https://www.occ.gov/publications-and-resources/publications/annual-report/files/2020-annual-report.pdf>, and <https://www.occ.gov/publications-and-resources/publications/annual-report/files/2019-annual-report.pdf>.

merger application by the OCC or (2) result in a burden on affected institutions. First, proposed appendix A would seek to provide transparency with respect to the OCC's BMA review process including the OCC's consideration of certain statutory factors under the BMA, which should provide regulated institutions with additional clarity and transparency about the OCC's decision-making process. Second, the removal of the expedited review process would potentially affect OCC staff, but not affect banks, as the scope of information to be submitted by banks would not change. And third, the OCC expects that the removal of the streamlined application process would not result in a substantive impact on affected institutions or on the information collected, as the streamlined application and the interagency BMA application requests substantively the same information.<sup>33</sup> Therefore, the OCC expects the impact to affected OCC-supervised institutions would likely be *de minimis*. For these reasons, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.<sup>34</sup>

##### C. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that the OCC prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation, currently \$182 million) in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act (2 U.S.C. 1535) also requires the OCC to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The OCC estimates that the annual aggregate cost of the proposal once fully phased in would be *de minimis*. Furthermore, the proposed changes are

<sup>33</sup> The same information is collected through both the streamlined and regular merger application review processes. The streamlined application generally asks yes or no questions about the same type of information requested on the interagency application, and if an applicant answers yes, then the applicant needs to provide additional detail.

<sup>34</sup> In general, the OCC classifies the economic impact on an individual small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense.

<sup>30</sup> 44 U.S.C. 3501-3521.

not new requirements for OCC-supervised institutions, but rather describe considerations and principles that guide the OCC's review of applications under the BMA. Therefore, the OCC concludes that the proposed rule would not result in an expenditure of \$182 million or more annually by state, local, and tribal governments, or by the private sector.

#### *D. Riegle Community Development and Regulatory Improvement Act of 1994*

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCRDIA),<sup>35</sup> in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA, requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.<sup>36</sup>

The OCC requests comment on any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions, and their customers, and the benefits of the proposed rule that the OCC should consider in determining the effective date and administrative compliance requirements for a final rule.

#### **List of Subjects in 12 CFR Part 5**

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Savings associations, Securities.

For the reasons set forth in the preamble, OCC proposes to amend chapter I of title 12 of the Code of Federal Regulations as follows:

### **PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES**

■ 1. The authority citation for part 5 continues to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.*, 24a, 35, 93a, 214a, 215, 215a, 215a–1, 215a–2, 215a–3, 215c, 371d, 481, 1462a, 1463, 1464, 1817(j), 1831i, 1831u, 2901 *et seq.*, 3101 *et seq.*, 3907, and 5412(b)(2)(B).

#### **§ 5.33 [Amended]**

■ 2. Section 5.33 is amended by removing and reserving paragraphs (d)(3), (i), and (j).

■ 3. Add appendix A to part 5, subpart C to read as follows:

#### **Appendix A: Policy Statement Regarding Statutory Factors Under the Bank Merger Act**

##### **I. Introduction**

The purpose of this policy statement is to provide insured depository institutions (institutions) and the public with a better understanding of the Office of the Comptroller of the Currency's (OCC's) consideration of certain statutory factors under the Bank Merger Act (BMA), 12 U.S.C. 1828(c). The matters discussed in this statement are intended to provide greater transparency, facilitate interagency coordination, and enhance public engagement.

##### **II. General Principles of OCC Review**

The OCC aims to act promptly on all applications. The agency's range of potential actions on applications include approval, denial, and requesting that an applicant withdraw the application because any shortcomings are unlikely to be resolved in a timely manner. Applications that are consistent with approval generally feature all of the following indicators:

1. The acquirer is well capitalized under § 5.3 of this part 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 Community Reinvestment Act (CRA) rating of Outstanding or Satisfactory;
4. The acquirer has composite and management ratings of 1 or 2 under the Uniform Financial Institution Ratings System (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 (CC Rating System), if applicable;
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 acquirer's total assets;
10. The target is an eligible depository institution as defined in § 5.3 of this part;

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; and

13. No adverse comment has raised a significant CRA or consumer compliance concern.

If certain indicators that raise supervisory or regulatory concerns are present, the OCC is unlikely to find that the statutory factors under the BMA are consistent with approval unless and until the applicant has adequately addressed or remediated the concern. The following are examples of indicators that raise supervisory or regulatory concerns:

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 global systemically important banking organization, or subsidiary thereof.
5. The acquirer has open or pending Bank Secrecy Act/Anti-money Laundering enforcement or fair lending actions, including referrals or 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.

##### **III. Financial Stability**

###### *A. Factors Considered*

The BMA requires the OCC to consider "the risk to the stability of the United States banking or financial system" when reviewing transactions subject to the Act. In reviewing a BMA application under this factor, the OCC considers the following factors:

1. Whether the proposed transaction would result in a material increase in risks to financial system stability due to an increase in size of the combining institutions.
2. Whether the proposed transaction would result in a reduction in the availability of substitute providers for the services offered by the combining institutions.
3. Whether the resulting institution would 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.
4. Whether the proposed transaction would materially increase the extent to which the combining institutions contribute to the complexity of the financial system.
5. Whether the proposed transaction would materially increase the extent of cross-border activities of the combining institutions.
6. Whether the proposed transaction would increase the relative degree of difficulty of resolving or winding up the resulting institution's business in the event of failure or insolvency.

<sup>35</sup> 12 U.S.C. 4802(a).

<sup>36</sup> 12 U.S.C. 4802(b).

7. Any other factors that could indicate that the transaction poses a risk to the U.S. banking or financial system.

#### B. Balancing Test

1. *In general:* The OCC applies a balancing test when considering the factors in section III(A) of this appendix in light of all the facts and circumstances available regarding the proposed transaction, including weighing the financial stability risk posed by the proposed transaction against the financial stability risk posed by denial of the proposed transaction, particularly if the proposed transaction involves a troubled target. The OCC considers each factor both individually and in combination with others. Even if only a single factor indicates that the proposed transaction would pose a risk to the stability of the U.S. banking or financial system, the OCC may determine that there would be an adverse effect of the proposal on the stability of the U.S. banking or financial system. Finally, the OCC also considers whether the proposed transaction would provide any stability benefits and whether enhanced prudential standards applicable as a result of the proposed transaction would offset any potential risks.

2. *Conditions:* The OCC's review of the financial stability factors will include, as appropriate, whether to impose conditions on approval of the transaction. The OCC may impose conditions, enforceable under 12 U.S.C. 1818, to address and mitigate financial stability risk concerns, such as requiring asset divestitures by the resulting institution, imposing higher minimum capital requirements, or imposing other financial stability related conditions.

3. *Recovery planning and heightened standards:* The OCC's review of the financial stability factors will consider the impact of the proposed transaction in light of:

b. Standards applicable to the resulting institution pursuant to 12 CFR 30, appendix D, "OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches"; and

c. Standards requirements applicable to the resulting institution's recovery planning pursuant to 12 CFR 30, appendix E, "OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches".

4. *Concurrent filings:* the OCC's review of the financial stability factors may consider the facts, circumstances, and representations of concurrent filings for related transactions, including the impact of the related transactions to the proposed transaction under review by the OCC.

#### IV. Financial and Managerial Resources and Future Prospects

The OCC is required by the BMA to consider the managerial resources, financial resources, and future prospects of the combining and the resulting institutions. The OCC considers each of these factors independently for both the combining and resulting institutions. However, because these factors are directly related to one another, the OCC also considers these factors holistically.

#### A. Overarching Considerations

1. The OCC tailors its consideration of the financial and managerial resources and future prospects of the combining and resulting institutions, to their size, complexity, and risk profile.

2. The OCC is more likely to approve combinations where the acquirer has sufficient financial and managerial resources to ensure safe and sound operations of the resulting institution than when:

a. The acquirer has a less than satisfactory supervisory record, including its financial and managerial resources;

b. The acquirer has experienced rapid growth;

c. The acquirer has engaged in multiple acquisitions with overlapping integration periods;

d. The acquirer has failed to comply with conditions imposed in prior OCC licensing decisions; or

e. The acquirer is functionally the target in the transaction.

3. The OCC normally does not approve a combination that would result in a depository institution with less than adequate capital or liquidity, less than satisfactory management, or poor earnings prospects.

4. The OCC considers all comments received on proposed business combinations. However, the OCC's consideration of an institution's financial and managerial resources and future prospects are necessarily based on confidential supervisory information. While the OCC will provide an appropriate discussion of comments pertaining to the financial resources, managerial resources, and future prospects factors, it will generally not discuss or otherwise disclose confidential supervisory information in public decision letters.

#### B. Individual Factors

##### 1. Financial Resources:

a. The OCC reviews the existing and proposed institutions' current and pro forma capital levels.

i. The OCC reviews for compliance with the applicable capital ratios required by 12 CFR part 3 and the Prompt Corrective Action capital categories established by 12 CFR 6.4.

ii. The OCC may not approve a combination application filed by an insured depository institution that is undercapitalized as defined in 12 CFR 6.4 unless it has approved the institution's capital restoration plan or the Board of Directors of the Federal Deposit Insurance Corporation has determined that the transaction would fulfill the purposes of 12 U.S.C. 1831o.

b. The OCC closely scrutinizes transactions that increase the risk to the bank's financial condition and resilience, including bank capital, liquidity, and earnings that can arise from any of the eight categories of risk included in the OCC's Risk Assessment System: credit, interest rate, liquidity, price, operational, compliance, strategic, and reputation.

c. In relation to the financial resources factor, the OCC considers management's ability to address increased risks that would result from the transaction.

d. A transaction involving an acquirer with a strong supervisory record relative to capital, liquidity, and earnings is more likely to satisfy the review factors. By contrast, a transaction involving an acquirer with a recent less than satisfactory financial or supervisory record is less likely to satisfy this factor.

2. *Managerial Resources:* The OCC considers several factors when considering the managerial resources of the institutions.

a. The OCC considers the supervisory record and current condition of both the acquirer and target to determine if the resulting institutions will have sufficient managerial resources to manage the resulting institution.

i. A significant number of MRAs suggests there may be insufficient managerial resources. Additionally, the OCC considers both institutions' management ratings under the UFIRS or ROCA system and component ratings under the CC Rating System, Uniform Rating System for Information Technology, and Uniform Interagency Trust Rating System, as applicable.

ii. When applicable, the OCC also considers the relevant Risk Assessment System (RAS) conclusions for the combining institutions.

iii. The OCC considers the context in which a rating or RAS element was assigned and any additional information resulting from ongoing supervision.

iv. Less than satisfactory ratings at the target do not preclude the approval of a transaction, provided that the acquirer can employ sufficiently robust risk management and financial resources to correct the weaknesses at the target.

b. The OCC considers whether the acquirer has conducted sufficient due diligence of the target depository institution to understand the business model, systems compatibility, and weaknesses of the target. To facilitate the OCC's review, the acquirer's management team should demonstrate its plans and ability to address the acquirer's previously identified weaknesses, remediate the target's weaknesses, and exercise appropriate risk management for the size, complexity, and risk profile of the resulting institution.

c. The OCC also considers the acquirer's analysis and plans to integrate the combining institutions' operations, including systems and information security processes, products, services, employees, and cultures. The OCC's consideration and degree of scrutiny reflects the applicant's track record with information technology governance, business continuity resilience, and, as applicable, integrating acquisitions.

d. The OCC considers the acquirer's plans to identify and manage systems compatibility and integration issues, such as information technology compatibility and the implications for business continuity resilience. Any combination in which the OCC identifies systems integration concerns may lead to additional review.

i. A critical component of these plans includes the acquirer's identification and assessment of overreliance on manual controls, strategies for automating critical processes, and the strategies and capacity for modernization of aging and legacy information technology systems.



ii. The OCC may impose conditions, enforceable pursuant to 12 U.S.C. 1818, if it determines that information technology systems compatibility and integration represent a supervisory significant concern. These conditions may include requirements and time frames for specific remedial actions and specific measures for assessing and evaluating the depository institution's systems integration progress.

iii. The OCC may deny the application if the integration issues or other issues present significant supervisory concerns, and the issues cannot be resolved through appropriate conditions or otherwise.

e. The OCC also considers the proposed governance structure of the resulting institution. This includes governance in decision-making processes, the board management oversight structure, and the risk management system, including change management. This also includes expansion of existing activities, introduction of new or more complex products or lines of business, and implications for managing existing and acquired subsidiaries and equity investments. When applicable, the resulting institution's governance is also considered in the context of the institution's relationship with its holding company and the scope of the holding company's activities.

### 3. Future Prospects:

a. The OCC considers the resulting institution's future prospects in light of its assessment of the institutions' financial and managerial resources.

b. The OCC also considers the proposed operations of the resulting institution. The OCC's consideration and degree of scrutiny reflects the acquirer's record of integrating acquisitions.

i. The OCC considers whether the integration of the combining institutions would allow it to function effectively as a single unit.

ii. The OCC considers the resulting institution's business plan or strategy and management's ability to implement it in a safe and sound manner.

iii. The OCC also considers the combination's potential impact on the resulting institution's continuity planning and operational resilience.

### V. Convenience and Needs

A. The OCC considers the probable effects of the proposed business combination on the community to be served. Review of the convenience and needs factor is prospective and considers the likely impact on the community of the resulting institution after the transaction is consummated, including but not limited to:

1. any plans to close, expand, consolidate, or limit branches or branching services, including in low- or moderate-income (LMI) areas;

2. 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;

3. credit availability throughout the community, including, for example, home mortgage, consumer, small business, and small farm loans;

4. job losses or reduced job opportunities from branch staffing changes, including branch closures or consolidations;

5. community investment or development initiatives, including, for example, community reinvestment, community development investment, and community outreach and engagement strategies; and

6. efforts to support affordable housing initiatives and small businesses.

B. The OCC considers comments received during the comment period and information provided during any public hearing or meeting for proposed business combinations. To the extent public comments or discussions address issues involving confidential supervisory information, however, the OCC generally will not discuss or otherwise disclose that confidential supervisory information in public decision letters and forums.

C. The OCC considers the CRA record of performance of an applicant in evaluating a business combination application. The OCC's forward-looking evaluation of the convenience and needs factor under the BMA is separate and distinct from its consideration of the CRA record of performance of an applicant in helping to meet the credit needs of the relevant community, including LMI neighborhoods.

### VI. Public Comments and Meetings

#### A. Public Comments

1. Unless an exception applies, a combination under the BMA is subject to a 30-day comment period following publication of the notice of the proposed combination. The OCC may extend the comment period in certain instances:

a. when a filer fails to file all required publicly available information on a timely basis or makes a request for confidential treatment not granted by the OCC;

b. when requested and the OCC determines that additional time is necessary to develop factual information necessary to consider the filing; and

c. when the OCC determines that other extenuating circumstances exist.

2. The OCC may find that additional time is necessary to develop factual information if a filer's response to a comment does not fully address the matters raised in the comment, and the commenter requests an opportunity to respond.

3. Examples of extenuating circumstances necessitating an extension include:

a. transactions in which public meetings are held to allow for public comment after the meeting;

b. unusual transactions (*e.g.*, novel or complex transactions); and

c. natural or other disasters occurring in geographic regions affecting the public's ability to timely submit comments.

#### B. Public Meetings

1. While the BMA does not require the OCC to hold meetings or hearings, the OCC has three methods for seeking oral input: (1) public hearing, (2) public meeting, and (3) private meeting. Public meetings are the most-employed public option.

2. The OCC will balance the public's interest in the transaction with the value or

harm of a public meeting to the decision-making process (*e.g.*, although there may be increased public interest in a transaction, a public meeting will not be held if it would not inform the OCC's decision on an application or would otherwise harm the decision-making process).

3. Criteria informing the OCC's decision on whether to hold public meetings include:

a. the extent of public interest in the proposed transaction.

b. whether a public meeting is appropriate in order to document or clarify issues presented by a particular transaction based on issues the public raises during the public comment process.

c. whether a public meeting would provide useful information that the OCC would not otherwise be able to obtain in writing.

d. the significance of the transaction to the banking industry. Relevant considerations may include the asset sizes of the institutions involved (*e.g.*, resulting institution will have \$50 billion or more in total assets), and concentration of the resulting institution in one or more markets.

e. the significance of the transaction to the communities affected. Relevant considerations may include the effects of the transaction on the convenience and needs of the community to be served, including a consideration of a bank's CRA strategy and the extent to which the acquirer and target are currently serving the convenience and needs of their communities.

f. the acquirer's and target's CRA, consumer compliance, fair lending, and other pertinent supervisory records, as applicable.

**Michael J. Hsu,**

*Acting Comptroller of the Currency.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 490

[FHWA Docket No. FHWA-2023-0014]

RIN 2125-AG06

### National Performance Management Measures; Extenuating Circumstances, Highway Performance Monitoring System Data Field Names, Safety Performance Measure, Pavement Condition Measure, and Freight Performance Measure

**AGENCY:** Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The FHWA is extending the comment period for a notice of proposed rulemaking (NPRM) and request for comments, which was published on January 25, 2024. The