The Drawbacks Of Banking Regulators' Merger Review Plans

By **Franca Harris Gutierrez, Julie Williams and Andrew Lindsay** (April 26, 2024)

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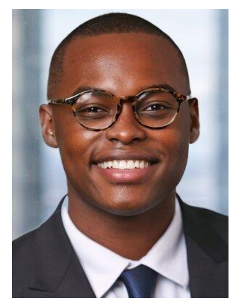

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The Federal Deposit Insurance Corp. and the Office of the Comptroller of the Currency recently announced proposals to update their approaches to evaluating bank mergers and other business combinations under the Bank Merger Act.[1]

These moves reflect efforts by these agencies to enhance the clarity of their standards and expectations for reviewing and approving applications, as well as adopt aggressive interpretations of the agencies' roles in response to increased scrutiny of mergers by the Biden administration.

Although the proposals differ in some respects, they share common themes: increased likelihood of new delays and uncertainties in agencies' merger review processes, wariness of transactions involving large — and not-so-large — banks, and new hurdles to transactions that could impede the competitiveness, efficiency, and long-term safety and soundness of the banks involved.

Background

In July 2021, the Biden administration issued an executive order, setting the stage for increased scrutiny of mergers.[2] Following this directive, in December 2021, the U.S. Department of Justice requested public comments to update its 1995 Bank Merger Guidelines.[3]

This push gained further momentum in November 2023, when FDIC Chairman Martin Gruenberg underscored the urgency of these updates in testimony to the U.S. Senate, highlighting the prudential regulators' lack of progress in recent years.[4]

On Jan. 29, 2024, the OCC advanced new standards for mergers by issuing a notice of proposed rulemaking and introducing a new policy statement.[5] This statement outlines 13 indicators for favorable bank merger applications[6] and six indicators that would raise supervisory or regulatory concerns.[7] The OCC proposal, if adopted, would apply to mergers where the acquiring bank is a national bank or federal savings association.[8]

On the heels of the OCC proposal, on March 21, the FDIC published a statement of policy[9] regarding how that agency would evaluate mergers where the acquiring bank is a state-chartered nonmember bank subject to FDIC jurisdiction under the BMA.[10]

The Federal Reserve has not yet provided any clear updates but is being encouraged by key members of Congress to revisit its merger policy.[11]

Takeaways

There are important differences between the two proposals.

Acting Comptroller of the Currency Michael Hsu has pitched the OCC proposal as an exercise in transparency regarding the OCC's review process.[12] In fact, the proposal favors — and disfavors — transactions based on criteria that are not found in the BMA or current OCC regulations or policy guidance.[13]

While the FDIC statement may reflect the current policy preferences of the majority of the FDIC board, it too goes beyond current FDIC practices and reflects an expansion of the FDIC's role in mergers beyond the BMA.

The practical consequences of these proposals — if implemented — will be to:

- Introduce considerations in the application review process that are outside the scope of the BMA;
- Create uncertainty regarding the standards that will actually be applied in an application;
- Discourage applications for mergers that may be urgently needed by mid-size banks in order to achieve competitive scale; and
- Prolong the process for agency review of mergers, potentially creating safety and soundness as well as strategic risks for target banks that cannot rely on a proposed transaction being accomplished.

The following sections discuss and compare the OCC proposal and FDIC statement.

Comparison of OCC and FDIC Approaches

Scope

The OCC proposal maintains the agency's current jurisdiction over transactions subject to the BMA, while the FDIC statement seeks to expand its BMA jurisdiction to a variety of new transactions between insured and noninsured entities. However, these transactions lack objective criteria and clear thresholds, complicating parties' efforts to accurately identify them under the proposed framework.

For example, transactions that the FDIC dubs "mergers in substance"[14] include when an FDIC-supervised bank acquires all or most of a target's assets, and the target dissolves or stops engaging in the acquired line of business.[15] Under the FDIC statement, such transactions would become subject to the BMA, "regardless of whether the transaction is structured as a merger or asset acquisition."[16]

This would include transactions involving bank and nonbank sales of a major business line to an FDIC-supervised bank, even if the seller continues to operate other businesses.[17] However, the FDIC statement provides no objective criteria for identifying "mergers in substance."[18]

Transactions involving "all or substantially all of the assets" of the seller[19] may involve intangible assets and assets not necessarily held on the seller's balance sheet, and could occur in a single transaction or series of transactions.[20]

However, the FDIC statement lacks clear criteria to help parties determine when transactions reach the threshold of involving "all or substantially all of the assets."[21] These shifts would force FDIC-supervised banks to more closely examine transactions involving major asset sales or acquisitions,[22] deposit base expansions,[23] and new custodial relationships involving nontraditional or noninsured financial entities[24] to determine if they warrant FDIC approval.

Competition

Competitive Effects and Market Concentration Analyses

The FDIC says it is updating its approach for assessing market concentration, which has historically centered on measuring bank branch deposits using the Herfindahl-Hirschman Index.[25]

However, the FDIC's new approach would start with deposits as an "initial proxy for commercial banking products and services"[26] to "evaluate the competitive effects ... in a manner that is most relevant to each transaction"[27] before expanding to include a broader examination of "specific products or customer segments," such as small business or residential lending or "activities requiring specialized expertise."[28]

The OCC proposal does not suggest a new competition test that would go beyond the standards currently applied by the DOJ.[29]

However, Hsu has emphasized the need to develop analytical methods for banking competition that "go beyond using retail deposits as a proxy for market power."[30] The acting comptroller stressed the OCC's commitment to revamp the bank merger evaluation process, stating that "the OCC is committed to working with our interagency peers to update our bank merger analytical frameworks," including collaboration with the DOJ on the BMA competition factor and described that work as "ongoing."[31]

Use of Divestitures and Noncompete Agreements

The FDIC statement indicates the agency may require divestitures before approving a merger transaction to address competitive concerns and would generally disapprove noncompete agreements with employees of the divested entity.[32]

The requirement of divestitures before mergers is not typically currently required, and the prohibition of "non-compete agreements with any employee of the divested entity" is not a requirement regulators traditionally apply in connection with bank mergers.[33]

Financial Stability

The OCC proposal includes a clarification of its approach to evaluating financial stability in bank merger applications.

The OCC applies a balancing test weighing the "financial stability risks of approving the transaction against the risks of denying the transaction," accounting for any "financial stability benefits" and "enhanced prudential standards" that may offset such risks and the impact of the transaction on resolution-planning standards.[34]

The OCC proposal cites the financial stability factors referenced in the Federal Reserve's approval of PNC's acquisition of BBVA Bancshares to outline the relevant financial benefits and enhanced prudential standards for the OCC's approval process.[35] These factors, which are not part of the BMA,[36] include:

- Whether the combined organization is "highly interconnected to many different segments of the U.S. banking or financial system through counterparty relationships or other channels";[37]

- Whether the combined organization participates in "short-term funding and capital markets" more than either the acquirer or target;[38] and

- Whether the combined organization's "structure and activities" are "sufficiently complex that ... if it were to fail, it would be difficult to resolve" without the potential for "significant disruptions to other financial institutions or markets."[39]

However, the OCC proposal does introduce several new indicators for approving transactions involving not just large banks but also midsize banks. The OCC states "applications that are consistent with approval generally feature" criteria including whether the "resulting institution will have total assets less than $50 billion" and "[t]he target's combined assets are less than or equal to 50% of the acquirer's total assets."[40]

How a prospective acquirer with more than $50 billion in assets, or a proposed transaction where a $49 billion acquirer seeks a $30 billion target, would fare under these considerations is not addressed.

The OCC now considers relative size to expedite certain bank merger applications.[41] However, changing this criterion to indicate approval might disincentivize mergers of equals or mergers involving larger community or midsize banks.

This could directly affect the appeal of national banks as bidders where there are competing state-chartered bidders, as transactions involving similarly sized acquiring state-chartered institutions might be viewed by a seller as posing less regulatory approval risk compared to those involving a national bank acquirer.

The FDIC also warns of an extended application process and low likelihood of approval of transactions resulting in larger banks. The FDIC statement provides that "transactions that result in a large [FDIC-supervised bank] (e.g., in excess of $100 billion) are more likely to present potential financial stability concerns" and "will be subject to added scrutiny."[42]

Consumer Financial Protection Bureau Director Rohit Chopra, an FDIC board member, went further, stating that "by codifying this [threshold], boards of directors and management of large firms can understand that the likelihood of approval of megamergers will be low."[43]

Financial and Managerial Resources

The OCC proposal clarifies the agency's approach to assessing financial and managerial resources for mergers. The OCC considers an applicant's Community Reinvestment Act, Uniform Financial Institution Ratings System or risk management, operational controls, compliance, and asset quality composite or management rating, as well as consumer compliance ratings.[44]

Additionally, the OCC reviews the applicants' most recent examination report.[45] To secure approval, applicants must also adequately address any issues or concerns highlighted in these evaluations.[46] Since these are considerations currently used by the OCC, the proposal mainly highlights the agency's attempt to demystify the approval process.

The FDIC statement places a significant emphasis on an acquirer's ability to effectively integrate a new entity, stressing the importance of human resources, IT infrastructure and risk management strategies, among others.[47]

Under the proposed guidelines, FDIC-supervised banks seeking approval for mergers may need to furnish proof of successful past integrations and deliver a detailed plan for the current merger.[48]

The FDIC states that it intends to approve applications only when standard and specific conditions,[49] like increased capital requirements or agreements to mitigate concerns,[50] are met without relying on these conditions to rectify major issues.[51]

Convenience and Needs

Even if an applicant meets the convenience and needs criteria under the BMA, its application may still be denied if supervisory and regulatory concerns are raised.

The OCC also would consider new criteria, such as "job losses or reduced job opportunities resulting from branch staffing changes, including branch closures or consolidations."[52] In particular, the reference to reduced job opportunities is a new development, as the OCC has not previously considered it when evaluating convenience and needs.

Similarly, the FDIC would also revise its expectations for mergers, looking for the resulting bank to "better meet the convenience and the needs of the community to be served than would occur absent the merger."[53]

As part of the review process, applicants would be required to submit a three-year plan for branch expansion, closings and consolidations, considering past, current and future community needs.[54]

Traditionally, the evaluation of bank merger applications focused on the institution's historical performance in meeting community credit needs. However, the FDIC statement adds prospective potential future benefits.[55]

Public Hearings and Application Processing

The OCC and FDIC proposals have distinct approaches to public hearings and expedited processing for merger applications.[56] Appendix A to the OCC proposal clarifies that the OCC balances the public's interest in the transaction with the value or harm of a public meeting to the decision-making process, considering factors such as the public's interest, appropriateness, significance to the banking industry and affected communities, and potential value of any information gathered.[57]

The FDIC statement, by contrast, generally considers it in the public interest to hold a hearing for any merger applications resulting in an FDIC-supervised bank with more than $50 billion in assets or for which a significant number of Community Reinvestment Act challenges — regardless of scope or substance — are received.[58]

The OCC proposes to remove the expedited review procedures for filings that qualify as business reorganizations or as streamlined applications while still reserving the right to tailor the information requested in the application as appropriate.[59]

The FDIC statement does not mention the agency's existing expedited application process for eligible institutions. The FDIC does acknowledge requests for a de minimis exception for mergers involving small and midsized FDIC-supervised banks that pose no competitive issues, but no such exception is proposed.[60]

The FDIC also proposes a new process: If an applicant decides to withdraw its application filing, the agency's board may release a statement outlining its concerns with the application.[61]

This is done to ostensibly promote "transparency for the public and future applicants."[62] How broadly this approach would be used is unclear and could implicate concerns regarding disclosure of confidential supervisory information or nonpublic business information about the applicant or target, even if the application has been withdrawn.

Role of the Federal Reserve

The Federal Reserve is the only federal banking agency that has not yet proposed amendments to its merger policy framework. It is currently unclear whether the Federal Reserve will update its bank merger guidelines, as there are no definitive signs indicating that imminent action will be taken on this issue.

However, it is worth noting that relevant agencies have acknowledged an ongoing review of the 1995 Bank Merger Guidelines,[63] and Sen. Sherrod Brown, D-Ohio, who is chair of the U.S. Senate Committee on Banking, Housing and Urban Affairs, has urged the Federal Reserve to take prompt action,[64] so the Federal Reserve's position may change in the near future.[65]

Comments on the OCC proposal are due on June 15, while comments on the FDIC statement are due on May 20.

Update: This article has been updated to add Julie Williams and Andrew Lindsay as authors.

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[1] See 12 U.S.C. § 1828(c). The statutory factors include competitive effects, financial and managerial resources, future prospects, convenience and needs of the community to be served, effectiveness in combatting money laundering, and the risk to the stability of the United States banking or financial system.

[2] Executive Order 14036, Promoting Competition in the American Economy, June 9, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/.

[3] DOJ, Antitrust Division Seeks Additional Public Comments on Bank Merger Competitive Analysis (Dec. 17, 2021), https://www.justice.gov/opa/pr/antitrust-division-seeks-additional-public-comments-bank-merger-competitive-analysis; see also Remarks by Assistant Attorney General Jonathan Kanter at the Brookings Institution's Center on Regulation and Markets Event Promoting Competition in Banking (June 20, 2023), https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-delivers-keynote-address-brookings-institution.

[4] Remarks by Martin J. Gruenberg, Chairman, FDIC, on Oversight of Financial Regulators: Protecting Main Street Not Wall Street, Before the Committee on Banking, Housing, and Urban Affairs, United States Senate (Nov. 14, 2023), https://www.fdic.gov/news/speeches/2023/spnov1423.html (stating that "[a]lthough there has been a significant amount of consolidation in the banking sector over the last thirty years, facilitated in part by mergers and acquisitions, there has not been a significant review of the implementation of the [Bank Merger Act] by the banking agencies in that time" and that "[t]he FDIC is evaluating and considering the comments received [as part of a March 2022 request for information from the FDIC on bank merger issues] as it considers changes to the merger review framework, as appropriate.").

[5] Business Combinations under the Bank Merger Act, 89 Fed. Reg. 10010 (Feb. 13, 2024) (to be codified at 12 C.F.R. pt. 5), https://www.govinfo.gov/content/pkg/FR-2024-02-13/pdf/2024-02663.pdf.

[6] See infra note 44.

[7] Id.

[8] 12 C.F.R. § 5.33.

[9] Fed. Deposit Ins. Corp., Request for Comment on Proposed Revisions to the Statement

of Policy on Bank Merger Transactions (Mar. 21, 2024), https://www.fdic.gov/sites/default/files/2024-04/2024-03-21-notice-dis-b-fr.pdf [hereinafter "FDIC SOP"].

[10] 12 U.S.C. § 1828(c)(2); 12 C.F.R. § 338.2(a) (An FDIC-supervised bank is "an insured state nonmember bank as defined in section 3 of the Federal Deposit Insurance Act."). Generally, the FDIC has jurisdiction over merger transactions that result in an FDIC-supervised institution and jurisdiction over any merger transaction involving an insured depository institution and a non-insured institution. See 12 U.S.C. § 1828(c)(2)(C). An FDIC-supervised institution is "either a bank or a State savings association." 12 C.F.R. § 338.2(c).

[11] On August 9, 2023, Chairman Sherrod Brown (D-OH), along with Senators Jack Reed (D-RI), Elizabeth Warren (D-MA), and John Fetterman (D-PA) of the U.S. Senate Committee on Banking, Housing, and Urban Affairs sent a letter to Federal Reserve Chair Jerome Powell and Vice Chair for Supervision Michael Barr, urging them to review and reconsider the Federal Reserve's approach to bank mergers. Press Release, In the Wake of Recent Failures, Brown, Colleagues Urge Federal Reserve to Overhaul Big Bank Merger Policy (Aug. 9, 2023), https://www.brown.senate.gov/newsroom/press/release/sherrod-brown-federal-reserve-overhaul-big-bank-merger-policy.

[12] Remarks by Acting Comptroller of the Currency Michael J. Hsu, What Should the U.S. Banking System Look Like? Diverse, Dynamic, and Balanced at the University of Michigan School of Business at 15, https://occ.gov/news-issuances/speeches/2024/pub-speech-2024-6.pdf ("The transparency provided in our proposed policy statement effectively proposes chalk lines demarcating the [different types of merger applications].").

[13] See supra notes 6–7.

[14] "The FDIC implements the BMA by emphasizing a transaction's substance over its form and asserting jurisdiction over transactions that substantively result in a merger (merger in substance)." FDIC SOP at 93. "The FDIC interprets the term "merge" in the BMA to encompass all transactions that result in an IDI substantively and effectively combining with a non-insured entity, regardless of whether the transaction is structured as a merger or asset acquisition." Id. at 14.

[15] "The Proposed SOP provides an example of a transaction that is a merger in substance, and is therefore subject to the BMA, such as when an IDI absorbs all (or substantially all) of a target entity's assets and the target entity dissolves or otherwise ceases engaging in the acquired lines of business." Id. at 15–16.

[16] Id. at 14.

[17] This includes when a "target would no longer compete in the market, regardless of whether the target plans to liquidate immediately after consummating the transaction." Id. at 68. "For example, this occurs when the acquired assets constitute all, or substantially all, of the non-insured entity's assets or business enterprise and if the non-insured entity dissolves, is rendered a shell, or otherwise substantially ceases its main business operations or enterprise." Id. at 15. Such a transaction could be "the substantive equivalent of a transaction legally structured as a merger." Id.

[18] In a moment of self-reflection, the FDIC asks, "How can the FDIC increase clarity to interested parties regarding the applicability of the BMA to a merger in substance?" Id. at

16.

[19] These transactions would implicate the following sections of the BMA: Section 18(c)(1)(A) ("mergers and consolidations involving IDIs and non-insured Entities") and Section 18(c)(2)(C) ("merger transactions solely involving insured depository institutions").

[20] "This applies when there is a transfer of all, or substantially all, of a non-insured entity's assets to an IDI, regardless of whether: (i) such transactions consist of an assumption of identified liabilities, (ii) the assets acquired are tangible or intangible (without regard to whether the assets would be considered assets under generally accepted accounting principles), or (iii) such acquisitions occur as a single transaction or over the course of a series of transactions." Id. at 15. "As with transactions involving IDIs and non-insured entities, the FDIC considers that a transaction in which an IDI absorbs another IDI by acquiring all, or substantially all, of its assets would be subject to FDIC approval under Section 18(c)(2)(C) of the BMA." Id. at 21.

[21] To that end, the FDIC asks: "What additional clarity should the FDIC provide regarding the circumstances in which a transaction is subject to FDIC approval under the BMA, including transactions involving an IDI and a non-insured entity that is not a traditional financial institution, such as a fintech firm, whose assets may be primarily intangible in nature?" Id. at 16.

[22] Id. at 17 ("[T]he applicability of Section 18(c)(1)(A) of the BMA to asset acquisitions [. . .] depends in part on the acquisition of 'all or substantially all' of a non-insured entity's assets.").

[23] Id. ("The FDIC takes the view that any expansion of an IDI's deposit base via acquisition would be subject to approval under the BMA."); id. at 18 ("[A]n FDIC-supervised IDI's assumption of a deposit from another IDI, or any IDI's assumption of a deposit from a non-FDIC insured entity, is likewise subject to FDIC approval even in the absence of an express agreement for a direct assumption."); id. ("The Proposed SOP highlights the broad definition of "deposit" in Section 3(l) of the FDI Act, and notes that the definition extends beyond traditional demand deposits to include, among other things, trust funds, and escrow funds.").

[24] Id. ("in cases where the agent, custodian, or trustee itself serves as a depository, a transfer of deposits for which it has liability to pay to an IDI would be subject to FDIC approval under the BMA."); Id. at 16 (noting "transactions involving an IDI and a non-insured entity that is not a traditional financial institution, such as a fintech firm, whose assets may be primarily intangible in nature" as potentially subject to the BMA); see supra note 20.

[25] FDIC SOP at 28 ("Consistent with the approach of the DOJ and the other federal banking agencies, the FDIC uses deposits as reported in the SOD data submitted by IDIs (and compiled by the FDIC), as a general proxy for the product market and then calculates the resulting market concentration and change in market concentration in each relevant geographic market using the HHI calculation. The FDIC initially focuses on the respective shares of total deposits held by the merging IDIs and the various other participants with offices in the relevant geographic market(s) to measure market concentration.").

[26] Id. at 75 ("The FDIC uses deposits as an initial proxy for commercial banking products and services.").

[27] Id. ("The FDIC will evaluate the competitive effects of a proposed merger in a manner that is most relevant to each transaction.); see also id. at 28 ("The FDIC uses deposits as an initial proxy for commercial banking products and services, but it will tailor the product market definition to individual products as needed.").

[28] Id. at 76 ("In addition, the FDIC will consider concentrations beyond those based on deposits. As appropriate, the FDIC may consider concentrations in any specific products or customer segments, such as, for example, the volume of small business or residential loan originations or activities requiring specialized expertise.").

[29] 89 Fed. Reg. at 10,012 ("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.").

[30] Hsu, What Should the U.S. Banking System Look Like?, supra note 12 at 16.

[31] Id.

[32] FDIC SOP, supra note 9 at 77.

[33] See also id. at 27 ("Additionally, to promote the ongoing competitiveness of the divested business lines, branches, or portions thereof, the FDIC will generally require that the selling institution will neither enter into non-compete agreements with any employee of the divested entity nor enforce any existing non-compete agreements with any of those entities.").

[34] 89 Fed. Reg. at 10,016 (Appendix A, Section III(B)).

[35] 89 Fed. Reg. at 10,012 n. 11 (citing FRB Order No. 2021–04 at 24 (May 14, 2021), https://www.federalreserve.gov/newsevents/pressreleases/files/orders20210514a1.pdf).

[36] See FRB Order No. 2021–04 n. 48 (citing 12 U.S.C. § 5365). Notably, 12 U.S.C. § 5365(C), which concerns "risks to financial safety and soundness," applies "to any bank holding company or bank holding companies with total consolidated assets equal to or greater than $100,000,000,000" supervised by the Federal Reserve.

[37] FRB Order No. 2021–04 at 24.

[38] Id.

[39] Id.

[40] 89 Fed. Reg. at 10,016 (Appendix A, Section II).

[41] At present, streamlined applications, in lieu of the full Interagency Bank Merger Act Application, are allowed by "eligible" acquirers, including those from banks with certain asset proportions. 12 U.S.C. § 5.33(j)(1)(i)("[T]he resulting national bank or resulting Federal savings association will be well capitalized . . . and the total assets of the target institution are no more than 50 percent of the total assets of the acquiring bank . . . .").

[42] FDIC SOP, supra note 9 at 87.

[43] Remarks of CFPB Director Rohit Chopra at the Peterson Institute for International Economics Event on Revitalizing Bank Merger Review (Mar. 21, 2024), https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-cfpb-director-rohit-chopra-at-the-peterson-institute-for-international-economics-event-on-revitalizing-bank-merger-review/.

[44] 89 Fed. Reg. at 10,016 (Appendix A, Section II).

[45] Id.

[46] Id.

[47] FDIC SOP, supra note 9 at 80–81; see also id. at 37–38.

[48] FDIC SOP, supra note 9 at 80.

[49] Id. at 22 ("Approvals will be subject to the standard conditions detailed in Section 303.2(bb) of the FDIC Rules and Regulations and any non-standard conditions deemed appropriate by the FDIC. However, the FDIC will not use conditions or written agreements that may be required as part of the conditions, as a means for favorably resolving any statutory factors that otherwise present material concerns.").

[50] Acting OCC Comptroller Hsu stated that targeted conditions could mitigate specific risks in some cases by the FDIC if the proposal is implemented, suggesting that the agency will consider when they will be effective and appropriate. CFPB Director Chopra suggested revisions to the FDIC proposal might include elements from the Hart-Scott-Rodino Act, such as requiring analyses of deals for banks' directors and officers, which can reveal anticompetitive intent.

[51] Supra note 49.

[52] 89 Fed. Reg. at 10,018 (Appendix A, Section V(A)(1), (4)).

[53] FDIC SOP, supra note 9 at 82.

[54] Id. at 42, 84

[55] Id. at 42 ("The Proposed SOP places an affirmative expectation on applicants to provide specific and forward-looking information to enable the FDIC to evaluate the expected impact of the merger on convenience and needs of the community to be served.").

[56] The BMA does not require the FDIC or OCC to hold meetings or hearings.

[57] 89 Fed. Reg. at 10,018 (Appendix A, Section VI(B)).

[58] Id. at 85 ("The FDIC will consider whether it is in the public interest to hold a hearing for merger applications, and generally expects to hold a hearing for any application resulting in an IDI with greater than $50 billion in assets or for which a significant number of CRA protests are received. The FDIC may also hold public or private meetings to receive input on the transaction. The decision to hold such meetings depend on issues raised during the comment period and the significance of the merger transaction to the public interest, to the banking industry, and communities affected.").

[59] 89 Fed. Reg. at 10,011, 10,015.

[60] FDIC SOP, supra note 9 at 8.

[61] Id. at 74.

[62] Id.

[63] In June 2023, Assistant Attorney General Jonathan Kanter emphasized the DOJ's updated, broader focus in assessing bank mergers, encompassing retail and business banking sectors. In December 2023, the DOJ and Federal Trade Commission released new merger guidelines for all industries. In a January 2024 speech, Acting Comptroller Hsu highlighted an ongoing collaboration between the Agencies and the DOJ to refine the framework for evaluating bank mergers under the BMA's competition factor.

[64] Supra note 11.

[65] See Evan Weinberger and Danielle Kaye, FDIC's Bank Merger Overhaul Leaves Midsize Lender Deals in Limbo, Bloomberg (Mar. 25, 2024), https://news.bloomberglaw.com/banking-law/fdics-bank-merger-overhaul-leaves-midsize-lender-deals-in-limbo ("The Federal Reserve is also expected to update its merger policy.").