FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 314, and 333

RIN 3064–AG18

Merger Transactions

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is inviting comment on a proposed rule that would fundamentally reform important aspects of the FDIC's approach to processing and evaluating merger transactions subject to the Bank Merger Act (BMA). Notable reforms under the proposed rule would include: accounting for credit unions and centrally booked deposits in the initial competitive effects analysis; establishing a letter filing process with ''deemed approval'' for ''*de minimis* merger transactions;'' tailoring other merger filing requirements to reduce burden and processing times based on the size and risk profile of a merger transaction and the attributes of the acquiring and resulting institution; limiting and clarifying the FDIC's discretion to remove a filing from expedited processing; and codifying the FDIC's reformed approach to evaluating the statutory factors under the BMA. Collectively, the revisions under the proposed rule would improve the speed, certainty, and predictability of the FDIC's bank merger framework in a manner consistent with the BMA. In addition, the proposed rule would modernize the framework to better reflect the competitive environment of the U.S. banking industry, including by tailoring it to reflect the full range of merger transactions subject to FDIC review along with reforming or eliminating outdated provisions.

DATES: Comments must be received on or before November 23, 2026.

ADDRESSES: The FDIC encourages interested parties to submit written comments. Please include your name, affiliation, address, email address, and telephone number(s) in your comment. You may submit comments to the FDIC, identified by RIN 3064–AG18, by any of the following methods:

• *Agency website: https://www.fdic.gov/resources/regulations/federal-register-publications.* Follow instructions for submitting comments on the FDIC's website.

• *Mail:* Jennifer M. Jones, Deputy Executive Secretary, Attention: Comments/Legal OES (RIN 3064–AG18), Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivered/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m., eastern time.

• *Email: comments@fdic.gov.* Include RIN 3064–AG18 on the subject line of the message.

• *Public Inspection:* Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register publications.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

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I. Policy Objectives

The FDIC is issuing this notice of proposed rulemaking (proposed rule) to improve the speed and certainty of, modernize the FDIC's approach related to, and reduce the regulatory burden associated with, the FDIC's review of merger transactions subject to FDIC approval under the BMA. Many aspects of the FDIC's current framework for evaluating merger transactions are outdated, and the proposed rule would align the FDIC's approach with the current market environment. For example, banking and financial services have become far more competitive in the decades since the BMA was enacted,[1] given the significant increase in nonbanks that offer bank-like products or services,[2] the dramatic reduction in legal restrictions on interstate banking and branching, and technological innovations such as the internet and mobile phones that allow banks and nonbanks to offer products and services nationwide much more easily than in the past.

Other elements of the current merger review framework are also in need of modernization and reform. For example, for certain merger transactions, supervisory experience has demonstrated that an approval is routine and can be provided expeditiously because the size and nature of such transactions, together with the attributes of the acquiring and resulting institutions, necessarily result in a favorable finding on each of the statutory factors. The current merger filing and processing requirements have not been tailored to reflect these *de minimis* types of merger transactions that, at most, only marginally affect the size and/or risk profile of a well-rated institution, as well as other merger

[1] Public Law 86–463, 74 Stat. 129.

[2] This includes credit unions, financial technology companies (fintechs), money market funds, retailers, technology companies, independent mortgage companies, private credit, and various other nonbank financial companies.

transactions such as certain corporate reorganizations that routinely result in favorable findings on at least some of the statutory factors.

In addition, aspects of the FDIC's current framework are more stringent than the requirements under the BMA, resulting in an unnecessarily burdensome filing process with few additional public benefits. For example, the public notice requirement under the current framework is more burdensome than required by statute and does not reflect modern information channels and the way most members of the public receive and consume information today. The related public comment period, which is not required under the BMA, similarly has not been modernized to reflect that certain types of merger transactions, such as *de minimis* merger transactions and corporate reorganizations, typically garner little to no meaningful public interest.

The cumulative result of these and other aspects of the current BMA framework—such as the lack of prescribed timelines for FDIC action, the ability of the FDIC to remove a merger filing from expedited processing due to an unsubstantiated Community Reinvestment Act (CRA) protest or at the agency's discretion for ''good cause,'' [3] and an undefined scope for transactions considered mergers in substance—is (at times) an undisciplined and unnecessarily long and inconsistent process.

The FDIC's approach to evaluating the statutory factors under the BMA also has revealed several shortcomings, including the undue weight placed on supervisory ratings. For example, in considering the adequacy of management of the acquiring institution, the FDIC considers the management component rating without always conducting a deeper review of the supervisory history to determine (1) management's ability to efficiently remediate identified concerns, and (2) whether and to what extent such concerns bear on the ability of management to successfully acquire and integrate the institution to be acquired.

Currently, information regarding the FDIC's evaluation of the statutory factors is available in the agency's SOP on Bank Merger Transactions and publicly-available filing processing materials; however, other important elements reflect unpublished internal practice. For example, the FDIC has, on occasion, taken qualitative elements into account when evaluating the competition factor, such as commuting patterns, that have not been disclosed in public-facing materials. The legacy approach to providing information regarding the FDIC's evaluation of the statutory factors has served to magnify concerns regarding transparency and predictability.

In recognition of these shortcomings, in 2025 the FDIC commenced a comprehensive review of the agency's BMA framework, which began in earnest with a March 2025 proposal to rescind the FDIC's 2024 SOP on Bank Merger Transactions (2024 SOP) and reinstate the prior SOP (2025 proposal), which was initially adopted in 1998 and amended most recently in 2008.[4] The 2025 proposal was intended to bring relatively more certainty and predictability to the industry and stakeholders while the FDIC conducted a broader review of the agency's BMA framework.[5]

The FDIC received 13 comments on the 2025 proposal. Commenters opposing the 2025 proposal expressed general support for the 2024 SOP, particularly with respect to the approaches to evaluating the financial stability and convenience and needs factors. Other commenters supported reinstatement of the prior SOP as an interim measure while the FDIC considered ways to improve the BMA framework and provided specific recommendations as to how the framework could be improved. Suggestions focused on modernization of the competitive effects analysis, including in highly concentrated rural areas and by more appropriately reflecting nonbank competition in the initial Herfindahl–Hirschman Index (HHI) analysis; placing less emphasis on supervisory findings for purposes of evaluating the statutory factors; improved coordination among the States and sister Federal agencies; enhanced scrutiny of bank-credit union mergers; clarification of the FDIC's analysis of the financial stability factor; a more disciplined approach to processing filings; and relatively closer adherence to the FDIC's statutory authorities under the BMA.

The FDIC is issuing this proposed rule to comprehensively reform the FDIC's framework for processing and evaluating bank merger transactions to address these and other concerns. Specifically, the proposed rule would improve the speed and certainty of the merger filing process by amending the FDIC's existing rules to establish a new framework for how the FDIC would review and process merger filings. The proposed rule would establish clear processing procedures and faster timelines for nearly all merger transaction types that are subject to the FDIC's review under the BMA. The proposed rule also would define new categories of merger transactions, including mergers in substance (an area that has presented considerable confusion for applicants); *de minimis* merger transactions; and significant asset transfers, which would not be treated as merger transactions. Aspects of the proposed rule also are focused on reducing complexity in the merger filing review process. For example, the proposed rule would establish a letter filing requirement and eliminate the public comment period for *de minimis* merger transactions; more broadly reduce public notice requirements; and provide consistency around the process for determining whether a filing is substantially complete. Furthermore, the proposed rule would make long overdue revisions to the competitive effects analysis for purposes of the BMA, including by expressly accounting for credit union shares [6] and centrally booked deposits as part of the initial analysis under the HHI. Other aspects of the FDIC's approach to evaluating the statutory factors would be reformed and made transparent. In the aggregate, the proposed rule is intended to result in a substantial and meaningful reduction in regulatory burden and to ensure that going forward, the agency's review of merger transactions is faster, more predictable, and appropriately tailored to reflect the type, size, and complexity of the potential risks of a merger transaction subject to FDIC approval. In addition, the proposed rule would modernize the framework to reflect the competitive environment of the banking industry and reform outdated provisions.

II. Background

The BMA, codified at section 18(c) of the Federal Deposit Insurance Act (FDI Act),[7] prohibits an insured depository institution (IDI) from entering into a merger transaction without regulatory approval and establishes a framework that applies to the review of merger transactions by the FDIC, the Office of the Comptroller of the Currency (OCC), and the Board of Governors of the Federal Reserve System (Federal

[3] *See* 12 CFR 303.11(c)(2).

[4] *See* 63 FR 44761 (Aug. 20, 1998); 67 FR 48178 (Jul. 23, 2002); 67 FR 79278 (Dec. 27, 2002); and 73 FR 8870 (Feb. 15, 2008).

[5] *See* 90 FR 11679 (Mar. 11, 2025).

[6] Credit union shares are equivalent to bank deposits and evidence ''money or its equivalent received or held by a credit union in the usual course of business and for which it has given credit or is obligated to give credit to the account of [a] member.'' 12 U.S.C. 1752(5).

[7] 12 U.S.C. 1828(c).

Reserve Board) (each, a responsible agency). The BMA requires the prior written approval of the FDIC before an IDI may merge or consolidate with, purchase or otherwise acquire the assets of, or assume any deposit liabilities of, another IDI if the resulting institution is a State nonmember bank or State savings association.[8] The BMA also requires the FDIC's prior written approval before any IDI may merge or consolidate with, assume the liability to pay deposits or similar liabilities of, or transfer assets to a noninsured bank or institution. The BMA prohibits the responsible agency from approving a merger transaction that would result in a monopoly and also prohibits approval of other merger transactions that may substantially lessen competition. The BMA further requires the responsible agency to consider the following statutory factors when evaluating a potential merger transaction: the financial and managerial resources and future prospects of the existing and proposed institutions;[9] the convenience and needs of the community to be served; the risk to the stability of the U.S. banking or financial system; and the effectiveness of any IDI involved in the merger transaction in combatting money laundering activities, including in overseas branches (collectively, statutory factors).[10]

Subpart D of 12 CFR part 303 (subpart D) establishes the FDIC's procedures for reviewing merger filings pursuant to the BMA. The FDIC has previously issued various SOPs intended to provide additional guidance to potential applicants and the public regarding the FDIC's consideration of the statutory factors when reviewing merger filings submitted pursuant to subpart D. The proposed rule would codify the FDIC's standards for evaluating the statutory factors, with certain modifications, to provide greater clarity and consistency for the public. As part of this rulemaking, the FDIC is proposing to rescind its current SOP concurrently with the issuance of a final rule.

III. Overview of the Proposed Rule

A. General Approach

The proposed rule would update many aspects of the FDIC's current merger framework with the goals of improving the FDIC's procedures to provide greater clarity and certainty to applicants, improve discipline around processing timelines, modernize how the agency evaluates the statutory factors, and reduce regulatory burden. The proposed rule would establish a new regulatory framework that encompasses the procedural aspects of merger review under part 303 of the FDIC Rules and Regulations and provides transparency regarding the FDIC's consideration of the statutory factors for various types of merger transactions in new § 335.5.

The FDIC seeks comments on all aspects of the proposed rule.

B. Substantially Complete Determination

The proposed rule would provide that, should an applicant submit an incomplete merger filing, the FDIC would notify the applicant and provide a written explanation regarding the information required to render the merger filing complete within 21 days after receipt of the merger filing. If the applicant does not provide the requested information within 30 days of the FDIC's notification, the proposed rule would permit the FDIC to return the merger filing as incomplete without rendering a decision on the merger filing. If the FDIC does not notify the applicant that a merger filing is incomplete within 21 days of receipt of the merger filing, the proposed rule would provide that the merger filing would be deemed substantially complete as of the date of receipt. The timelines for rapid, expedited, and standard processing (discussed further below) would begin on the date that the FDIC receives a substantially complete merger filing.

C. Rapid Processing and Streamlined Filing Requirements for de Minimis Merger Transactions

The proposed rule would establish a new subcategory of merger transactions called *de minimis* merger transactions that would qualify for rapid processing with deemed approval. Under the proposed rule, a *de minimis* merger transaction would be defined as a transaction (1) that falls within one of the categories in § 303.61(c)(1); (2) in which all institutions involved in the transaction satisfy each of the criteria in § 303.61(c)(2), to the extent applicable; and (3) in which the resulting institution will be ''well-capitalized'' immediately following the merger transaction.

Section 303.61(c)(1) would identify types of merger transactions, including certain corporate reorganizations, that, based on the FDIC's experience, satisfy the statutory factors when conducted by institutions that also satisfy the criteria in § 303.61(c)(2). The first category would include merger transactions, including certain corporate reorganizations, if the amount of assets being acquired is less than the adjusted lower threshold under section 7A(a)(2)(B)(i) of the Clayton Act, as amended by the Hart-Scott-Rodino Act (HSR Act),[11] and 5 percent of the assets of the acquiring IDI. The second category would include corporate reorganizations in which (1) an IDI acquires one or more operating subsidiaries; and (2) the legal and financial risk that the IDI is exposed to is substantially identical before and after the transaction.

Section 303.61(c)(2) would require all institutions involved in the *de minimis* merger transaction to satisfy the following criteria, as applicable: each institution (1) received an FDIC-assigned composite rating of 3 or better under the Uniform Financial Institutions Rating System (UFIRS) as a result of its most recent examination; (2) received a satisfactory or better CRA rating at its most recent examination (provided it is examined for CRA); (3) received a compliance rating of 1, 2, or 3 from its primary Federal regulator at its most recent examination; (4) is well-capitalized; and (5) is not subject to certain orders, directives, or written agreements with the primary Federal regulator or chartering authority. Section 303.61(c)(3) would require that the resulting institution will be well-capitalized immediately following the merger transaction.

De minimis merger transactions would be subject to a streamlined letter filing requirement and would be eligible for ''rapid processing'' in which the transaction would, unless the U.S. Attorney General objects to the transaction on competition grounds, be deemed approved five business days after the latest of (1) the FDIC's receipt of a substantially complete filing; or (2) if the transaction is not a corporate reorganization, five business days after (A) receipt of a competitive factors report (if applicable) indicating the Attorney General does not object to the transaction on competition grounds; (B) the expiration of the 30-day time period for the Attorney General to provide a competitive factors report under the BMA if no competitive factors report has been received; or (c) the end of the time period set forth in a request by the Attorney General for additional time to analyze competitive concerns. If the

[8] If the acquiring, assuming, or resulting bank is to be a national bank or a Federal savings association, then the OCC is the responsible agency. 12 U.S.C. 1828(c)(2)(A). If the acquiring, assuming, or resulting bank is to be a state member bank, then the Federal Reserve Board is the responsible agency. 12 U.S.C. 1828(c)(2)(B).

[9] The FDIC considers each of these elements separately as part of a single statutory factor.

[10] 12 U.S.C. 1828(c)(5), (11).

[11] 15 U.S.C. 18a(a)(2)(B)(i).

Attorney General issues an adverse competitive factors report for a merger transaction subject to the FDIC's review under the BMA, it would not qualify for rapid processing as a *de minimis* merger transaction under the proposed rule.

The proposed rule would also eliminate the public comment period for all *de minimis* merger transactions.

D. Expedited Processing for Corporate Reorganizations That Are Not de Minimis Transactions

The proposed rule would refine the definition of ''corporate reorganization'' to clarify that a corporate reorganization is a merger transaction involving solely an IDI and one or more affiliated institutions that are affiliates as of the time of filing to provide certainty to applicants regarding the point in time when the FDIC evaluates whether a merger transaction constitutes a corporate reorganization.

To qualify for this category of expedited processing, either: (1) all parties to the merger transaction would have received a composite rating of 3 or better under UFIRS as a result of their most recent Federal or State examination; or (2) the acquiring party would be an eligible depository institution (as defined in § 303.2(r)) and the amount of the total assets to be acquired would not exceed an amount equal to 25 percent of the acquiring institution's total assets as reported in its consolidated report of condition and income (Call Report) for the immediately preceding quarter.

For qualifying corporate reorganizations that are not a *de minimis* merger transaction, the FDIC would take action by the latest of (1) 30 days after receipt of a substantially complete filing, or (2) for an interstate merger transaction subject to the provisions of section 44 of the FDI Act, five business days after the FDIC receives confirmation from the host State (as defined in § 303.41(e)) that the applicant has both complied with the filing requirements of the host State and submitted a copy of the filing to the host State bank's supervisor. Such transactions would be authorized for immediate consummation upon approval.

The proposed rule would also reduce the public comment period to 15 days for corporate reorganizations that are eligible for this category of expedited processing and are not *de minimis* merger transactions.

E. Expedited Processing for Eligible Depository Institutions Engaging in Merger Transactions That Are Not Corporate Reorganizations or de Minimis Merger Transactions

Subpart D currently provides expedited processing for eligible depository institutions so long as (1) the resulting institution will be ''well-capitalized;'' and (2) either (a) all parties to the merger transaction are eligible depository institutions, or (b) the acquiring institution is an eligible depository institution and the amount of the total assets to be transferred does not exceed an amount equal to 10 percent of the acquiring institution's total assets. The proposed rule would retain expedited processing for eligible depository institutions, but update the asset threshold to reflect that the amount of the total assets to be acquired could not exceed an amount equal to 25 percent (as opposed to the current 10 percent) of the acquiring institution's total assets as reported in its Call Report for the immediately preceding quarter.

F. Standard Processing

The proposed rule would establish new tailored timeframes for standard processing of merger filings. Under the proposed rule, an applicant submitting a merger filing that does not qualify for rapid or expedited processing would receive a written determination by the FDIC within 90 days after submitting a substantially complete filing if (1) the resulting institution would have less than $50 billion in assets, (2) authority to act on the filing is not reserved to the FDIC's Board of Directors, and (3) consummation of the merger transaction is not dependent upon action by another Federal regulator. All other merger filings not qualifying for expedited processing or the 90-day timeline would be acted upon within 150 days after the FDIC's receipt of a substantially complete filing. The FDIC would have discretion to extend the 90-day or 150-day processing timelines based on extenuating circumstances, for a maximum of 180 days or 270 days, respectively.

G. Mergers in Substance

The proposed rule would replace the FDIC's current qualitative, facts and circumstances-based approach for identifying a merger in substance with an approach that uses a transparent and predictable asset-based threshold. Specifically, the proposed rule would define a merger in substance as any merger transaction or series of merger transactions over a rolling 12-month period in which an IDI directly or indirectly acquires all or substantially all, meaning 80 percent or more, of the assets of another institution.

H. Significant Asset Transfers

The proposed rule would establish a new notice and non-objection process for significant asset transfers to provide the FDIC with supervisory visibility into asset transfers that may affect the safety and soundness of an FDIC-supervised institution without requiring a more complex filing process. A significant asset transfer would be defined as a transaction that is not a merger transaction but that is a single transaction or a part of a series of transactions with the same counterparty or one or more affiliates of the same counterparty that would increase the size of the acquiring FDIC-supervised institution's assets by 25 percent or more over a rolling 12-month period. The proposed rule would exempt from the notice and non-objection framework transactions that are otherwise subject to FDIC approval or filing requirements.

Under the proposed rule, an institution must provide advance notice of the significant asset transfer. The FDIC would issue a decision within 30 days of receipt of the notice unless it notified the applicant that an extension was necessary due to extenuating circumstances. The FDIC could extend the processing timeline one time by a maximum of 60 days, for a total processing timeline of 90 days. The proposed rule specifies factors the FDIC will consider when reviewing the notice, including the capital level of the resulting institution, conformity with applicable law, the purpose(s) for the significant asset transfer, and the impact on safety and soundness.

I. Adverse Public Comments and CRA Protests

The proposed rule would clarify that the FDIC expects to use its discretion to remove a filing from expedited processing sparingly, particularly in the case of adverse public comments or CRA protests. Specifically, in the circumstance where an adverse comment or CRA protest can be resolved within the filing processing timeframe, the FDIC expects that a filing qualifying for expedited processing would not be removed from expedited processing simply due to the FDIC's receipt of an adverse comment or CRA protest. Additionally, the proposed rule provides that the FDIC would only remove an otherwise qualifying filing from expedited processing based on an adverse comment or CRA protest if certain criteria are met. These changes would apply to all filings submitted to the FDIC under part 303 of the FDIC Rules and Regulations—not just merger filings.

J. Statutory Factors

The proposed rule would codify the FDIC's approach to evaluating the statutory factors. By codifying the FDIC's approach, the proposed rule would provide for a more durable and transparent framework regarding the agency's review and adjudication of merger filings submitted pursuant to the BMA, particularly when compared to the existing SOP. Notably, the proposed rule would specify that the FDIC would conduct a tailored review of a merger filing according to the facts and circumstances of the merger transaction, including taking into account the structure, scale, and materiality of the merger transaction.

The FDIC would also consider the applicant's plans to timely remediate any previously unresolved deficiencies identified in the supervisory record of the applicant or institution being acquired. The FDIC would place heightened focus on the resulting institution and the cumulative benefits and impact of the merger transaction in its review of the statutory factors.

The proposed rule would clarify and significantly reform the FDIC's approach to evaluating competition in the context of a merger transaction. The FDIC uses the HHI as an initial screen to evaluate the competitive effects of a merger transaction in a relevant geographic market, as defined at new § 303.61(l). The proposed rule would update how the FDIC calculates the initial HHI screen to more accurately reflect competition in a relevant geographic market today. Specifically, the FDIC's initial HHI screen would incorporate the deposits of all banks and thrift institutions, as well as centrally booked deposits of banks and thrift institutions, and shares of credit unions.

The proposed rule would establish a safe harbor for applicants using the results of the initial HHI screen. Under the proposed rule, absent objection from the Attorney General, the FDIC would not deny a merger filing on competition grounds where: (1) the initial HHI screen in a relevant geographic market is 1,800 points or less after consummation of the merger transaction; (2) if the initial HHI screen is more than 1,800 after consummation of the merger transaction, the increase is less than 200 points from the HHI in a relevant geographic market prior to the merger transaction; or (3) the transaction is a corporate reorganization.

The proposed rule also describes how the FDIC would analyze transactions that exceed the safe harbor thresholds. To the extent the initial HHI screen exceeds the safe harbor thresholds described above, the FDIC would consider other factors, such as alternative geographic market definitions or other procompetitive effects, including the public interest, as part of its consideration of the impact of a merger transaction on competition.

The proposed rule would also codify a revised approach to analyzing the financial stability factor, which would include a safe harbor that specifies the types of merger transactions that would conclusively result in a favorable finding.

IV. Section-by-Section Description of the Proposed Rule

A. Scope (§ 303.60)

The proposed rule would revise § 303.60 to eliminate a reference to the FDIC's SOP, which the FDIC expects to rescind upon finalizing changes to subpart D. Section 303.60 would also be updated to reference additional considerations the FDIC takes into account when evaluating the statutory factors under the BMA, which would be codified at new § 333.5.

Question 1: Should the FDIC revise the current SOP to serve as supplementary information in addition to a final rule and, if so, what areas of the proposed rule would benefit from further explanation or discussion in a revised SOP?

B. Definitions (§ 303.61)

1. Centrally Booked Deposits (§ 303.61(a))

The proposed rule would define ''centrally booked deposits'' at § 303.61(a) to clarify that the term ''centrally booked deposits'' refers to deposits recorded at an institution's central office. Central booking occurs when an institution records deposits at a central office and does not attribute the deposits to a branch based on the location of the depositor. The FDIC seeks comment on whether additional specificity, or an alternative definition, would best capture the universe of deposits that are part of a nationwide platform, rather than local branches.

This clarification would correspond to changes in the methodology used by the FDIC to determine the competitive effects of a merger transaction in new § 333.5(c). In new § 333.5(c), the FDIC would consider a representative portion of the centrally booked deposits of a bank or thrift institution with one or more branches in a relevant geographic market in its initial HHI screen.

Question 2: Should the FDIC provide additional specificity regarding how to apply the proposed definition of centrally booked deposits? If so, what additional specificity would be appropriate?

Question 3: Should the FDIC adopt a different definition of centrally booked deposits? Why or why not?

2. Corporate Reorganization (§ 303.61(b))

The proposed rule would refine the definition of ''corporate reorganization'' at § 303.61(b) to clarify that a corporate reorganization is a merger transaction that involves solely an IDI and one or more institutions that are affiliated with the IDI at the time of filing. The proposed definition is consistent with the BMA's statutory exception to the requirement to request a competitive factors report from the Attorney General for a corporate reorganization.[12] It would also align with the definition of ''affiliate'' under the Bank Holding Company Act.[13]

This change would clarify and provide certainty on the point in time at which the FDIC evaluates affiliation for purposes of determining whether a merger transaction is a corporate reorganization. Under the proposed rule, certain corporate reorganizations would be eligible for new categories of rapid and expedited processing. Moreover, as discussed in more detail in §§ 303.64 and 333.5, the FDIC's tailored approach to reviewing corporate reorganizations under the proposed rule would result in more streamlined processing. For example, through this rulemaking, the FDIC would conclude that corporate reorganizations generally do not present anticompetitive concerns, and the FDIC would similarly not request a competitive factors report as a result.[14]

The proposed revisions to the definition of ''corporate reorganization'' would also clarify that a merger between an IDI and another institution would not be a ''corporate reorganization'' in the context of a contemporaneous holding company merger. Although the FDIC would not typically request a duplicative competitive factors report if the Federal Reserve Board also requested one in connection with the holding company merger, narrowing the definition as proposed would ensure the FDIC continues to observe the necessary BMA procedural requirements and

[12] *See* 12 U.S.C. 1828(c)(4)(C)(ii).

[13] *See* 12 U.S.C. 1841(k) (defining ''affiliate'' as ''any company that controls, is controlled by, or is under common control with another company'').

[14] This is consistent with the BMA's statutory exception in 12 U.S.C. 1828(c)(4)(C)(ii).

timeframes applicable to merger transactions involving nonaffiliates.

This change would address a question frequently asked by applicants by codifying the FDIC's current and longstanding approach to determining whether an entity is an affiliate for purposes of a merger transaction.

Question 4: Should the proposed definition of ''corporate reorganization'' be revised to provide additional clarity? If yes, please explain.

Question 5: Should the FDIC adopt a different definition of ''corporate reorganization?'' If yes, please explain.

3. De Minimis Merger Transaction (§ 303.61(c))

The proposed rule would establish a new subcategory of merger transactions called ''*de minimis* merger transactions'' at § 303.61(c). The proposed rule would define ''*de minimis* merger transaction'' as a transaction that falls within one of the categories in paragraph (c)(1) for which all institutions involved in the transaction satisfy each of the criteria in paragraph (c)(2), to the extent applicable, and where the resulting institution would be ''well-capitalized'' immediately following the merger transaction.

New paragraph (c)(1) would include two categories of transactions that do not warrant the same level of regulatory scrutiny as other merger transactions when conducted by institutions that also satisfy the criteria in paragraph (c)(2). The first category in paragraph (c)(1)(i) would capture smaller merger transactions. Specifically, the category would apply to merger transactions where the amount of assets acquired by the IDI would be less than the adjusted lower threshold under the Clayton Act, as amended by the HSR Act, and the amount of assets acquired would be less than 5 percent of the acquiring IDI's assets. The first criterion would ensure that *de minimis* merger transactions remain limited to transactions that conform to thresholds established under Federal law for determining that a merger transaction is presumptively competitive and do not typically require pre-notification under other competition and antitrust statutes. Consistent with the BMA's requirements that the FDIC consider the competitive effects of a merger transaction, the FDIC views the adjusted thresholds set forth in the HSR Act, together with a finding by the Attorney General that a merger transaction is unlikely to have a significantly adverse effect on competition, to provide a meaningful proxy for a determination that a merger transaction is presumptively competitive,[15] particularly when coupled with the second criterion, which is intended to ensure that a *de minimis* merger transaction allows only for marginal growth of the acquiring IDI.

The second category of *de minimis* merger transaction in paragraph (c)(1)(ii) would capture a corporate reorganization in which (1) an IDI acquires one or more operating subsidiaries; and (2) the legal and financial risk that the IDI is exposed to is substantially identical before and after the transaction. In practice, corporate reorganizations between an IDI and one or more of its operating subsidiaries are often referred to as ''roll-up'' transactions. The FDIC has found that routine roll-up transactions are less complex in structure because the acquiring institution and resulting institution tend to be effectively the same entity. For example, the managerial resources analysis for a routine roll-up transaction typically involves the same management rating for all entities involved in the transaction. The same typically also holds true when examining the financial resources of all entities involved in the transaction.

Additionally, an IDI generally already bears the legal and financial risks associated with an operating subsidiary. The FDIC recognizes that there may be certain instances in which a roll-up transaction presents new or heightened legal and financial risks to the IDI, which may in turn present a risk to the resulting institution and the Deposit Insurance Fund (DIF). Accordingly, the proposed rule would only include in the definition of *de minimis* merger transactions roll-up transactions that would not present new or heightened legal and financial risks to the IDI, and therefore the DIF, upon consummation of the transaction. However, if the IDI does not already bear the legal or financial risks of the operating subsidiary, for example due to accounting reasons, the transaction would not qualify as a *de minimis* merger transaction. For example, a roll-up transaction would not be categorized as a *de minimis* merger transaction if it involved the roll-up of an operating subsidiary involved in substantial, ongoing litigation that the IDI was not already exposed to. In such cases, the roll-up transaction would not be categorized as a *de minimis* merger transaction because the FDIC would have a supervisory interest in reviewing the transaction and the risks presented to the IDI, and therefore the DIF, more closely. However, the transaction would generally still be eligible for expedited processing for corporate reorganizations under § 303.64(d).

New paragraph (c)(2) would require all institutions involved in the merger transaction to satisfy the following criteria, to the extent applicable: each institution (A) received an FDIC-assigned composite rating of 3 or better under the UFIRS as a result of its most recent Federal or State examination; (B) received a satisfactory or better CRA rating from its primary Federal regulator at its most recent examination, if the depository institution is subject to examination under part 345 of the FDIC Rules and Regulations; (C) received a compliance rating of 1, 2, or 3 from its primary Federal regulator at its most recent examination; (D) is well-capitalized as defined in the appropriate capital regulation and guidance of the institution's primary Federal regulator; and (E) is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its primary Federal regulator or chartering authority.

The criteria in new paragraph (c)(2) are consistent with the FDIC's definition of ''eligible depository institution'' in § 303.2(r), except that the definition would be expanded to include 3-rated institutions. In addition, new paragraph (c)(3) would require that the resulting institution will be ''well-capitalized'' immediately following the merger transaction. The FDIC has found that, when all institutions involved in a *de minimis* merger transaction receive a composite rating of 3 or higher under the UFIRS, a compliance rating of 3 or better, and satisfy the other criteria in the existing definition of ''eligible depository institution,'' and the resulting institution will be ''well-capitalized,'' the qualification criteria can serve as meaningful proxies for full consideration and favorable resolution of the statutory factors within the narrow context of *de minimis* merger transactions.

Question 6: Is the first category of transaction types in the definition of de minimis merger transaction appropriately tailored to the risks presented by such transactions? Why or why not?

Question 7: Is the second category of transaction types, i.e., roll-up transactions, in the definition of de

[15] The purposes of the HSR Act are to help prevent monopolies, protect customers, and ensure a fair competitive marketplace. *See* Public Law 94–435, 90 Stat. 1391. The HSR Act amended the Clayton Antitrust Act to require companies planning a merger to notify the Federal Trade Commission (FTC) and the Department of Justice (DOJ) prior to consummation of the transaction.

minimis merger transaction appropriately tailored to the risks presented by certain roll-up corporate reorganizations? Why or why not? Should the FDIC consider alternative criteria to capture merger transactions with an operating subsidiary in which the IDI is already exposed to the legal and financial risk of the subsidiary?

Question 8: Are there other types of merger transactions with subsidiaries that the FDIC should consider including in the definition of ''de minimis merger transaction?'' If so, please explain.

Question 9: Should the FDIC consider additional criteria for purposes of defining a de minimis merger transaction? If so, which ones and why?

Question 10: Should the FDIC consider including an anti-evasion provision to prevent the structuring of one larger merger transaction into multiple de minimis merger transactions?

Question 11: Would another definition of de minimis merger transaction be more appropriate? If yes, please explain.

4. Interim Institution (§ 303.61(d))

The proposed rule would establish a new defined term, ''interim institution,'' at § 303.61(d), consistent with the definition of ''interim institution'' at § 303.21(b). ''Interim institution'' would be defined as a State- or Federally-chartered depository institution that does not operate independently but exists solely as a vehicle to accomplish a merger transaction. This definition would clarify how the FDIC views interim institutions for purposes of merger filings and, where applicable, associated deposit insurance applications.

Question 12: Would the new definition of ''interim institution'' provide additional clarity and certainty in subpart D? Why or why not?

Question 13: Would another definition of ''interim institution'' be more appropriate? Why or why not?

Question 14: Are interim merger transactions used for purposes not described in the proposed definition, and, if so, what are they?

5. Interim Merger Transaction (§ 303.61(e))

The proposed rule would revise the definition of ''interim merger transaction'' at current § 303.61(c) and move the term to new § 303.61(e). The proposed rule would make technical changes to incorporate the new defined term ''interim institution.''

Question 15: Would the revised definition of ''interim merger transaction'' provide additional clarity and certainty in subpart D? Why or why not?

Question 16: Would another definition of ''interim merger transaction'' be more appropriate? Why or why not?

6. Interstate Merger Transaction (§ 303.61(f))

The proposed rule would establish a new defined term, ''interstate merger transaction,'' at § 303.61(f). The proposed rule would define ''interstate merger transaction'' as any merger transaction that results in a State nonmember bank acquiring a branch in a State that is not its home State or in which it does not currently operate a branch. The introduction of the defined term ''interstate merger transaction'' is intended to provide additional clarity on the application of section 44 of the FDI Act to the transaction.[16] Under section 44 of the FDI Act, the FDIC may approve a merger transaction involving two IDIs with different home States without regard to whether such transaction is prohibited under the law of any State. Although no State prohibits interstate mergers as of 2026, section 18(d) of the FDI Act nonetheless requires that certain requirements of section 44 of the FDI Act apply in cases where a State nonmember bank is acquiring, establishing, or operating a branch in any State other than the bank's home State or a State in which the bank already has a branch.[17] Additional information regarding the application of section 44 of the FDI Act can be found in § 303.62(b).

Question 17: Would the new definition of ''interstate merger transaction'' provide additional clarity on the application of section 44 of the FDI Act to interstate merger transactions? Why or why not?

Question 18: Would another definition of ''interstate merger transaction'' be more appropriate? Why or why not?

7. Merger in Substance (§ 303.61(g))

The proposed rule would establish a new defined term for ''merger in substance'' to clarify the scope of transactions that would be subject to the filing and processing requirements of subpart D and require prior FDIC approval under the BMA. The proposed rule would define a merger in substance as any merger transaction or series of merger transactions over a rolling 12-month period in which an IDI acquires all or substantially all, meaning 80 percent or more, of the assets of another IDI, noninsured bank, or other institution. As a practical matter, mergers in substance typically would be limited to nonbank merger transactions[18] or a series of nonbank merger transactions over a rolling 12-month period because merger transactions with IDI counterparties nearly always involve a transfer of deposit liabilities, which alone triggers application of the BMA.

The proposed definition of merger in substance is generally consistent with the FDIC's longstanding practice of applying the BMA to certain transactions that are substantively and economically equivalent to a merger, while at the same time embedding substantially more transparency and predictability into such determinations. The FDIC's current approach is largely qualitative and based on the facts and circumstances of a particular transaction or series of transactions. However, based on the FDIC's experience, mergers in substance have been characterized by a transfer of all or nearly all the assets from the target institution to the acquiring institution. By incorporating a numerical percentage of assets threshold, the proposed rule would move away from the opaque nature of a facts and circumstances-based approach toward a more transparent and predictable asset-based threshold.

The FDIC considered adopting a factors-based approach to assist in its determination of whether a transaction or series of transactions constitutes a merger in substance, similar to the ''*de facto* merger'' doctrine. The *de facto* merger doctrine is an equitable, judicially-created and applied doctrine that is rooted in States' common laws rather than Federal competition and antitrust statutes and regulations. Courts have generally coalesced around the following factors as relevant to the determination of whether a transaction constitutes a *de facto* merger: (1) continuity of ownership; (2) cessation of the ordinary business and dissolution of the selling entity; (3) assumption by the acquiring entity of liabilities ordinarily necessary for the uninterrupted continuation of the business of the selling entity; and (4) continuity of business operations, including management, personnel, physical location, and general business operations in the acquiring entity.[19]

[16] 12 U.S.C. 1831u(g)(6).

[17] 12 U.S.C. 1828(d)(3).

[18] This Supplementary Information uses the term ''nonbank merger transaction'' to refer to a merger transaction between an IDI and a nonbank entity.

[19] *See, e.g., Cargo Partner AG* v. *Albatrans, Inc.*, 352 F.3d 41 (2d Cir. 2003); *Xie* v. *Sklover & Co., LLC*, 260 F. Supp. 3d 30, 49 (D.D.C. 2017); *Taylor* v. *Atlas Safety Equip. Co.*, 808 F. Supp. 1246 (E.D. Va. 1992); *Opportunity Fund, LLC* v. *Epitome Sys.,*

Courts use the *de facto* merger doctrine to fashion equitable remedies in conjunction with shareholders' rights lawsuits and to establish successor liability under State law. State common law forms the basis of the *de facto* merger doctrine and States' common laws diverge on the scope of transactions that qualify as *de facto* mergers. Moreover, judicial interpretations of the types of transactions that constitute *de facto* mergers vary based on the State's common law that is being applied to a particular set of facts and circumstances. Even judicial interpretations applying the same State's common law to similar sets of facts and circumstances occasionally vary, which is a testament to the subjective nature of the doctrine.

Accordingly, the FDIC does not propose to adopt a factors-based approach similar to the *de facto* merger doctrine. Instead, the proposed rule would establish a simple and transparent definition of merger in substance.

The FDIC emphasizes that only a transaction or series of transactions over a rolling 12-month period in which the subject asset transfer is or exceeds 80 percent of an institution's assets would be treated as a merger in substance. The rolling 12-month lookback period for a series of transactions would require an applicant to submit a merger filing for a series of smaller transactions over a consecutive 12-month period, not simply those occurring within the same calendar or fiscal year, that, taken together, satisfy the definition of merger in substance. An acquisition of a business line that does not represent all or substantially all of an institution's assets would not be considered a merger in substance subject to subpart D, unless it also involved an assumption of deposits. An assumption of deposits triggers the applicability of the BMA as a merger transaction, irrespective of the asset size of the transaction.

An IDI would be required to submit a merger filing for the series of transactions prior to completing the transaction that will exceed the 80 percent threshold. The FDIC expects an IDI to submit a merger filing when the IDI becomes aware that it will complete one or more transactions that will ultimately exceed the 80 percent threshold. The merger filing would be required to contain information related to all transactions that are part of the series. For example, in a series of three transactions involving acquisitions of 20 percent, 20 percent, and 40 percent of an entity's assets respectively, the applicant would be required to submit a merger filing containing information related to all three transactions. The FDIC recognizes that an IDI may not always intend to exceed the 80 percent threshold until after it has completed one or more transactions during a 12-month period. The FDIC encourages IDIs to contact the FDIC as soon as possible to discuss associated filing requirements.

Question 19: Does the definition of ''merger in substance'' provide an appropriate threshold for establishing whether substantially all of another institution has been acquired? Why or why not?

Question 20: Should the FDIC adopt a different framework or incorporate any other considerations for evaluating mergers in substance, such as common law considerations? Why or why not?

Question 21: Should the FDIC consider a lookback period that is longer than 12 months? Why or why not?

Question 22: Should the FDIC adopt an anti-evasion provision? Why or why not? If yes, what should the provision state?

Question 23: Should the FDIC adopt a timing requirement for the filing of a merger in substance-related filing? For example, should the FDIC require a merger filing prior to the first transaction in the series of transactions or prior to the transaction that will result in a merger in substance? Why or why not?

8. Merger Transaction (§ 303.61(h))

The FDIC proposes to revise the definition of ''merger transaction'' in current § 303.61(a) to more clearly delineate the types of merger transactions that are subject to the FDIC's approval under the BMA, and to move the revised definition to new § 303.61(h). Current § 303.61(a) tracks the statutory language of the BMA,[20] which condenses the types of merger transactions that are subject to the FDIC's approval into two short paragraphs. The proposed definition of ''merger transaction'' would break these two paragraphs out into six shorter subparagraphs to improve readability and clarity. The definition of merger transaction in the proposed rule would not alter the scope of merger transactions subject to the FDIC's prior approval under the BMA.

Question 24: Is the proposed definition of merger transaction clear?

Question 25: Would another definition of merger transaction be more appropriate?

9. Operating Subsidiary (§ 303.61(i))

The proposed rule would adopt the definition of ''operating subsidiary'' in the Federal Reserve Board's Regulation W at new § 303.61(i).[21] Regulation W defines ''operating subsidiary'' as including any subsidiary of an IDI except for the following: (1) a depository institution; (2) a financial subsidiary; (3) a company directly controlled by: (A) one or more affiliates (other than depository institution affiliates) of a Federal Reserve System member bank, or (B) a shareholder that controls the member bank or a group of shareholders that together control the member bank; (4) an employee stock option plan, trust, or similar organization that exists for the benefit of the shareholders, partners, members, or employees of the member bank or any of its affiliates; or (5) any other company determined to be an affiliate by the Federal Reserve Board.[22]

Regulation W implements sections 23A and 23B of the Federal Reserve Act (sections 23A and 23B),[23] which apply with respect to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank under the FDI Act.[24] Further, under the BMA, any company that would be an affiliate for purposes of sections 23A and 23B of a State nonmember insured bank if the State nonmember insured bank were a State member bank is deemed to be an affiliate of that State nonmember insured bank.[25] The new defined term is used in the proposed rule to provide rapid processing for certain corporate reorganizations. The FDIC proposes to rely on the Regulation W definition for purposes of subpart D to clarify how the FDIC analyzes the concept of affiliation under subpart D and to maintain consistency with its analysis of affiliation for purposes of sections 23A and 23B.

Inc., 912 F. Supp. 2d 531 (S.D. Ohio 2012); *U.S. Automatic Sprinkler Co.* v. *Reliable Automatic Sprinkler Co.,* 719 F. Supp. 2d 1020 (S.D. Ind. 2010); *MyLocker.com, LLC* v. *S&S Activewear, LLC,* No. 25–CV–10160, 2025 WL 2350653, at *3 (E.D. Mich. Aug. 12, 2025); *Hadassa Inv. Sec. Nigeria Ltd.* v. *Swiftships Shipbuilders LLC,* No. 6:16–CV–01502, 2018 WL 1310104, (W.D. La. Mar. 12, 2018); *Farris* v. *Glen Alden Corp.,* 393 Pa. 427, 143 A.2D (1958); *Metropolitan Partners Fund IIIA, LP* v. *GemCap Lending I, LLC,* 2023 NY Slip Op. 33042 (Sup. Ct. Sept. 1, 2023); *Hydraulic IP Holdings, LLC* v. *Tan,* 2024 N.Y. Slip Op. 32930 (Sup Ct., NY Cty, Aug 16, 2024). *See also* Jan G. Deutsch, *The Form and Substance of a Merger: A Reading of Farris* v. *Glen Alden Corp.,* 20 Vill. L. Rev. 80 (1974).

[20] *See* 12 U.S.C. 1828(c)(1), (2).

[21] *See* 12 CFR 223.3(aa).

[22] *See* 12 CFR 223.3(aa) (citing 12 CFR 223.2(b)(1)(i) through (v)).

[23] *See* 12 U.S.C. 371c, 371c–1.

[24] 12 U.S.C. 1828(j)(1)(A).

[25] 12 U.S.C. 1828(j)(1)(B).

Question 26: Should the proposed rule cross-reference Regulation W for the purpose of defining an operating subsidiary or should the proposed rule provide a standalone definition? Why or why not?

10. Significant Asset Transfer (§ 303.61(j))

The proposed rule would adopt a new defined term for ''significant asset transfers'' at new § 303.61(j). A ''significant asset transfer'' would be defined as a transaction or series of transactions with the same counterparty, or one or more affiliated counterparties, that is not a merger transaction but that would increase the size of the acquiring FDIC-supervised institution's assets by 25 percent or more over a rolling 12-month period. As with mergers in substance, use of a rolling 12-month period would require applicants to submit a significant asset transfer notice for a series of smaller transactions with the same counterparty or one or more affiliated counterparties that occur over the course of any consecutive 12-month period. To avoid duplicative filing requirements, the definition of ''significant asset transfer'' would not include a change in assets of an FDIC-supervised institution that is otherwise subject to FDIC approval or filing requirements. For example, a merger transaction subject to the FDIC's approval under the BMA would not also be subject to the significant asset transfer notice requirement.

11. Substantially Complete (§ 303.61(k))

The proposed rule would define ''substantially complete'' at new § 303.61(k) as meaning the FDIC has received information sufficient to evaluate and make a determination on the statutory factors in section 18(c) of the FDI Act, as described in new § 333.5, and to confirm the applicant has complied with its statutory obligations. The processing timeline for a merger filing under § 303.64 of the proposed rule would start upon the FDIC's receipt of a ''substantially complete'' merger filing. The FDIC recognizes that the determination of whether a merger filing is substantially complete can be confusing for applicants and has been applied in an ambiguous and inconsistent way. Accordingly, the FDIC proposes to define this term for purposes of subpart D in the proposed rule to provide additional transparency to applicants regarding when the timeline begins and to promote the consistency and accountability with respect to the proposed filing processing timelines.

Question 27: Should the FDIC define ''substantially complete?'' Why or why not?

Question 28: Is the proposed definition of ''substantially complete'' sufficiently clear? If not, please provide an alternative definition with explanation. Should the FDIC adopt a definition with more specificity? If so, how?

12. Relevant Geographic Market (§ 303.61(l))

The proposed rule would define ''relevant geographic market'' at new § 303.61(l) for purposes of conducting market concentration analysis under new § 333.5(c), as discussed in more detail below. ''Relevant geographic market'' would be defined as the banking market(s) of the acquiring institution and the institution to be acquired as defined by the Federal Reserve Board at the time a merger filing is submitted. If a banking market has not been defined by the Federal Reserve Board, the relevant geographic market would consist of each county in which both the acquiring institution and the institution to be acquired have branch locations, as adjusted to reflect factors that influence how customers in the market seek and obtain banking products and services. For additional discussion of this definition, see section IV.I.3 of this Supplementary Information.

Question 29: Is the proposed definition of ''relevant geographic market'' appropriate? Should the FDIC continue to rely primarily on the Federal Reserve Board's definition of a banking market, or should the FDIC provide a different definition? Why or why not?

C. Transactions Requiring Prior Approval (§ 303.62)

The proposed rule would revise § 303.62 to reflect the new defined terms discussed above and to clarify the application of other FDIC Rules and Regulations to merger transactions.

1. Merger Transactions (§ 303.62(a))

Under § 303.62(a), and consistent with the BMA,[26] the FDIC's prior written approval would be required for (1) any merger transaction in which the resulting institution is to be an FDIC-supervised institution;[27] and (2) any merger transaction that involves a bank or institution that is not insured by the FDIC. The proposed rule would make conforming revisions to § 303.62(a) to reflect the new definition of ''merger transaction'' in § 303.61(h). The proposed rule would clarify that the definition of ''merger transaction'' includes a merger in substance, as defined in § 303.61(g).

As discussed previously, neither the revision of the defined term ''merger transaction'' in § 303.61(h), nor the conforming changes to § 303.62(a), are intended to alter the scope of transactions subject to FDIC approval under the BMA.

Question 30: Is the FDIC's treatment of ''mergers in substance'' as subject to the same filing and processing requirements as merger transactions appropriate? Why or why not? Please explain why another approach may be appropriate.

2. Related Regulations (§ 303.62(b))

Section 303.62(b) states that transactions covered by subpart D may be subject to other regulations or application requirements (collectively, related regulations) in addition to those in subpart D. Section 303.62(b) then provides examples of potentially applicable related regulations. The FDIC routinely receives questions regarding the application of the related regulations to merger transactions and proposes to revise § 303.62(b) to provide additional clarity.

Question 31: Should the FDIC adopt a different approach for addressing related regulations? For example, should related regulations be addressed in preamble only, an appendix to 12 CFR part 303, or an SOP instead of in § 303.62(b)? Why or why not?

a. Interstate Merger Transactions (§ 303.62(b)(1))

The proposed rule would revise § 303.62(b)(1) to incorporate the new defined term ''interstate merger transaction'' and provide that such transactions are subject to the restrictions and requirements of section 44 of the FDI Act. Section 44(a) of the FDI Act provides that a responsible agency may approve a merger transaction under the BMA between insured banks with different home States, without regard to whether such transaction is prohibited under the law of any State, subject to certain limitations.[28] The FDIC encourages potential applicants to consult with the FDIC and the relevant State regulators to confirm whether, and to what extent, State law applies to a merger transaction

[26] *See* 12 U.S.C. 1828(c)(1) and (2).

[27] ''FDIC-supervised institution'' means any entity for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act, 12 U.S.C. 1813(q). *See* 12 CFR 303.2(ee). The FDIC is the appropriate Federal banking agency for any State nonmember insured bank, any foreign bank having an insured branch, and any State savings association. *See* 12 U.S.C. 1813(g).

[28] *See* 12 U.S.C. 1831u(a).

prior to submitting a merger filing. Section 44(b) of the FDI Act outlines the filing requirements and applicable modifications to the statutory factor analysis for an interstate merger transaction. Under the proposed rule, an interstate merger transaction would be subject to such provisions.

Question 32: Would the proposed revisions to § 303.62(b)(1) with respect to interstate merger transactions provide additional clarity and certainty to the public? Why or why not?

Question 33: Should the FDIC address other elements of interstate merger transactions in subpart D or elsewhere? Why or why not?

b. Deposit Insurance for Interim Institutions (§ 303.62(b)(2))

The proposed rule would divide the content of current § 303.62(b)(2) into two separate subsections to more clearly address the distinctions between Federal deposit insurance for State-chartered interim institutions and Federally-chartered interim institutions. The proposed rule would not change the provision of Federal deposit insurance for certain interim institutions under section 5(a)(2) of the FDI Act or the procedures for applying for deposit insurance for interim institutions in § 303.24.

New § 303.62(b)(2)(i) would specify that State interim institutions are not insured by operation of law. The FDI Act only provides automatic Federal deposit insurance in the case of a Federal interim institution that is chartered by the appropriate Federal banking agency and will not open for business.[29] Therefore, FDIC action is needed to either grant Federal deposit insurance to the State interim institution or to act on the merger filing between a noninsured State interim institution and an IDI under the BMA.

New § 303.62(b)(2)(ii) would address deposit insurance for Federal interim institutions. The proposed rule would specify that where the resulting institution is FDIC-supervised and FDIC action is required under the BMA, an additional deposit insurance application is unnecessary. Further, the proposed rule would specify that Federal interim institutions that do not open for business are insured by operation of law pursuant to section 5(a)(2) of the FDI Act. Consequently, the merger of a Federal interim institution with another IDI is not subject to FDIC approval if the Federal interim institution has not been, and will not be, open for business.

Question 34: Would the proposed revisions to § 303.62(b)(2) provide additional clarity and certainty to the public? Why or why not?

Question 35: Should the FDIC address other elements of deposit insurance for interim institutions in subpart D or elsewhere? Why or why not?

c. Other Related Regulations (§ 303.62(b)(3) and (4))

The proposed rule would revise the substance of current § 303.62(b)(3) and (4) to replace the term ''application'' with ''filing'' for consistency with the remainder of the proposed rule. The proposed rule would also strike the reference to the ''Interagency Policy Statement Concerning Branch Closing Notices and Policies'' (1 FDIC Law, Regulations, Related Acts (FDIC) 5391) in current § 303.62(b)(3) as part of the agency's initiative to streamline the FDIC Rules and Regulations; however, this would not change the force of the statement. The FDIC notes that this joint policy statement specifically addresses merger transactions, and the FDIC encourages potential applicants to review this resource.[30] The proposed rule would retain current § 303.62(b)(5).

Question 36: Are there other elements of the related regulations that the FDIC should address in subpart D or elsewhere? Why or why not?

D. Filing Procedures (§ 303.63)

1. General (§ 303.63(a))

The proposed rule would revise § 303.63(a) to provide that forms and instructions may be obtained upon request from any FDIC regional office or the FDIC website. The proposed rule would also permit an IDI contemplating a *de minimis* merger transaction to submit a letter filing. This aspect of the proposed rule is consistent with the approach adopted in OCC regulations.[31]

2. Submission Requirements (§ 303.63(b))

The proposed rule would revise § 303.63(b) to provide that merger filings shall be accompanied by copies of all agreements or proposed agreements related to the merger transaction. The proposed rule would clarify that the FDIC may request additional information as necessary to reach a decision on the merger filing, and that an applicant may voluntarily submit additional information for consideration under the provisions of new § 333.5. These changes are consistent with longstanding practice that the FDIC may request additional information regarding agreements and proposed agreements related to the merger transaction if necessary to evaluate the statutory factors.

Section 303.63(b) is not intended to establish a new compliance obligation. Submission of additional information for consideration under new § 333.5 is voluntary. If an applicant would like the FDIC to consider mitigating factors, as described in new § 333.5, then the applicant should submit supporting materials for the agency's review.

Question 37: Should the FDIC permit applicants to voluntarily submit supplementary information? Why or why not?

Question 38: Should the FDIC permit or require applicants to submit information not otherwise addressed in § 303.63(b)? Why or why not?

3. Interim Merger Transactions (§ 303.63(c))

The proposed rule would retain much of the substance of § 303.63(c) with conforming changes to reflect the new definitions in the proposed rule.

Question 39: Should the FDIC adopt substantive changes to § 303.63(c)? Why or why not?

E. Processing (§ 303.64)

1. Filing Decisions (§ 303.64(a))

a. Timeliness (§ 303.64(a)(1))

The proposed rule would establish a new procedural framework for processing merger filings to implement more consistency, timeliness, and discipline regarding the FDIC's review of and decisions concerning merger filings. Under new § 303.64(a)(1), the FDIC would be required to render a decision on a substantially complete merger filing within the new processing timelines in the proposed rule for the applicable merger transaction type. The BMA requires the FDIC to issue prior written approval of merger transactions and to inform the Attorney General of such approval,[32] and, in its implementation of the proposed rule, the FDIC would issue written approval of its decision and copy the Attorney General on the associated notification to ensure compliance with the requirements of the BMA.

The FDIC recognizes that in recent years, the merger filing review process has been too lengthy and overly burdensome for applicants. The proposed rule is intended to address these concerns by requiring agency action within specified time frames that are appropriately tailored to the typical complexity of specific transaction categories.

[29] *See* 12 U.S.C. 1815(a)(2).

[30] *See* 64 FR 34844, 34845 (June 29, 1999).

[31] *See* 12 CFR 5.33(j).

[32] *See* 12 U.S.C. 1828(c)(1), (2), and (6).

Question 40: Should the FDIC adopt mandatory processing timelines? Why or why not?

b. Immediate Consummation (§ 303.64(a)(2))

The proposed rule would provide that corporate reorganizations will be authorized for immediate consummation on receipt of the FDIC's written approval at new § 303.64(a)(2). Before acting on a merger filing, the BMA generally requires the responsible agency to (i) request a report on the competitive factors involved from the Attorney General; and (ii) provide a copy of the request to the FDIC when the FDIC is not the responsible agency.[33] However, the responsible agency is not required to request a competitive factors report if the merger transaction involves solely an IDI and one or more of the IDI's affiliates.[34] Congress established this exception in the Financial Services Regulatory Relief Act of 2006 (FSRRA), the purposes of which included providing regulatory relief and improving productivity for IDIs.[35] Eliminating the competitive factors report requirement for merger transactions involving solely an IDI and one or more of its affiliates suggests that Congress did not view such transactions as presenting a risk to competition in the market. This aligns with the FDIC's supervisory experience in reviewing such transactions and observation that affiliates generally do not compete against each other. Accordingly, the FDIC concludes that corporate reorganizations do not present a risk of violating the BMA's prohibition against approving a merger transaction that would result in a monopoly, be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking, or otherwise have the effect in any section of the country to substantially lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade.[36] For this reason, the FDIC does not typically request a competitive factors report from the Attorney General for a corporate reorganization, and would not do so under the proposed rule.

The BMA generally imposes a waiting period before the parties may consummate an approved merger transaction.[37] However, if the merger transaction is solely between an IDI and one or more of its affiliates and the responsible agency has not requested a competitive factors report, then the transaction may be consummated immediately upon approval by the agency.[38] Because the FDIC has concluded corporate reorganizations do not present a risk to competition and will not request a competitive factors report for a corporate reorganization, the proposed rule would state that corporate reorganizations would be authorized for immediate consummation upon the applicant's receipt of the FDIC's written approval. The proposed rule would provide certainty to applicants regarding the FDIC's processing of corporate reorganizations, consistent with the purposes of FSRRA.

2. Substantially Complete Filings (§ 303.64(b))

The proposed rule would address the FDIC's disposition of incomplete merger filings at new § 303.64(b). The proposed rule would provide that, for incomplete merger filings, the FDIC would notify the applicant within 21 days after receipt of the submission and provide a written explanation regarding the information or materials that would be needed to render the merger filing substantially complete. This reflects the FDIC's current practice of issuing an initial Additional Information Request to seek additional materials to render a merger filing complete but imposes a timeline on the FDIC to ensure that merger filings are processed in a timely manner. The proposed rule would provide that, if the FDIC does not provide notice within 21 days after receipt that a merger filing is incomplete, the merger filing would be deemed substantially complete as of the date of receipt. This provision would further ensure that merger filings are processed in a timely manner.

If the FDIC issued a notice under this subpart, the proposed rule would require an applicant to provide the information or materials requested by the FDIC within 30 days of the applicant's receipt of the notice. Additionally, the proposed rule would allow the FDIC to return a merger filing as incomplete without rendering a decision on the merger filing if the applicant failed to produce the requested information within the 30-day timeframe. This framework would impose substantially more rigor and discipline around timeframes for determining that a merger filing is substantially complete compared to the FDIC's historical approach.

The proposed rule would make corresponding changes to § 303.11(e) to permit the FDIC to return an incomplete filing to an applicant if the filing does not contain all information set forth in the applicable subpart, or if information requested by the FDIC is not provided within the time specified by the FDIC. This change would apply to all filings submitted to the FDIC and is intended to provide additional clarity and certainty to applicants by establishing a process for the FDIC to clearly notify the applicant that a filing does not contain sufficient information for the FDIC to render a decision. Under the proposed rule, the FDIC would notify the applicant and any interested parties that submitted comments to the FDIC that the filing has been returned and that the FDIC has not rendered a decision on the filing.

Question 41: Should the FDIC codify the process and timelines for determining whether a filing is substantially complete? Why or why not?

Question 42: Are the proposed steps and timeframes for determining whether a filing is substantially complete appropriate? Why or why not?

Question 43: Should the FDIC adopt a process for returning an incomplete filing? Why or why not? Should a different process be adopted? Why or why not?

Question 44: Should the FDIC adopt an explicit provision that would enable an applicant to request, and the FDIC to grant, additional time to submit information? Why or why not?

Question 45: Should the FDIC apply the same timelines and process for all filings, or are there reasons different types of filings should be subject to different approaches?

3. Rapid Processing for de Minimis Merger Transactions (§ 303.64(c))

The proposed rule would establish a new category of rapid processing for *de minimis* merger transactions at § 303.64(c). Such transactions would, unless the Attorney General objects to the transaction on competitive grounds within the statutory timeframe, be deemed approved by the date that is the latest of: (1) five business days after the date of the FDIC's receipt of a substantially complete letter filing; or (2) if the transaction is not also a corporate reorganization, 5 days after (A) receipt of a BMA competitive factors report confirming that the Attorney General does not object to the transaction on competition grounds; (B) the expiration of the timeframe permitted in section 18(c)(4) of the FDI Act if no competitive factors report has been received; or (c) the end of the time period set forth in a request by the

[33] 12 U.S.C. 1828(c)(4)(A).

[34] 12 U.S.C. 1828(c)(4)(C)(ii).

[35] Public Law 109–351, 120 Stat. 1966.

[36] *See* 12 U.S.C. 1828(c)(5).

[37] 12 U.S.C. 1828(c)(6).

[38] 12 U.S.C. 1828(c)(6).

Attorney General for additional time to analyze competitive concerns.[39] Based on the FDIC's supervisory experience, it is appropriate to provide ''deemed approval'' for *de minimis* merger transactions because the definition of *de minimis* merger transaction in § 303.61(c) includes only transactions that necessarily satisfy the statutory factors by virtue of the size and/or structure of the transaction and the attributes of the institutions involved.

The definition of *de minimis* merger transactions has been constructed to ensure such transactions would result in a favorable finding on each of the statutory factors and therefore warrant a letter filing and deemed approval approach. Merger transactions below the HSR thresholds that are less than 5 percent of the assets of the acquiring institution and that do not result in an adverse competitive factors report from the Attorney General, and corporate reorganizations involving the consolidation of an operating subsidiary that do not change the IDI's legal and financial risks, each will always satisfy the competition and financial stability statutory factors due to the type of transaction. The other statutory factors are conclusively satisfied based on the eligibility criteria for the merging institutions and the criteria that the resulting institution must be well-capitalized.

Moreover, as discussed, the categories of transactions in § 303.61(c)(1) are limited to transactions that do not pose a risk to the safety and soundness of the acquiring IDI or the U.S. banking or financial system based on their structure or structure and size, particularly when engaged in by IDIs that satisfy the eligibility criteria in § 303.61(c)(2).

The deemed approval construct for *de minimis* merger transactions would ensure routine, nearly automated approval of transactions that the FDIC has determined can be processed in a rapid fashion without in-depth supervisory review and potential delay. The proposed rule would also reduce regulatory burden for such transactions by establishing streamlined letter filing requirements for *de minimis* merger transactions in § 303.64(c)(2). These streamlined letter filing requirements reflect the information needed to review a *de minimis* merger transaction and ensure that the transaction qualifies as a *de minimis* merger transaction. A letter filing for a *de minimis* merger transaction that contains all the required information would be considered substantially complete. The processing timeline would begin upon receipt of a substantially complete filing, and approval would follow based on the aforementioned timelines as a matter of course.

Question 46: What are the advantages and disadvantages of the filing and processing requirements for de minimis merger transactions? What changes, if any, should the FDIC consider for purposes of a final rule?

Question 47: What are the advantages and disadvantages of a letter filing for de minimis merger transactions?

Question 48: Are the content requirements for the letter filing appropriate? Why or why not? Are any of the proposed letter filing content requirements unnecessary? Are there additional content requirements that would be appropriate? If so, what are they, and what would be the advantages and disadvantages of including them for purposes of a final rule?

Question 49: Are the proposed timeframes for deemed approval of de minimis merger transactions reasonable? Why or why not? If not, what timeframe(s) would be reasonable, and why?

Question 50: Should the FDIC adopt flexibility to remove a de minimis merger transaction from rapid processing under § 303.64(c)? Why or why not? If yes, please explain under what circumstances.

Question 51: Given the limited risk presented by transactions qualifying for rapid processing under § 303.64(c), should the FDIC adopt a deemed approval framework for such transactions? Why or why not?

4. Removal From Expedited Processing (§ 303.11(c))

The proposed rule would provide that merger filings subject to expedited processing in new §§ 303.64(d) and (e) could be removed from expedited processing for any of the reasons set forth in revised § 303.11(c)(2).[40] Section 303.11(c)(2) currently provides that the FDIC may remove a merger filing from expedited processing if an adverse comment or CRA protest is received that warrants additional investigation or review, or if the appropriate Regional Director determines that the merger filing presents a significant CRA or compliance concern, a significant supervisory concern or significant legal or policy issue, or that other good cause exists for removal. Based on supervisory experience, the FDIC has found that adverse comments and CRA protests typically do not warrant extensive additional investigation or review and can frequently be resolved within the expedited processing timeline. In a circumstance where an adverse comment or CRA protest can be resolved within this timeframe based on the supervisory record and other available information, the FDIC expects that a merger filing qualifying for expedited processing would not be removed from expedited processing simply due to the filing of an adverse comment or CRA protest. Additionally, under the proposed rule, the FDIC would not remove an otherwise qualifying merger filing from expedited processing based on an adverse comment or CRA protest unless the supervisory record or other available information supports the conclusion that the merger filing presents a significant CRA concern, a significant compliance or supervisory concern, a significant legal or policy issue, or that other good cause exists for removal. This is intended to ensure that a merger filing would only be delayed due to adverse comments or CRA protests if there is evidence to suggest that the adverse comments or CRA protests warranted additional investigation or review and the allegations were sufficiently severe such that they would impact the FDIC's analysis of the statutory factors.

While the additional time required to hold a hearing would constitute good cause for removing a merger filing from expedited processing, hearings have been exceptionally rare because, under § 303.10(c), ''[t]he FDIC generally grants a hearing request only if it determines that written submissions would be insufficient or that a hearing otherwise would be in the public interest.'' Because, as discussed above, concerns raised in written submissions can generally be addressed based on the supervisory record and other available information, the FDIC expects that hearings will continue to be exceptionally rare. The public interest is generally not served by expending resources on hearings that do not produce information relevant to the statutory factors beyond that already in the written record. The determination as to whether a hearing is appropriate is within the sole discretion of the FDIC. As set forth in § 303.10(d), ''[a] decision to deny a hearing request shall be a final agency determination and is not appealable.''

The FDIC proposes to make corresponding changes to § 303.11(c) to reflect these expectations as applied not

[39] If the Attorney General issues an adverse competitive factors report regarding a merger transaction, it would not qualify for rapid processing as a *de minimis* merger transaction under the proposal.

[40] The proposed rule would not permit the FDIC to remove a transaction from rapid processing under § 303.64(c).

only to merger filings but also to other filings subject to removal under § 303.11(c) because the FDIC has determined that themes are consistent across filing types. Specifically, the proposed rule would refine the reasons for removal from expedited processing listed in § 303.11(c)(2). Under the proposed rule, the FDIC would be permitted to remove a filing from expedited processing at any time prior to final disposition if: (i) for filings subject to public notice under § 303.7, an adverse comment is received that is supported by the supervisory record or other available information and warrants additional investigation or review; and (ii) for filings subject to evaluation of CRA performance under § 303.5, a CRA protest is received that raises a significant CRA concern, is supported by the supervisory record or other available information, and warrants additional investigation or review.

Additionally, the proposed rule would add a new § 303.11(c)(5) to codify the FDIC's expectation that the removal of a filing from expedited processing would be rare. The proposed rule would provide that filing of an adverse comment or CRA protest would not automatically remove a filing from expedited processing, and that, rather, the FDIC would determine if it was necessary to remove a filing because the allegations were sufficiently severe to impact the FDIC's analysis of the statutory factors. This provision is intended to enhance the predictability of timelines for the FDIC's processing of merger filings.

Question 52: Are the proposed modifications to removal from expedited processing appropriate? Should the FDIC provide more or less specificity? Why or why not?

Question 53: Should the FDIC include a maximum number of days for the extension of the processing timeframe for filings that are removed from expedited processing due to the FDIC's receipt of an adverse comment or CRA protest in § 303.11(c)? If so, why, and what would be an appropriate number of days?

5. Expedited Processing for Corporate Reorganizations That Are Not de Minimis Merger Transactions (§ 303.64(d))

The proposed rule would establish new expedited processing procedures for corporate reorganizations that are not *de minimis* merger transactions at new § 303.64(d). Expedited processing would be available if: (1) immediately following the transaction, the resulting institution would be ''well-capitalized;'' and (2) (A) all parties to the transaction received an FDIC-assigned composite rating of 3 or better under the UFIRS as a result of the most recent Federal or State examination, to the extent applicable; or (B) the acquiring party is an eligible depository institution and the amount of the total assets to be acquired does not exceed an amount equal to 25 percent of the acquiring institution's total assets as reported in its Call Report for the quarter immediately preceding the filing. This two-prong test is a change from the FDIC's existing criteria to qualify for expedited processing under current § 303.64(a). Under the first prong, the FDIC currently requires all parties to be eligible depository institutions; under the proposed approach, the parties would need to be 3-rated or better to qualify. Furthermore, under the second prong, the proposed rule would raise the asset threshold applicable to eligible depository institutions from the current 10 percent to 25 percent.

The FDIC has found that corporate reorganizations that are not *de minimis* merger transactions but that satisfy the proposed qualifying criteria are also typically less complex in structure and scale than other types of merger transactions and accordingly also warrant a relatively less intensive review of the statutory factors. However, such corporate reorganizations tend to be more complex than those qualifying for rapid processing as *de minimis* merger transactions.

For most corporate reorganizations that are not *de minimis* merger transactions, and particularly those that do not involve affiliate IDIs, review under the BMA involves only the ratings of the acquiring institution and an analysis of how the transaction would impact the resulting institution. For corporate reorganizations involving affiliate IDIs, both IDIs' ratings would be relevant to the analysis under the BMA. As discussed above, the FDIC has concluded corporate reorganizations do not present a risk of violating the BMA's competition-related prohibitions.

The FDIC would have the discretion to remove a corporate reorganization that is not a *de minimis* merger transaction from expedited processing for any of the reasons set forth in § 303.11(c)(2). However, given the reduced risks associated with a corporate reorganization eligible for expedited processing and the applicant's interest in timely consummation of a corporate reorganization, and for the other reasons discussed, the FDIC expects removal of such transactions from expedited processing to be rare.

Under the proposed rule, the FDIC would take action on a merger filing for a corporate reorganization that is not a *de minimis* merger transaction and qualifies for expedited processing by the date that is the latest of: (1) 30 days after the date of the FDIC's receipt of a substantially complete merger filing; or (2) for an interstate merger transaction subject to the provisions of section 44 of the FDI Act, five business days after the FDIC receives confirmation from the host State that the applicant has both complied with the filing requirements of the host State and submitted a copy of the filing to the host State's bank supervisor. Because the FDIC can conduct a meaningful review of the statutory factors for corporate reorganizations in a shorter timeframe than other types of merger transactions, other than those that qualify for rapid processing as *de minimis* merger transactions, the FDIC believes it is appropriate to establish a relatively shorter timeframe for processing such transactions. Indeed, experience has demonstrated that the FDIC can conduct a meaningful review of the BMA statutory factors within the proposed timeframes under this section regardless of the type of corporate reorganization, for example, whether the transaction involves affiliate IDIs or an IDI and a nonbank affiliate.

Question 54: Are the proposed timeframes for approval of a corporate reorganization that is eligible for expedited processing under § 303.64(d) and not a de minimis merger transaction appropriate? Why or why not? If not, what timeframes would be appropriate, and why?

Question 55: Should the FDIC adopt specific reasons for removing a corporate reorganization from expedited processing under § 303.64(d)? Why or why not? If yes, please explain.

Question 56: Are the eligibility criteria for expedited processing under § 303.64(d) appropriate? If not, please explain.

Question 57: Should the FDIC adopt presumptions or safe harbors that specific factors, for example, managerial resources, under § 333.5 will be resolved favorably for a corporate reorganization eligible for expedited processing under § 303.64(d) absent existing supervisory concerns? Why or why not?

Question 58: Given the limited risk presented by transactions qualifying for expedited processing under § 303.64(d), should the FDIC adopt a deemed approval framework for such transactions or otherwise process them pursuant to rapid processing under new § 303.64(c)? Why or why not?

Question 59: Are there additional criteria or requirements the FDIC could apply to such corporate reorganizations that would make a deemed approval framework appropriate?

Question 60: Should the FDIC expressly address requirements for merger transactions involving an acquisition of a subsidiary that is a permitted payment stablecoin issuer (PPSI), as that term is defined in the Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act at 12 U.S.C. 5901(23)? Under the GENIUS Act, an IDI that seeks to issue payment stablecoins must do so through a subsidiary that has been approved to issue payment stablecoins. However, an IDI with a subsidiary that issues payment stablecoins may seek to exit that business and wind up the subsidiary, in which case the subsidiary could be merged into the IDI. In addition, there may be cases in which an IDI with a subsidiary that issues payment stablecoins enters into a merger transaction with another IDI with a subsidiary that issues payment stablecoins. Should the FDIC expressly address such transactions? If so, what provisions would be appropriate?

6. Expedited Processing for Eligible Depository Institutions Engaging in Merger Transactions That Are Not Corporate Reorganizations Eligible for Expedited Processing Under § 303.64(d) or de Minimis Merger Transactions (§ 303.64(e))

The proposed rule would revise current § 303.64(a) to address expedited processing for other merger transaction types when engaged in by eligible depository institutions, and relocate the revised § 303.64(a) to new § 303.64(e). The proposed rule would retain expedited processing for eligible depository institutions that satisfy the revised criteria in new § 303.64(e)(3). The proposed rule would update the expedited processing criteria in current § 303.64(a)(4)(ii)(B) to increase the transaction size threshold. Under the proposed rule, the maximum amount of the total assets to be transferred in the transaction would increase from 10 percent to 25 percent of the acquiring institution's total assets as reported in its Call Report for the quarter immediately preceding the filing.

The proposed rule would retain the timing provisions in current § 303.64(a)(2), with certain modifications to reflect the FDIC's practice with respect to the competitive factors report in § 303.64(a)(2)(iii) consistent with the language used in new § 303.64(c), along with the FDIC's discretion to remove a filing from expedited processing for the reasons set forth in § 303.11(c)(2), as revised under the proposed rule. As discussed, the FDIC would expect removal from expedited processing to be rare.

Question 61: Should the FDIC adopt specific reasons for removing a merger transaction from expedited processing under § 303.64(e)? Why or why not? If yes, please explain.

Question 62: Are the eligibility criteria for expedited processing under new § 303.64(e) appropriately tailored? Should any of the criteria be modified? Please explain.

Question 63: Are there other categories of expedited processing that the FDIC should adopt? Why or why not?

Question 64: Given the limited risk presented by transactions qualifying for expedited processing under § 303.64(e), should the FDIC adopt a deemed approval framework for such transactions or otherwise subject them to rapid processing under new § 303.64(c)? Why or why not? If not, are there additional criteria or requirements the FDIC could apply to such transactions that would make a deemed approval framework appropriate?

Question 65: Should expedited processing under § 303.64(e) be limited to merger transactions where the resulting institution would not exceed a certain asset size threshold, e.g., $50 billion? Why or why not?

7. Standard Processing for Qualifying Merger Transactions (§ 303.64(f))

The proposed rule would address standard processing procedures for certain qualifying merger filings that do not qualify for expedited or rapid processing at new § 303.64(f) and (g). In the FDIC's experience, merger transactions subject to standard processing procedures are often more complex and present more involved supervisory, regulatory, and legal considerations than merger transactions subject to expedited or rapid processing. As such, merger transactions subject to standard processing procedures require additional time and FDIC resources to process and evaluate against the statutory factors as compared to merger transactions qualifying for expedited or rapid processing. The additional required time and resources may vary based on the specific transaction, such as where action may be reserved to the FDIC Board of Directors (FDIC Board) or require interagency coordination. Accordingly, the proposed rule would adopt two separate standard processing timelines to account for processing complexities associated with certain merger transactions in § 303.64(f) and (g). The proposed changes are intended to provide applicants with greater transparency and clarity and to enhance FDIC accountability with respect to timeframes while also allowing sufficient time to manage and resolve any complexities presented by a merger filing.[41]

Under new § 303.64(f), the FDIC would take action on certain qualifying merger filings within 90 days after receipt of a substantially complete merger filing. Standard processing under new § 303.64(f) would apply to merger filings in which the resulting institution would have less than $50 billion in assets, authority to act on the merger filing is not reserved to the FDIC Board, and consummation of the transaction is not dependent upon action by another Federal regulator. A concurrent merger between two bank holding companies related to the merger of two banks would not prevent the FDIC from processing the bank merger transaction pursuant to this section. The FDIC would be able to extend the 90-day timeframe by a maximum of 90 additional days, for a total maximum processing time of 180 days, due to extenuating circumstances. The FDIC would be required to notify an applicant of any extension to the processing timeline and include a specific reason for the extension. Under the proposed rule, the FDIC would take action on a merger filing that is subject to an extended standard processing timeline within a maximum of 180 days.

For all merger filings subject to standard processing procedures in § 303.64(f) and (g), the FDIC expects that extensions of the initial processing timeline would be based on extenuating circumstances, such as significant credit or liquidity issues due to accounting errors affecting one of the institutions involved in the merger transaction. The initial processing timeline would not be extended due to internal delays within the FDIC's control; for example, due to the FDIC's workload.

8. Standard Processing for All Other Merger Transactions (§ 303.64(g))

For all other merger filings, the proposed rule would include new standard processing procedures in § 303.64(g). Based on the FDIC's experience, as compared to the standard processing option for qualifying merger transactions in § 303.64(f), merger transactions under § 303.64(g) often require additional processing time due

[41] *See* General Application Processing Timeframes for Regional Offices, FDIC, *available at https://www.fdic.gov/regulations/applications/application-processing-timeframes.pdf.*

to the size of the transaction and certain processing considerations, including where authority to act on the merger filing is reserved to the FDIC Board or consummation of the transaction is dependent upon action by another Federal regulator. New § 303.64(g) would provide that the FDIC would take action on a merger filing under § 303.64(g) within 150 days of the FDIC's receipt of a substantially complete merger filing. The FDIC would be able to extend the 150-day timeframe by a maximum of 120 additional days, for a total maximum processing time of 270 days, due to extenuating circumstances as described above. The FDIC would be required to notify an applicant of any extension to the processing timeline and include a specific reason for the extension. As discussed, for all merger filings subject to standard processing procedures in § 303.64(f) and (g), the FDIC expects that extensions of the initial 90- or 150-day processing timeline would be based on extenuating circumstances.

Question 66: Should the FDIC adopt different processes and time limits for standard processing? Why or why not?

Question 67: Are there other categories of merger transaction subject to standard processing that the FDIC should address in subpart D? If yes, please explain.

Question 68: Should the FDIC adopt any exceptions to standard processing that may warrant the use of shorter or longer processing deadlines? If yes, please explain.

9. Standard Processing for State Savings Associations (§ 303.64(h))

The proposed rule would revise existing § 303.64(c) and move it to new § 303.64(h). The proposed rule would include technical changes to conform to terminology used in other sections of subpart D, such as removing references to automatic or default approval, but would not change the substance of this section, which requires the FDIC to approve or disapprove a merger filing filed by a State savings association before the end of 60 days of the FDIC's receipt of a substantially complete filing, consistent with the Home Owners' Loan Act.[42] The 60 day time period is an outer limit, however, and a qualifying merger filing by a State savings association may receive rapid or expedited processing within a shorter time period if eligible.

F. Public Notice Requirements (§ 303.65)

1. General (§ 303.65(a))

The proposed rule would continue to address public notice requirements for merger transactions with modifications at § 303.65(a). Public notice is a statutory requirement of the BMA.[43] The BMA requires publication prior to the FDIC's approval of a merger transaction, in a form approved by the FDIC, at appropriate intervals during a period at least as long as the period allowed for furnishing a report of competitive factors, in a newspaper of general circulation in the community or communities where the main offices of the banks or savings associations are located, or, if there is no such newspaper in any such community, then in the newspaper of general circulation published nearest thereto. The FDIC is proposing to modify the publication cadence, and is considering modifying the definition of ''newspaper of general circulation,'' in subpart D to reduce regulatory burden for applicants while ensuring compliance with the requirements of the BMA.

Under the current rule, an applicant for approval of a merger transaction must publish notice of the merger transaction on at least three occasions at approximately equal intervals in the community or communities where the main offices of the merging institutions are located. The proposed rule would decrease the number of requisite publications, so that an applicant for approval of a merger transaction that is not also a corporate reorganization would be required to publish notice of the merger transaction on at least two occasions instead of three.

For merger transactions that are not corporate reorganizations, the BMA requires publication at appropriate intervals during a period at least as long as the 30-day period for the Attorney General to furnish the competitive factors report. Two publications at appropriate intervals throughout the 30-day period satisfies that requirement. The FDIC does not believe that the third publication provides a material public benefit in the context of merger transactions today, particularly because once information is published, it generally remains available in the public domain throughout the required 30-day period.

Additionally, under new § 303.65(e)(1), comments for such merger transactions must be received by the appropriate FDIC office within 30 days after the first publication of the merger transaction notice, and under new § 303.65, the last publication must be made 20 days after the first publication. The FDIC believes that two publications, structured in this manner at appropriate intervals, would provide the public with sufficient notice and opportunity to comment within that 30-day period.

Publication would only be required in the communities where the main offices of the banks or savings associations are located. Publication would not be required in the communities where the main offices of a merging entity that is not a bank or a saving association is located, consistent with the language of the BMA. By its terms, the BMA only requires publication in the community or communities where the main offices of the banks or savings associations involved are located, and not any other nonbank institution involved in the transaction.[44]

Question 69: Would two rounds of publication provide sufficient notice to the public of a merger transaction? If not, why not?

Question 70: Should the FDIC codify other public notice requirements related to specific types of merger transactions, such as when Federal deposit insurance will terminate due to acquisition by a credit union? Why or why not?

Question 71: Should the FDIC codify procedures for satisfying the public notice requirement of the BMA? Why or why not? If yes, what would be the most appropriate procedure?

The FDIC considered, and seeks comment on, an alternative to the newspaper publication requirement that would involve defining ''newspaper of general circulation'' to reflect modern information channels and the means through which information is shared today. Specifically, the FDIC considered defining ''newspaper of general circulation'' to mean ''a publicly available medium of communication reasonably calculated to provide notice to members of the community.'' This definition could be codified in § 303.2(ff) such that it would apply to all FDIC filings that require publication in a newspaper of general circulation.

Under this alternative, the FDIC also could allow an applicant to publish the notice only once, provided that the notice remains available to the public throughout the applicable newspaper publication period, or the applicable public comment period if there is no applicable newspaper publication period, as set forth in part 303 of the FDIC Rules and Regulations.

This alternative would recognize that the BMA and other similar statutes were

[42] 12 U.S.C. 1467a(s)(2).

[43] 12 U.S.C. 1828(c)(3).

[44] 12 U.S.C. 1828(c)(3)(D).

drafted at a point in time when traditional print newspapers served as the primary source for sharing news and information. Modern communication channels such as online sources have drastically changed how news and information are shared today, making reliance on traditional print newspapers as the sole means by which an applicant can satisfy the public notice requirement outdated. Moreover, the requirement to publish notice in a traditional newspaper often imposes unnecessary regulatory burden on an applicant, for example, by requiring an applicant to locate a newspaper and pay the newspaper to publish notice. Under such an alternative, requiring publication more than once may be unnecessary because modern mediums for sharing information and news are generally available 24 hours a day, seven days a week during the applicable notice period.

Question 72: What are the advantages and disadvantages of the alternative public notice requirements discussed above? Are the other alternatives the FDIC should consider? If so, please explain.

Question 73: Should the FDIC define ''newspaper of general circulation'' for purposes of a final rule? Why or why not?

Question 74: Should the FDIC consider a different definition of ''newspaper of general circulation'' than the one discussed above? Would the definition under consideration benefit from more specificity? If so, how?

2. Corporate Reorganizations (§ 303.65(b))

The proposed rule would establish reduced publication requirements for corporate reorganizations at new § 303.65(b), consistent with the requirements of the BMA. As noted above, the BMA generally requires public notice to be published during a period at least as long as the period allowed for furnishing a report of competitive factors. However, the BMA does not require a responsible agency to request a competitive factors report for corporate reorganizations, and the FDIC will not request a competitive factors report for a corporate reorganization under the proposed rule.[45] The requirement that an applicant publish notice at appropriate intervals during a period at least as long as the period allowed for furnishing a report of competitive factors does not, practically speaking, apply to such transactions. Thus, the proposed rule would require an applicant for a corporate reorganization to publish only once in a newspaper of general circulation in the community or communities where the main office of the bank or savings association is located instead of three times.

Question 75: Would one round of publication in a newspaper in the community or communities where the main office of the merging institutions are located provide sufficient notice to the public of a corporate reorganization? Why or why not?

3. Exceptions (§ 303.65(c))

The proposed rule would revise existing § 303.65(b) and move it to a new § 303.65(c). The proposed rule would reduce the number of newspaper publications for a merger transaction when the FDIC determines that an emergency exists requiring expeditious action. Under new § 303.65(c)(1), if the FDIC determines that an emergency exists requiring expeditious action, publication would only be required once. This clarification would also be consistent with the modernization efforts proposed in other parts of proposed § 303.65, including reducing the number of publications required for corporate reorganizations in § 303.65(b). The proposed rule would retain the current exception for merger transactions involving probable failures at new § 303.65(c)(2).

Question 76: Should the FDIC adopt other exceptions to the public notice requirements? Why or why not?

4. Content of Notice (§ 303.65(d))

The proposed rule would revise existing § 303.65(c) and move the provision to new § 303.65(d). The proposed rule would not change the notice content requirements; however, it would make clarifying changes to indicate that the public notice should make clear when branches will remain in operation and when they will be closed. Additionally, the proposed rule would delete existing § 303.65(c), which refers to an emergency requiring expeditious action, because this circumstance would be addressed in new § 303.65(c)(1).

Question 77: Should the FDIC make further revisions to the content of notice requirements? Why or why not?

5. Public Comments (§ 303.65(e))

The proposed rule would move existing § 303.65(d) to new § 303.65(e) with revisions. The proposed rule would retain the 30-day comment period for merger filings submitted pursuant to §§ 303.64(e) through (h). Under new § 303.65(e)(1), comments for such merger filings must be received by the appropriate FDIC office within 30 days after the first publication of the merger transaction notice, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2). However, if the FDIC has determined that an emergency exists requiring expeditious action, comments must be received by the appropriate FDIC office within 10 days after the publication under new § 303.65(e)(2). This time period is consistent with the existing comment period for such merger transactions at existing § 303.65(d) and the amount of time the BMA permits the Attorney General to respond to a request for a competitive factors report when the responsible agency advises the Attorney General that an emergency exists requiring expeditious action.[46]

The proposed rule would shorten the public comment period for corporate reorganizations that are not also *de minimis* merger transactions to 15 days instead of 30 days at new § 303.65(e)(3). In the FDIC's experience, such transactions garner little, if any, public comment, and the public comment period unnecessarily delays consummation of corporate reorganizations, which are not subject to a statutory waiting period under the BMA. Accordingly, the FDIC proposes to shorten the public comment period for corporate reorganizations that are not also *de minimis* merger transactions.

The proposed rule would also eliminate the public comment period for *de minimis* merger transactions. In the FDIC's experience, such transactions garner little, if any, public comment. Indeed, corporate reorganizations between an IDI and its operating subsidiary present little interest to the community because they are a matter of corporate structure that do not impact services available to the community. For example, in the past five years, the FDIC has received one CRA protest for a corporate reorganization involving an IDI and its subsidiaries. In this case, the FDIC found that due to the nature of the merger transaction, the corporate reorganization had no impact on the IDI's ability to meet the convenience and needs of its communities. Similarly, the FDIC expects other *de minimis* merger transactions to have minimal impact on the communities served. In the FDIC's experience, public comments on these types of transactions generally do not raise concerns that the FDIC is not already aware of through the supervisory process. For these reasons, the FDIC proposes to eliminate the

[45] 12 U.S.C. 1828(c)(4)(C)(ii).

[46] *See* 18 U.S.C. 1828(c)(4)(B)(ii).

public comment period for *de minimis* merger transactions.

The proposed rule would also make corresponding changes to § 303.7(a) to reflect the updated public comment periods for merger filings and remove reference to publication in a newspaper of general circulation for other types of filings. Publication in a newspaper of general circulation is required by the BMA but not by other statutory authorities.

Question 78: Should the FDIC implement a shortened public comment period for all corporate reorganizations? Why or why not?

Question 79: Should the FDIC retain the public comment period for de minimis merger transactions? Why or why not? Would a shortened public comment for such transactions be more appropriate? Why or why not?

Question 80: Should the FDIC codify the removal of the comment period for de minimis *merger transactions in the regulation? Why or why not?*

6. Public Access to Filings (§ 303.8(a))

Under § 303.8(a), any person may inspect or request a copy of the non-confidential portions of a filing subject to a public notice requirement (the public file) until 180 days following final disposition of a filing. The FDIC has an obligation under the Freedom of Information Act to redact certain confidential information from the public file. Depending on the complexity of a particular filing, the redaction process can be time consuming and labor intensive. Accordingly, the FDIC requires time to prepare the public file before producing it for review. The FDIC proposes to update § 303.8(a) to provide that a public file would be provided to a requestor not more than one business day after preparation of the file is complete.

Question 81: Should the FDIC adopt a different timeframe for providing access to the public file? Why or why not?

G. Significant Asset Transfers (§ 303.66)

The proposed rule would adopt a new notice and prior non-objection framework for significant asset transfers under new § 303.66. The framework would be similar in purpose to the OCC's regulations regarding substantial asset changes by national banks and Federal savings associations.[47] Adoption of a parallel approach in the FDIC Rules and Regulations would provide the FDIC with supervisory visibility into significant asset transfers that would substantially increase the size of the IDI, but that do not meet the asset thresholds associated with a merger in substance. Based on the FDIC's supervisory experience, asset transfers of this magnitude can have the potential to affect the safety and soundness of an IDI. Adoption of this approach would allow the FDIC to address any supervisory, regulatory, or legal concerns associated with such transfers.

In addition, the proposed definition of merger in substance may have the effect of limiting the scope of transactions subject to merger filing and processing requirements under § 303.62 and § 303.64, relative to prior practice. Adoption of a notice and non-objection framework for substantial asset transfers would subject such transactions to a framework that is materially less burdensome and time-consuming when compared to merger filing and processing requirements under § 303.62 and § 303.64.[48]

The proposed rule would require an FDIC-supervised institution to provide the FDIC with written notice of a significant asset transfer. The FDIC would issue a written decision on a significant asset transfer notice within 30 days of receipt of any such notice or alternatively notify the applicant of an extension to the processing timeframe within that same period. The FDIC could extend the 30-day timeframe by a maximum of 60 days, if necessary, due to extenuating circumstances. The FDIC would notify the applicant of any such extension and describe in the notification the underlying extenuating circumstances with specificity. If the FDIC does not issue a written decision or notify the applicant of an extension within the initial 30-day period, the significant asset transfer notice would be deemed approved at the expiration of the 30-day period. If the FDIC extended the processing timeframe and did not issue a written decision on the significant asset transfer notice before the expiration of the extended period, which would be a maximum of 60 days for a total processing timeframe of 90 days, the notice would be deemed approved upon expiration of the extended period.

In practice, the FDIC expects an FDIC-supervised institution to submit a notice when it becomes aware that it will exceed the 25 percent threshold. The notice should include information related to all transactions that are part of the series. For example, in a series of three transactions involving an acquisition that increases the institution's asset size by 10 percent, 10 percent, and 5 percent respectively, the institution should submit a notice containing information related to all three transactions. The FDIC emphasizes, as with mergers in substance, however, that asset transfers that do not meet the definition of significant asset transfer, including those that result in the entry or exit of a single business line but do not increase the FDIC-supervised institution's asset size by 25 percent or more over a rolling 12-month period, would not be subject to notice or filing requirements under subpart D.

The proposed rule would exempt from the notice requirements in subpart D a change in the assets of an FDIC-supervised institution that results from activity that is otherwise subject to FDIC approval or other FDIC filing requirements. For example, the FDIC would not require an institution to submit a notice under this subpart if a transaction was already subject to filing and approval requirements as a merger transaction under § 303.62 or if an institution acquired assets from a failed or failing institution as part of an FDIC-supervised resolution process.

The proposed rule would require the FDIC to consider the following factors in connection with the approval or non-objection to a significant asset transfer: (1) the capital level of the resulting institution; (2) the conformity of the transaction(s) to applicable law, regulation, and supervisory policy; (3) the purpose(s) of the transaction(s); and (4) the impact of the transaction(s) on the safety and soundness of the institution(s) involved in the transaction(s). The factors, which are consistent with the OCC's regulations regarding substantial asset changes by national banks and Federal savings associations, are intended to ensure the transaction or series of transactions fits within the non-objection framework and is not subject to approval under the

[47] 12 CFR 5.53.

[48] To the extent an acquisition of assets would not constitute a merger in substance subject to the BMA and its competitive review framework, institutions undertaking such transactions should be mindful of the pre-merger notification requirements under the HSR Act. Under FTC Formal Interpretation Number 17, applicants planning nonbank merger transactions and certain corporate reorganizations involving a nonbank affiliate or subsidiary are required to report information about the merger transaction to the FTC and DOJ to enable the FTC and DOJ to conduct a premerger review of the transaction in accordance with the requirements of the HSR Act. *See Formal Interpretation No. 17,* FTC (Apr. 3, 2000). The HSR Act exempts from FTC and DOJ premerger review transactions that are already subject to specialized regulatory agency review, including bank merger transactions. However, the FTC and DOJ treat the nonbank portion of a nonbank merger transaction or a corporate reorganization as subject to the reporting requirements of the HSR Act, regardless of whether the nonbank entity is an affiliate of the bank entity or a subsidiary of the bank entity.

BMA. The factors are intended to appropriately mitigate risk associated with potential growth resulting from the significant asset transfer. When evaluating the purpose(s) of the transaction(s), the FDIC would consider whether the applicant has structured the transaction(s) to evade compliance with the BMA.

The FDIC would have discretion to object to a notice of a significant asset transfer if the transaction(s) would have a negative impact on one or more of these factors that could not be appropriately mitigated by the institution(s) involved in the transaction(s). Significant asset transfers would not be subject to the FDIC's regulations in subpart A of part 303 concerning public notice, public comment, or the opportunity for a public hearing.

Question 82: What are the advantages and disadvantages of the proposed framework for significant asset transfers?

Question 83: Is the 25 percent threshold appropriate for defining significant asset transfers? Why or why not?

Question 84: Should the FDIC consider a lookback period that is longer than 12 months? Why or why not?

Question 85: What changes to the significant asset transfer framework could the FDIC consider to better tailor it to the size and risk profile of FDIC-supervised institutions?

Question 86: Should this type of notice and non-objection framework apply to additional types of transactions? If yes, please explain why, and under what applicability threshold(s)?

Question 87: Should the FDIC include other exceptions to the definition of significant asset transfer? If yes, for what type(s) of asset transfers and why?

Question 88: Should the FDIC consider other factors in determining whether to issue a non-objection? If yes, please explain such factor(s) and why it would be relevant to the issuance of a non-objection.

Question 89: Is there an alternative framework the FDIC should consider to provide supervisory visibility into and an opportunity to object to such transactions? If yes, please explain.

H. Severability (§ 303.67)

The proposed rule would include a severability provision at new § 303.67. The proposed rule would provide that if any provision of subpart D or its application to any person or to certain circumstances were held to be invalid, the remainder of subpart D and its application would remain in force. Each provision of the proposed rule is designed to function sensibly without the others, and the FDIC intends for them to be severable so that each can operate independently.

Question 90: Should the FDIC adopt a severability provision in subpart D? Why or why not?

I. BMA Transactions (§ 333.5)

1. Scope (§ 333.5(a))

The proposed rule would codify the FDIC's evaluation of the statutory factors at new § 333.5. Section 333.5(a) would explain that § 333.5 would apply to merger transactions subject to FDIC approval under the BMA, and that the definitions in § 303.61 apply to § 333.5. Historically, the FDIC has provided supplements to the procedural and other requirements for such transactions in an SOP. New § 333.5 would provide for more durability and transparency by codifying all aspects of the FDIC's BMA review framework in regulation. New § 333.5 would also better enable applicants to supply additional information including mitigating factors or other pertinent details relevant to the FDIC's consideration of a merger transaction and the statutory factors. The proposed rule is not intended to impose additional burden or new compliance obligations on applicants.

2. General (§ 333.5(b))

a. Statutory Factors (§ 333.5(b)(1))

New § 333.5(b)(1) would reflect the statutory factors that the FDIC must consider under the BMA. In addition to considering the competitive impact of a merger transaction, as discussed in § 333.5(c), the BMA requires the responsible agency to consider 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 U.S. banking or financial system, and the effectiveness of the parties in combatting money laundering activities.[49]

Question 91: What are the advantages and disadvantages of codifying how the FDIC would review the BMA statutory factors under the proposed rule, instead of revising its current SOP on Bank Merger Transactions? Does codifying how the FDIC reviews the statutory factors improve the transparency and certainty of the FDIC's BMA framework? Why or why not?

[49] 12 U.S.C. 1828(c)(5) and (11).

b. Tailored Review (§ 333.5(b)(2))

New § 333.5(b)(2) would specify that the FDIC would conduct a tailored review of a merger filing as appropriate to the facts and circumstances of the merger transaction, including taking into account the structure, scale, and materiality of the merger transaction. The BMA applies to a large spectrum of transaction types—from those involving the largest banks to a corporate reorganization involving a community bank and a small operating subsidiary. The FDIC's expectations regarding the statutory factors are not the same for all transactions falling across this spectrum. For example, when evaluating the financial, managerial, and future prospects statutory factor as applied to a corporate reorganization involving an IDI and a subsidiary, the FDIC will generally not conduct a resource-intensive review because the financial, managerial, and future prospects of the acquiring institution and resulting institution will typically either not change as a result of the corporate reorganization, or they may improve as a result of a simplification of the corporate structure.

More generally, the FDIC recognizes the fundamental differences between corporate reorganizations and merger transactions involving unaffiliated parties in evaluating the statutory factors. As discussed above and below, corporate reorganizations will always satisfy the statutory requirements with respect to competition. Furthermore, in the FDIC's experience, it is very rare that a corporate reorganization would result in an unfavorable conclusion with respect to the convenience and needs of the community factor, as such transactions rarely impact the products and services provided to customers. As noted, the FDIC will tailor its review of the statutory factors to the specific type of transaction.

Question 92: Should the FDIC provide additional guidance regarding the tailoring of its evaluation of merger transactions according to transaction structure? If so, please explain.

Question 93: Should the FDIC consider presumptions that certain statutory factors will be resolved favorably for merger transactions that meet certain criteria? If so, in what circumstances?

c. Remediation Plans (§ 333.5(b)(3))

New § 333.5(b)(3) would specify that the FDIC would consider the applicant's plans to timely remediate any previously unresolved deficiencies identified in the supervisory record of the acquiring institution, institution being acquired, or resulting institution in its evaluation of the statutory factors. Under the proposed rule, effective remediation plans may result in a favorable finding on a statutory factor despite identified weaknesses. In the FDIC's supervisory experience, supervisory weaknesses can often be remedied by an acquiring institution with a thoughtful, tailored plan based on reasoned metrics and realistic timelines. The FDIC would rely upon its supervisory expertise to determine the reasonableness of the proposed remedial plans and to evaluate the relevant statutory factor as to the resulting institution in light of such remediation plans.

New § 333.5(b)(3) is not intended to change the FDIC's obligations under the BMA to consider certain statutory factors within the context of each institution involved in the merger transaction. The FDIC would retain discretion to deny a merger filing for weaknesses at the institution being acquired, particularly when the parties have not presented a reasonable remediation plan.

Question 94: Should the FDIC consider a different approach to considering the relationship between the acquiring IDI, the IDI being acquired, and the resulting institution? If yes, please explain and suggest an alternative approach.

Question 95: Should the FDIC adopt a provision regarding remediation plans? Why or why not?

Question 96: Would new § 333.5(b)(3) provide clarity and certainty to the public? Why or why not?

d. Focus on the Resulting Institution (§ 333.5(b)(4))

The proposed rule would also clarify that the FDIC would emphasize the resulting institution and the cumulative benefits and impact of the merger transaction in its review of the statutory factors at new § 333.5(b)(4). Consistent with the BMA, the FDIC would continue to take into account the acquiring institution, institution being acquired, and resulting institution in its review of the statutory factors. However, to emphasize the resulting institution, the FDIC would also take into account the applicant's plans to timely remediate any previously unresolved deficiencies identified in the supervisory record of the acquiring institution, institution being acquired, or resulting institution in its evaluation of the statutory factors, consistent with new § 333.5(b)(3), and the cumulative benefits and impact of the merger transaction consistent with new § 333.5(c)(4).

3. Competition (§ 333.5(c))

New § 333.5(c) would outline and reform how the FDIC considers and evaluates the competitive effects of a merger transaction (competition statutory factor), including by incorporating credit union shares and centrally booked deposits in the initial HHI screen. The FDIC believes codifying the standards used by the FDIC to evaluate the competition statutory factor would provide applicants and the public with greater transparency and certainty than has been previously provided through the agency's SOPs.

a. Generally (§ 333.5(c)(1))

The BMA generally requires the responsible agency to consider the impact a merger transaction may have on competition in the U.S. banking market. As part of this consideration, the responsible agency must request a report on the competitive factors involved from the Attorney General (competitive factors report) before acting on the transaction.[50] If the FDIC is not the responsible agency, then a copy of the competitive factors report must also be provided to the FDIC.[51] The responsible agency is not required to request a competitive factors report if: (1) the responsible agency finds that it must act immediately in order to prevent the probable failure of one of the IDIs involved in the merger transaction; or (2) the merger transaction involves solely an IDI and one or more of the IDI's affiliates (*i.e.,* a corporate reorganization).[52]

The Attorney General must provide the competitive factors report to the responsible agency not later than 30 calendar days after receipt of the request.[53] If the requesting agency advises the Attorney General that an emergency exists requiring expeditious action, the competitive factors report must be provided not later than 10 calendar days after receipt of the request.[54]

The BMA prohibits the responsible agency from approving merger transactions under two scenarios. First, the responsible agency may not approve a merger transaction that would result in a monopoly, or that would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States.[55] Second, the responsible agency may not approve a merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the responsible agency finds that the anticompetitive effects of the transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.[56] The proposed rule would codify these statutory restrictions, as applied to the FDIC, at new § 333.5(c)(1).

b. Initial Herfindahl-Hirschman Index (HHI) Screen (§ 333.5(c)(2))

The HHI is a broadly used measure for analyzing market concentration.[57] It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI accounts for the relative size and distribution of the firms in a market and decreases as the number of firms in a market increases, provided they are of a relatively similar size. By contrast the HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is between 1,000 and 1,800 points are considered to be moderately concentrated and those in which the HHI is in excess of 1,800 points are considered to be concentrated.

The proposed rule would clarify that the FDIC uses an initial HHI screen to evaluate the competitive effects of a merger transaction. The FDIC currently includes all the deposits of banks and thrift institutions with branches in a relevant geographic market(s) in its initial HHI screen. Deposits of thrift institutions are generally given a 50 percent weighting in the FDIC's initial HHI analysis today, but deposits of certain thrift institutions that are significantly engaged in commercial and industrial lending are given a 100 percent weighting.[58] The proposed rule

[50] 12 U.S.C. 1828(c)(4)(A)(i).

[51] 12 U.S.C. 1828(c)(4)(A)(ii).

[52] 12 U.S.C. 1828(c)(4)(C).

[53] 12 U.S.C. 1828(c)(4)(B)(i).

[54] 12 U.S.C. 1828(c)(4)(B)(ii).

[55] 12 U.S.C. 1828(c)(5)(A).

[56] 12 U.S.C. 1828(c)(5)(B).

[57] *See, e.g.,* FDIC, Applications Procedures Manual, p. 4–19 (June 2019), *available at https://www.fdic.gov/regulations/applications/resources/apps-proc-manual/section-04-mergers.pdf; see also* DOJ, ''Herfindahl-Hirschman Index'' (last updated Jan. 17, 2024), *available at https://www.justice.gov/atr/herfindahl-hirschman-index.*

[58] To determine whether a thrift institution is significantly engaged in commercial lending, the FDIC looks at the thrift institution's total commercial and industrial lending as a percentage of assets. In general, if the commercial and industrial loans of a thrift institution constitute less

would expand the FDIC's initial HHI screen to include the deposits of banks and thrift institutions and shares of credit unions with branches in a relevant geographic market(s), with certain credit unions' shares calculated as a representative portion, as discussed below. Also as discussed further below, the relevant geographic market(s) would be the banking market(s) assigned by the Federal Reserve Board, or, if not defined by the Federal Reserve Board, the relevant geographic market would be all counties in which both the acquiring institution and the institution to be acquired have branch locations, as adjusted to reflect factors that influence how customers in the market seek and obtain banking products and services.

The Federal Reserve Board has divided the United States and U.S. territories into more than 1,400 local banking markets.[59] Various information is used by the Federal Reserve Board to determine the scope of a banking market, such as commuting patterns, shopping patterns, interviews with local government and business leaders, and surveys of local households or small businesses.[60] The Federal Reserve Bank of St. Louis operates the Competitive Analysis and Structure Source Instrument for Depository Institutions (CASSIDI), which enables regulators and the public to perform HHI analyses for each banking market, as defined by the Federal Reserve Board.[61] Banking markets are updated from time to time in CASSIDI. The proposed rule would define ''relevant geographic market'' as the banking market(s) of the acquiring institution and the institution to be acquired, as defined by the Federal Reserve Board at the time of a merger filing. If a relevant banking market has not been defined by the Federal Reserve Board, the relevant geographic market would consist of all counties in which both the acquiring institution and the institution to be acquired have branch locations, as adjusted to reflect factors that influence how customers in the market seek and obtain banking products and services.

The FDIC recognizes that the U.S. banking sector and the financial services industry more broadly are highly competitive. Decades ago, when the BMA was first passed, banks were heavily restricted in their ability to compete in different geographic regions due to branching, interstate banking, and other legal and regulatory restrictions. Furthermore, technology has made it much easier for banks and nonbanks to offer products and services nationwide. Banks also now compete with a wider array of nonbank competitors who offer bank-like products. As such, the FDIC is making certain adjustments to how it calculates its initial HHI screen, and is seeking comment on whether further changes are warranted regarding how the FDIC analyzes the competition statutory factor.

Thrift institutions historically were not viewed as equivalent competitors of banks because they were unable to offer the same range of banking products and services as those provided by commercial banks. Thrift institutions were once focused on savings deposit accounts, and their lending activities were limited by statute to residential lending.[62] Deregulation relaxed many of the original restrictions that were placed on thrift institutions. For example, thrift institutions can now offer a broader range of banking products and services, including commercial lending. However, commercial lending remains limited by statute and regulation.[63] Banks do not have similar restrictions on their commercial lending activities, but banks and thrift institutions still engage in virtually the same activities.[64]

Credit unions also historically have not been viewed as equivalent competitors of banks because they are limited by statutory restrictions on both their customer bases[65] and commercial lending activities.[66] Banks do not have similar restrictions on their customer bases or commercial lending activities and, as such, have historically been able to provide a full range of services to a broader portion of the population in a relevant geographic market. Despite the restrictions placed on credit unions, credit unions and community banks tend to provide similar products and services within a relevant geographic market, including customer accounts and consumer and small business lending.[67] Furthermore, similar to thrifts, legal and regulatory restrictions on credit unions have eased over time, resulting in the differences between banks and credit unions shrinking.[68] In this way, credit unions have evolved into a more equivalent competitor in a similar way to how thrift institutions evolved.

In addition to thrifts and credit unions, other types of nonbank financial institutions have emerged over multiple decades that increasingly compete with banks. This includes fintechs and other nonbank entities that gather deposits from customers and place such deposits at banks. The FDIC is not formally proposing a methodology by which it would incorporate deposits gathered by these types of entities. These deposits are currently included in the HHI calculation on account of the bank with which such deposits are placed. However, the FDIC recognizes that this approach may not optimally reflect the competitive landscape and thus is inviting comment on whether and how to incorporate such considerations into the FDIC's HHI methodology.

Recent updates to CASSIDI make more data readily available to regulators and the public, resulting in additional tools for regulators to leverage when evaluating the competitive effects of a potential merger transaction under new § 333.5(c). This data, if appropriately utilized, enables regulators to more accurately assess competition from other competitors in a relevant geographic market. For example, the regulator-facing version of CASSIDI contains data on credit union shares. The National Credit Union Administration (NCUA) does not collect data at the branch level for credit union shares. Instead, data on total credit union shares is derived from credit unions' Call Reports, which credit unions submit to the NCUA quarterly. Because branch-level shares data is not available for credit unions, for regulators, CASSIDI divides a credit union's total shares equally among its branches as reported in its NCUA Call Reports. Regulators can modify total share amounts to reflect a representative portion of the credit union's shares in the relevant banking market, as discussed further below.

than two percent of its total assets, the thrift institution's deposits will not be weighted at 100 percent.

[59] *See* Governor Michelle Bowman, ''The New Landscape for Banking Competition'' at the 2022 Community Banking Research Conference (Sept. 28, 2022), p. 4, *available at: https://www.federalreserve.gov/newsevents/speech/files/bowman20220928a.pdf* [hereinafter, ''Gov. Bowman Speech''].

[60] *See* Federal Reserve Board, *How do the Federal Reserve and the U.S. Department of Justice, Antitrust Division, analyze the competitive effects of mergers and acquisitions under the Bank Holding Company Act, the Bank Merger Act and the Home Owners Loan Act?,* Q. 14, *available at https://www.federalreserve.gov/bankinforeg/competitive-effects-mergers-acquisitions-faqs.htm* (last accessed Aug. 19, 2026).

[61] *See https://cassidi.stlouisfed.org.*

[62] Public Law 73–43, 48 Stat. 123.

[63] 12 U.S.C. 1464; 12 CFR part 32.

[64] Kwan, S., *Bank Charters vs. Thrift Charters,* Fed. Res. Bank of San Francisco (Apr. 24, 1998), *available at https://www.frbsf.org/research-and-insights/publications/economic-letter/1998/04/bank-charters-vs-thrift-charters/.*

[65] 12 U.S.C. 1759(b); Gov. Bowman Speech, p. 7.

[66] *See* 12 U.S.C. 1757a.

[67] *Introduction to Bank Regulation: Credit Unions and Community Banks,* Congressional Research Service (Dec. 14, 2018), *available at congress.gov/crs_external_products/IF/HTML/IF11048.html.*

[68] *See, e.g.,* Public Law 105–219, 112 Stat. 913; Public Law 115–174, 132 Stat. 1296, Sec. 105.

Similarly, the regulator-facing version of CASSIDI accurately reflects the particular branch that any centrally booked deposits are booked at, but these numbers are not representative of the bank or thrift institution's deposit activity within a relevant banking market because deposits from the bank or thrift institution's branches may be booked at a central location. However, regulators can now modify the total deposits of an institution with centrally booked deposits to reflect a representative portion of the institution's data, as discussed further below. Regulators can also add additional institutions to the HHI analysis in a relevant banking market. This could allow regulators to include online-only banks that do not have a physical geographic presence in a relevant banking market or other nonbank competitors, such as fintechs, as discussed further below.

The proposed rule would include an approach that utilizes regulators' new capabilities in CASSIDI to incorporate the shares of credit unions in the FDIC's initial HHI screen, and the FDIC invites comment on potential approaches to incorporate the deposits of other competitors. Under the proposed rule, the FDIC would continue to include in its initial HHI screen all deposits of a bank's branch or branches that are located in a relevant geographic market. The FDIC would apply the same approach for deposits of thrift institutions. The FDIC would also incorporate in its initial HHI screen all shares of a credit union located in a relevant geographic market if all of the credit union's branches are located in the relevant geographic market. Credit unions that serve the same geographic footprint as one or more of the relevant geographic markets, or an area that is smaller than, but entirely within the bounds of one or more of the relevant geographic markets would receive this treatment.

The FDIC would incorporate in its initial HHI screen a representative portion of the shares of a credit union where some but not all of the branches of the credit union are located in one or more of the relevant geographic markets. The FDIC would use a representative portion of the credit union's shares as an estimate for the credit union's share amount in the relevant geographic market(s). The representative portion of shares would be calculated by dividing the credit union's total shares by its total number of branches and multiplying that number by the number of the credit union's branches that are located in a relevant geographic market, as determined by its most recent NCUA Call Report data reflected in the regulator-facing version of CASSIDI. For example, if a credit union had $4,000,000 in total shares and 20 total branches, each branch would be allocated $200,000 in shares. If the credit union had 4 branches in a relevant geographic market, then $800,000 would be assigned to the relevant geographic market as the representative portion of shares.

Similarly, the FDIC would incorporate into its initial HHI screen a representative portion of the centrally booked deposits of banks and thrift institutions. The FDIC would use a representative portion of the institution's centrally booked deposits as an estimate of the institution's deposit share in the relevant geographic market(s). Because centrally booked deposits are associated with depositors who may be living anywhere in the country, the incorporation of centrally booked deposits into the HHI screen does not require the location of a branch in a relevant geographic market in order to be included in the HHI screen. The representative portion of deposits would be calculated by taking the total population of the relevant geographic market(s), as determined by the most recent U.S. Census data, dividing that number by the total U.S. population, as determined by the most recent U.S. Census data, and multiplying that number by the total centrally booked deposits of the bank. For example, as of the 2025 U.S. Census, if the population of a relevant geographic market was 707,600 people, and the total U.S. population was 341,784,857, the relevant geographic market would represent approximately 0.21 percent of the U.S. population. Multiplying that 0.21 percent by the institution's total centrally booked deposits would yield the representative share of deposits for the relevant geographic market. For example, if an institution had $2,000,000,000 in centrally booked deposits multiplied by that 0.21 percent, then $4,130,765 would be assigned to the relevant geographic market as the representative share of centrally booked deposits. As an alternative method, the FDIC could adopt the same approach it is proposing for credit unions and equally apportion centrally booked deposits across all the branches of the institution. In some cases, this may better proxy for the bank's geographic footprint; however, in other cases, such as a bank with a nationwide footprint but very few branches, such an alternative would likely be a far worse proxy for the bank's geographic footprint. The FDIC seeks comment on this alternative.

The FDIC acknowledges that the public-facing version of CASSIDI currently does not offer the same expanded data or other features as the regulator-facing version of CASSIDI. The public-facing version of CASSIDI currently allows an applicant to conduct a pro forma HHI analysis that captures competition from other banks and thrift institutions in the relevant banking market(s). It does not provide data on credit union shares. Nor does it allow applicants to conduct modified analyses, for example, to incorporate only a representative portion of centrally booked deposits or the deposits of other competitors, for example, online-only banks. Applicants should still complete and may rely on a pro forma HHI analysis in CASSIDI as a baseline representation of the competitive effects of a merger transaction in the relevant geographic market(s). However, applicants should view the pro forma HHI analysis as a ceiling because the FDIC's initial HHI screen would have the effect of reducing concentration in a relevant geographic market because it would also incorporate additional categories of deposits, as described above.

To approximate the FDIC's initial HHI screen more closely, an applicant could also obtain data on credit union shares from Call Reports that are publicly available on the NCUA's website and calculate the FDIC's initial HHI screen using the methodology discussed above. The FDIC recognizes that the Summary of Deposits (SOD)[69] data is imprecise and often does not reflect the geographic location of customers, particularly with respect to banks with very few or no branches. The FDIC is also aware that not all banks may use the same methodology to assign deposits to particular branches. The FDIC is seeking comment on whether banks should be required to report deposit data based on customer addresses or some other metric so that the SOD data more accurately reflects the geographic locations of customers.

Additionally, the FDIC recognizes that the competitive landscape varies for different types of deposits. For example, banks may compete in local markets for retail and small business deposits, while brokered certificates of deposit are sold in a national market. The FDIC is seeking comment on whether the HHI

[69] The SOD is the annual survey of branch office deposits as of June 30 for all FDIC-insured institutions, including insured U.S. branches of foreign banks. All institutions with branch offices are required to submit the survey; institutions with only a main office are exempt.

analysis should focus on a subset of deposits, such as retail and small business deposits, to better reflect competition within geographic markets.

Question 97: Is the FDIC's approach to considering the competition statutory factor appropriate? Are there other approaches the FDIC should consider that would better reflect the existing competitive landscape?

Question 98: Is the proposed approach for delineating the relevant geographic market(s) for the FDIC's initial HHI screen appropriate and sufficiently clear? Please explain.

Question 99: Should the FDIC consider other approaches for delineating the relevant geographic market(s) for its initial HHI screen? Please explain.

Question 100: Is the proposed methodology for the FDIC's incorporation of credit union shares in its initial HHI screen appropriately tailored? Why or why not? Should the FDIC consider a credit union's field of membership designation for purposes of incorporating a credit union into the initial HHI analysis? If so, why, and to what extent?

Question 101: Is the proposed methodology for the FDIC's incorporation of thrift institution deposits in its initial HHI screen appropriately tailored? Why or why not?

Question 102: Is the proposed methodology for the FDIC's incorporation of centrally booked deposits in its initial HHI screen appropriately tailored? Why or why not?

Question 103: Would it be appropriate for the FDIC to incorporate deposits gathered by nonbank competitors in its initial HHI screen, separate from the IDIs with whom the deposits are placed? If so, how should the deposits be incorporated?

Question 104: As an alternative approach, should the FDIC consider applying a ''scaler'' to a relevant geographic market to account for deposits gathered by online banks and fintechs? For example, the FDIC could construct a proxy, hypothetical institution to represent the presence of banks with nationwide online lending platforms, fintechs, and other nonbank competitors, and attribute a portion of the hypothetical institution's deposits to a relevant geographic market. The FDIC would need to develop a methodology to estimate the total deposits in this case. The FDIC seeks comment on these and other alternative approaches for incorporating such deposits into the HHI analysis.

Question 105: Should the FDIC collect different or additional data related to the reporting of deposits? For example, should deposits be reported based on customers' address? Are there other metrics the FDIC should consider?

Question 106: Should the FDIC consider limiting the calculation of deposits of banks and thrift institutions and shares of credit unions in the FDIC's initial HHI screen to retail and small business deposits, premised on an assumption that such deposits are more likely to be local deposits? Why or why not? Alternatively, are there specific types of deposits that the FDIC should consider excluding from the calculation of deposits in the initial HHI screen because they are part of a national market, such as certain types of brokered deposits?

c. Safe Harbor for Transactions Falling Within Specified HHI Thresholds (§ 333.5(c)(3))

The proposed rule would establish a safe harbor for merger transactions that fall within specific HHI thresholds, absent objection from the Attorney General, at new § 333.5(c)(3). As discussed in greater detail below, the safe harbor is intended to enable potential applicants to rely on a simple, definitive metric for determining how the FDIC would evaluate the competitive effects of a merger transaction. In the FDIC's experience, many merger transactions would fall within the proposed safe harbor. The proposed rule is intended to streamline the initial analysis for such transactions to reduce cost and burden for applicants and the FDIC. The safe harbor is not intended to deter or prohibit merger transactions that do not qualify for the safe harbor. Under new § 333.5(c)(4), the FDIC would also consider other factors in evaluating the competition statutory factor when a merger transaction does not satisfy the HHI safe harbor.

New § 333.5(c)(3) would establish that, absent objection from the Attorney General, the FDIC would not deny a merger filing on competition grounds where: (1) the HHI, as calculated by the FDIC, in each relevant geographic market is 1,800 points or less after consummation of the merger transaction; (2) if the HHI, as calculated by the FDIC, is more than 1,800 in a relevant geographic market after consummation of the merger transaction, the increase is less than 200 points from the HHI in the relevant geographic market prior to the merger transaction; or (3) the transaction is a corporate reorganization.

The FDIC is seeking comment on whether to establish a separate HHI-based safe harbor for merger transactions involving rural areas. Most rural banking markets are highly concentrated based on traditional metrics such as HHI, resulting in ''stuck'' markets where the merger of two small local banks could appear to present competition concerns using traditional HHI metrics.[70] To establish a separate HHI-based safe harbor for rural areas, the FDIC would first establish a definition of ''rural area.'' The FDIC could define ''rural area'' as a geographical area not within a metropolitan statistical area, as established by the Office of Management and Budget. The rural area safe harbor could be available when either the acquiring institution or the institution to be acquired is a small institution, as defined at § 327.8(e), with a main office located in rural area whose customer base is primarily located in a rural area.

The FDIC emphasizes that an HHI-based safe harbor is not intended to establish a bar to any merger transactions that fall outside the contemplated safe harbors. The FDIC recognizes that the FDIC's initial HHI screen may not be sufficiently tailored for a specific merger transaction, the potential parties, and the surrounding community. As noted further below, the FDIC would conduct additional analysis with respect to the competition factor for transactions that do not satisfy the safe harbor.

Finally, nothing in the proposed rule is intended to obligate applicants to rely on CASSIDI to conduct market competition analysis. The FDIC intends to provide the initial HHI screen concept and safe harbor as standard metrics that all parties can consider freely and easily. It is the FDIC's experience that most applicants already rely on this data. The proposed rule is intended to permit this usage but is not intended to require it. Applicants may continue to furnish their own market competition analysis for the FDIC's consideration.

The Interagency BMA Application requires submission of information regarding the effects of the merger transaction on existing competition in the relevant geographic market(s) where the applicant and the target institution operate.[71] Each responsible agency provides different instructions to complete the competitive analysis in a supplement to the Interagency BMA Application. The FDIC requires an

[70] *See* Andrew P. Meyer, *Market Concentration and Its Impact on Community Banks,* Federal Reserve Bank of St. Louis (Apr. 12, 2018), *available at https://www.stlouisfed.org/publications/regional-economist/first-quarter-2018/concentration-community-banks.*

[71] *See* Interagency BMA Application, Q. 16, *available at https://www.fdic.gov/formsdocuments/f6220-01.pdf.*

applicant to delineate the relevant geographic market in the FDIC supplement to the Interagency BMA Application (FDIC Supplement).[72] Specifically, the FDIC Supplement notes that the relevant geographic market includes the areas in which the offices to be acquired are located and from which those offices derive the predominant portion of their loans, deposits, or other business. The FDIC Supplement also notes the relevant geographic market includes the areas where existing and potential customers impacted by the merger transaction may practically turn for alternative sources of banking services. New § 333.5(c) enables applicants to rely on established standards for delineating the relevant geographic market and the effect of the merger transaction on competition in the relevant market when submitting a merger filing. The FDIC intends to update the FDIC Supplement to remove references to the SOP and to cite to § 333.5(c). The FDIC also intends to make conforming changes to align the FDIC Supplement with the proposed rule, particularly § 333.5.

Question 107: Is the safe harbor for transactions falling within specified HHI thresholds sufficiently tailored to the current U.S. banking market? Why or why not?

Question 108: Should the FDIC adopt different HHI thresholds for the safe harbor? If yes, please explain.

Question 109: Should the FDIC adopt a separate HHI threshold for the safe harbor for merger transactions in rural areas? Why or why not? If yes, how should the FDIC delineate qualifying for the rural area safe harbor; what would be an appropriate HHI threshold and why; and how should the FDIC define ''rural area?''

Question 110: Should the FDIC characterize this section as a presumption instead of a safe harbor? If yes, please explain.

Question 111: Should the FDIC revise the FDIC Supplement? Why or why not? If yes, what should be revised and how?

d. Additional Considerations for Merger Transactions That Exceed the Safe Harbor (§ 333.5(c)(4))

The proposed rule would incorporate additional considerations that the FDIC takes into account for merger transactions that exceed the HHI safe harbor at new § 333.5(c)(4). If the initial HHI screen for a merger transaction exceeds the safe harbor thresholds in new § 333.5(c)(3), the FDIC would consider other factors related to the impact of the transaction on competition in its market concentration analysis, including alternative geographic market definitions, the extent to which the initial HHI screen accurately reflects the competitive effects of the merger transaction, and any procompetitive effects of the merger transaction, including those that are in the public interest. This new § 333.5(c)(4) would enable applicants to submit additional evidence and/or considerations for the FDIC's review to mitigate HHIs that exceed the safe harbor thresholds.

The FDIC has historically considered mitigating factors, including alternative geographic markets and the extent to which the initial HHI screen accurately reflects the competitive effects of the merger transaction, to offset concentrated HHI results. For example, in the FDIC's experience, the relevant banking market presented in CASSIDI may not always appropriately account for the nuances associated with a specific transaction, the relevant parties, or the banking needs of a particular community. For this reason, the FDIC has historically considered whether the boundaries of a specific CASSIDI market should be expanded to consider, for example, whether members of the community are willing and able to cross a geographic feature, *e.g.,* a mountain or river, to access banking services. This consideration has proven particularly relevant for merger transactions in rural areas. The proposed rule would introduce additional transparency into the FDIC's consideration of mitigating factors in its competitive analysis.

Analysis of the procompetitive effects of a merger transaction to offset the anticompetitive effects of such transaction is consistent with the BMA and the practice of other regulators.[73] The BMA allows the FDIC to find that the anticompetitive effects of a merger transaction are ''clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.'' [74] A ''procompetitive effect,'' in essence, would be a public interest or benefit that offsets any anticompetitive effects of a merger transaction. The FDIC would consider any procompetitive effect in the community or communities to be served by the resulting institution that are proffered by an applicant. For example, the FDIC would consider any improvements in the general availability and accessibility of banking products and services, quantity or quality of banking products and services, and pricing of banking products and services. However, any such procompetitive effect should be verifiable, or at the very least not speculative, to be credited as a mitigating factor in the FDIC's competitive analysis. Any such procompetitive effect should also be merger-specific, meaning that the procompetitive effect would be unlikely to be achieved without the merger. This is consistent with the approach of other regulators.[75]

Additionally, in considering the procompetitive effects of a merger transaction, the FDIC would give particular emphasis to procompetitive effects associated with merger transactions in rural areas. The FDIC notes that there may be unique and significant public interests and benefits associated with merger transactions in rural areas that warrant additional weight, particularly when compared to the traditionally high HHI concentrations associated with rural area merger transactions. For example, the combination of two local institutions may create a stronger competitor to national banks with a physical or online presence in the community.

Question 112: Should the FDIC codify the specific factors that would be considered when evaluating a merger transaction involving a rural area? Why or why not?

Question 113: Should the FDIC provide more specificity regarding the analysis of transactions that do not satisfy the safe harbor? If so, how?

Question 114: Are there other factors that should be considered when evaluating a merger transaction involving a rural area? If yes, please explain what they are and how they should be considered.

4. Financial and Managerial Resources and Future Prospects (§ 333.5(d))

The BMA requires the responsible agency to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions (financial, managerial, and future prospects statutory factor) when evaluating a merger filing. The proposed rule would

[72] FDIC Supplement, Part I, *available at https://www.fdic.gov/formsdocuments/f6220-01.pdf.*

[73] *See, e.g.,* 12 U.S.C. 1828(c)(5)(B); 2023 Merger Guidelines, Rebuttal Evidence Showing That No Substantial Lessening of Competition Is Threatened by the Merger, DOJ Antitrust Division, *available at https://www.justice.gov/atr/merger-guidelines/rebuttal-evidence.*

[74] 12 U.S.C. 1828(c)(5)(B).

[75] 2023 Merger Guidelines, Rebuttal Evidence Showing That No Substantial Lessening of Competition Is Threatened by the Merger, DOJ Antitrust Division, *available at https://www.justice.gov/atr/merger-guidelines/rebuttal-evidence.*

modify and codify certain elements of the FDIC's approach for considering each component of this statutory factor at new § 333.5(d).

a. Financial Resources (§ 333.5(d)(1))

When evaluating the financial resources of the institutions as part of its consideration of the financial, managerial, and future prospects statutory factor, the FDIC considers the institutions' capital, funding and liquidity, and key financial metrics. As discussed below, the proposed rule would codify further detail on the FDIC's review of this component of the statutory factor at new § 333.5(d)(1).

i. Capital (§ 333.5(d)(1)(i))

Under new § 333.5(d)(1)(i), the FDIC would consider the regulatory capital levels of the applicant at both the IDI-level and on a consolidated basis. The proposed rule would include a review of the availability of additional capital or resources to support consummation of the merger transaction and the subsequent integration of the institutions while continuing to satisfy all minimum regulatory capital and buffer requirements. The FDIC believes that available capital resources should be considered not only within the context of the initial consummation of a merger transaction, but also on a routine basis going forward after the parties have integrated. Integration can be a capital-intensive process, with costs often exceeding initial projections. Accordingly, the FDIC would consider capital adequacy at multiple points in time when evaluating the financial, managerial, and future prospects statutory factor.

ii. Funding and Liquidity (§ 333.5(d)(1)(ii))

Similarly, new § 333.5(d)(1)(ii) would require the FDIC to evaluate whether the applicant has adequate liquidity and funding sources to support the merger transaction in the ordinary course. This evaluation would consider the liquidity position of the resulting institution, not only upon consummation, but also during and for purposes of integration. Whether an applicant has sufficient funding and liquidity to support consummation and integration would be part of the consideration of the statutory factor. The FDIC would also consider whether the applicant would need to access contingency funding to support unforeseen circumstances as determined under scenario testing. In the FDIC's experience, funding and liquidity testing under multiple scenarios is important to ensure that an applicant has sufficient financial resources.

iii. Key Financials (§ 333.5(d)(1)(iii))

Under new § 333.5(d)(1)(iii), the FDIC would consider the historical financial performance of the applicant using additional financial metrics typically referenced by market participants to evaluate the financial strength of a banking organization. Such metrics may include Net Interest Margin, Return on Assets, or Z-Score. The FDIC has found these metrics provide helpful insight into the financial resources of the parties when reviewing merger filings. Accordingly, the proposed rule would codify the FDIC's practice of reviewing such metrics when evaluating the statutory factors.

Question 115: Are there other metrics that the FDIC should consider when evaluating the financial resources of the existing and proposed institutions? If yes, please explain.

Question 116: Should the FDIC adopt a presumption or safe harbor for finding favorably on the financial resources of the institutions involved in the merger transaction in certain instances? Why or why not? If yes, what would be an appropriate presumption or safe harbor?

b. Managerial Resources (§ 333.5(d)(2))

i. Qualifications and Experience (§ 333.5(d)(2)(i))

As part of its consideration of the financial, managerial, and future prospects statutory factor, the FDIC must take into consideration the managerial resources of the existing and proposed institutions. New § 333.5(d)(2)(i) would provide that the FDIC would consider management's relevant qualifications and experience to operate the resulting institution when evaluating this statutory factor. The FDIC has found that prior experience and positive outcomes in prior merger transactions involving an IDI may increase the likelihood of successful merger consummation and integration. Accordingly, such experience and outcomes may receive favorable consideration by the FDIC. However, lack of relevant experience with merger transactions involving an IDI would not by itself be viewed negatively in evaluating this statutory factor. The FDIC completes a tailored review of management's prior experience within the context of the specific transaction. Under the proposed rule, the FDIC would provide greater weight to the operation of the resulting institution than it would to deficiencies at the institution to be acquired, if the acquiring institution has proposed appropriate remediation plans.

ii. Supervisory History (§ 333.5(d)(2)(ii))

Under the proposed rule, prior supervisory ratings and the resulting institution's managements' responsiveness to supervisory concerns would be taken into consideration when the FDIC evaluates the managerial resources of the existing and proposed institutions. As part of this review, the FDIC would consider the reasons for particular supervisory criticisms or ratings concerning management and management's remediation of supervisory concerns as mitigating factors. The FDIC also would consider the extent to which the reasons for particular supervisory criticisms or ratings bear on the ability of management to successfully integrate the institution to be acquired and operate the resulting institution.

iii. UFIRS Ratings

When evaluating the managerial resources of the existing and proposed institutions under new § 333.5(d)(2), the FDIC would take into account the acquiring institution's UFIRS rating. If the acquiring institution has received a UFIRS composite rating of 1 or 2 as a result of its most recent Federal or State examination and on the management component of its rating, there is a very high probability the FDIC would find favorably on this component of the statutory factor. The FDIC also expects that the agency can find favorably on this component of the statutory factor for 3-rated institutions, depending on the reasoning for the 3 rating and other considerations relevant to managerial resources. A favorable finding would be significantly less likely if the acquiring institution received a 4 or 5 rating as a result of the most recent Federal or State examination, but a favorable finding could still be possible, depending on the existence and quality of a remediation plan and/or other mitigating circumstances.

Question 117: Are there other metrics the FDIC should consider when evaluating the managerial resources of the existing and proposed institutions? If yes, please explain.

Question 118: Should the proposed rule codify in the regulatory text that the FDIC will find favorably with respect to managerial resources if an institution receives certain ratings? If so, which ratings? Alternatively, should the regulatory text include a presumption or safe harbor? Why or why not?

c. Future Prospects (§ 333.5(d)(3))

New § 333.5(d)(3) would require the FDIC to consider the following when evaluating the institutions' future prospects under the financial, managerial, and future prospects statutory factor: (1) business plan, (2) pro formas, and (3) integration plan. First, the FDIC would consider the relevant business, integration, and strategic plans to evaluate whether the plans are appropriate for the resulting institution's risk profile. Second, the FDIC would consider the pro forma balance sheet of the resulting institution under various scenarios. As discussed above, the FDIC believes testing should be conducted under multiple scenarios, as it provides important insight into the viability of the resulting institution under the range of conditions in which it may reasonably operate. Third, the FDIC would consider the sufficiency of the integration plan in demonstrating that the applicant has the ability to efficiently integrate the assets, systems, and personnel acquired under a range of scenarios. Finally, the FDIC may also take into consideration scenario test results or other information relevant to the resulting institution's future prospects.

Question 119: Are there other metrics that the FDIC should consider when evaluating the future prospects of the existing and proposed institutions? If yes, please explain.

5. Convenience and Needs of the Community (§ 333.5(e))

The BMA requires each responsible agency to consider the convenience and needs of the community to be served (convenience and needs statutory factor) when evaluating a merger transaction. The proposed rule would modify and codify the FDIC's approach for considering the convenience and needs statutory factor at new § 333.5(e).

a. Supervisory Records (§ 333.5(e)(1))

Under the proposed rule, the FDIC would continue to consider the supervisory record of both the applicant and the institution being acquired for compliance with applicable statutes and regulations, including the CRA. The FDIC would also review the supervisory record for fair banking considerations by considering, for mergers in which the resulting institution has more than $50 billion in assets, whether the acquiring or target institutions have treated existing or potential customers less favorably than other existing or potential customers based on political, social, cultural, or religious considerations rather than individualized, objective, and risk-based analysis. This additional review would respond to concerns expressed in Executive Order 14331, Guaranteeing Fair Banking for All Americans,[76] and would help deter and combat politicized or unlawful debanking activities.

If the acquiring institution has received a rating of 1 or 2 on its most recent consumer compliance examination and received a satisfactory or outstanding on its most recent CRA examination, there is a very high probability the FDIC would find favorably on the convenience and needs statutory factor, assuming there were no fair banking concerns. The FDIC also expects that the agency would generally find favorably on the convenience and needs statutory factor for acquiring institutions that have received a 3 rating on its most recent consumer compliance examination and received a satisfactory or outstanding on its most recent CRA examination, depending on the reasoning for the 3 rating and other considerations relevant to fair banking and the convenience and needs of the community. A 4 or 5 rating on the acquiring institution's most recent consumer compliance examination would not necessarily be a barrier to finding favorably on the convenience and needs statutory factor, but a favorable finding would be less likely in the absence of appropriate remediation plans and/or other mitigating circumstances.

The FDIC would continue to consider the applicant's plans to remediate any unresolved deficiencies identified in its supervisory record or in the supervisory record of the institution being acquired, including any plans to address fair banking concerns. The FDIC's review would focus on unresolved deficiencies identified in the institution's most recent CRA or consumer compliance examination and any unresolved deficiencies when the institution being acquired is rated: (1) Needs to Improve or Substantial Noncompliance in its most recent CRA examination; or (2) a 3 or lower in its most recent consumer compliance examination.

b. Changes to Branches, Products, and Services (§ 333.5(e)(2))

The proposed rule would require the FDIC to consider whether the merger transaction would result in any changes to branches, products, and services offered in the community to be served. Specifically, the proposed rule would provide that the FDIC would consider the extent to which the resulting institution would offer products or services to a broader or smaller customer base and any impact on prices. If the resulting institution is expected to offer a broader set of products and services, its products and services to a broader market, or products and services at lower prices (if, for example, a result of economies of scale), this would support a favorable finding. Conversely, any reduction in products and services offered in the case of a merger transaction between an IDI and a credit union would be viewed negatively in the analysis of the convenience and needs factor.

Question 120: Are there other considerations the FDIC should include in the agency's evaluation of the convenience and needs statutory factor? Would more specificity be helpful? If yes, please explain.

Question 121: Should the FDIC adopt a different standard when evaluating whether an IDI has engaged in fair banking? If yes, please explain.

6. Record of Combatting Money Laundering Activities (§ 333.5(f))

The BMA requires each responsible agency to take into consideration the effectiveness of any IDI involved in the merger transaction in combatting money laundering activities, including in overseas branches (AML statutory factor), when evaluating a merger transaction. The proposed rule would codify this statutory factor at new § 333.5(f).

When evaluating the effectiveness of the IDIs in combatting money laundering, the FDIC would expect each IDI, including the resulting institution, to have a Bank Secrecy Act (BSA)/anti-money laundering (AML) program commensurate with the volume and risk reflected in the IDI's enterprise-wide business model. The FDIC would also consider each IDI's prior compliance with Federal and State AML laws. If an IDI involved in a merger transaction is not directly supervised by the FDIC, the FDIC would generally rely on the primary Federal regulator's supervisory information when evaluating the IDI's effectiveness in combating money laundering. Prior deficiencies may not necessarily preclude a favorable finding on the AML statutory factor if the FDIC finds sufficient mitigating factors exist. For example, sufficient mitigating factors may include material, demonstrated progress toward implementing a satisfactory BSA/AML program that addresses the underlying issues or concerns (including with respect to any required ''look back'' reviews), or validation that the acquiring institution's satisfactory BSA/AML program will address the less than satisfactory record of the institution being acquired.

[76] 90 FR 38925 (Aug. 12, 2025).

Question 122: Should the FDIC adopt a different approach for evaluating the AML statutory factor? Why or why not?

7. Financial Stability (§ 333.5(g))

The Dodd-Frank Wall Street Reform and Consumer Protection Act amended the BMA to require the responsible agency to take into consideration the risk to the stability of the U.S. banking or financial system (financial stability statutory factor) when evaluating a merger filing.[77] In evaluating the likely impact of a merger transaction on the stability of the U.S. banking or financial system, the FDIC has considered quantitative and qualitative metrics, each of which aims to assess whether the resulting institution's systemic footprint would be such that its failure or financial distress would compromise the overall stability of the U.S. banking or financial system. The proposed rule would modify and codify certain elements of the FDIC's approach for considering the financial stability statutory factor at new § 333.5(g).

a. Financial Stability Safe Harbor (§ 333.5(g)(1))

The proposed rule would establish a safe harbor for concluding that a merger transaction does not present a financial stability concern at new § 333.5(g)(1). Under the proposed rule, the FDIC would conclude that a merger transaction would not raise a financial stability concern if: (1) the resulting institution would not be: (A) a subsidiary of a global systemically important bank holding company, (B) a Category II FDIC-supervised institution, (C) a Category III FDIC-supervised institution, or (D) a Category IV banking organization;[78] (2) the institution to be acquired is an IDI with total consolidated assets of less than $20 billion as reported in the IDI's Call Report for the quarter immediately preceding the filing; (3) the merger transaction is a corporate reorganization in which: (A) all institutions involved in the transaction are organized under the laws of the United States; (B) all institutions involved in the transaction have been affiliates for longer than 12 months; and (C) the total consolidated assets of the institution to be acquired are less than $20 billion; or (4) the merger transaction is a *de minimis* merger transaction. Each proposed prong of the financial stability safe harbor is based on the FDIC's supervisory experience.

The first prong of the financial stability safe harbor would evaluate the size of the resulting institution within the context of the risk-based categories established by the Federal Reserve Board and the FDIC for determining the applicability of regulatory capital and liquidity requirements.[79] Under the proposed rule, if the resulting institution would not satisfy, at a minimum, the definition of a Category IV banking organization, then the FDIC would conclude that the merger transaction would not present risk to the stability of the U.S. banking or financial system.

The second prong of the financial stability safe harbor would evaluate the size of the institution to be acquired. Under the proposed rule, the FDIC would conclude that a merger transaction would not present a risk to the stability of the U.S. banking or financial system if the institution to be acquired is an IDI with less than $20 billion, as reported in the institution's Call Report for the quarter immediately preceding the filing. The FDIC is seeking comment on whether this is the appropriate asset threshold to preemptively conclude that acquisitions of institutions below such threshold do not have a material impact on risks to the stability of the U.S. banking or financial system, regardless of the size and complexity of the acquiring institution. The FDIC has also proposed limiting this prong of the safe harbor to targets that are IDIs, which would limit the prong to a contained universe of entities with activities that are banking and financial in nature. The FDIC is seeking comments on whether this prong of the safe harbor should be expanded to apply to non-IDIs as well. Finally, the FDIC is proposing total consolidated assets as the metric, which would provide a bright line test for the safe harbor. The FDIC recognizes that there may be other relevant metrics, such as off-balance sheet exposures or total payments activity. The FDIC also seeks comments on whether other metrics should be considered.

The third prong of the financial stability safe harbor would capture certain corporate reorganizations. Corporate reorganizations involve transactions among affiliates. In the FDIC's experience, such transactions rarely implicate financial stability risks, and to the extent they do, the impact is often positive in improving resolvability by simplifying corporate structures. The third prong of the safe harbor would specifically apply to corporate reorganizations in which (1) the merging parties are all based in the United States, (2) the entities involved have been affiliates for longer than twelve months, and (3) the institution or institutions to be acquired have total consolidated assets of less than $20 billion. Entities that are based outside of the United States may present financial stability risks due to the complexities of cross border operations. The safe harbor is limited to entities that have been affiliated for longer than twelve months to help ensure it applies to genuine corporate reorganizations, as opposed to step-type transactions that may be designed to take advantage of the safe harbor. The asset threshold would effectively apply the second prong to domestic affiliated non-IDIs. The FDIC seeks comment on whether this asset threshold is appropriate. The FDIC also seeks comment on whether the proposed rule should distinguish banks with a single point of entry resolution strategy, in which case consolidation within the broader banking organization may be less likely to increase financial stability risks and more likely to mitigate such risks.

The fourth prong of the financial stability safe harbor would apply to *de minimis* merger transactions, including acquisitions of very small institutions and certain types of operating subsidiaries. Such transactions do not present a risk to the stability of the U.S. banking or financial system, given the institutions being acquired are very small or do not expose the IDI to additional legal or financial risk.

Question 123: Should the FDIC adopt a financial stability safe harbor? Why or why not?

Question 124: Is the proposed rule's financial stability safe harbor appropriate? Why or why not? Would different criteria be more appropriate? If yes, please provide.

Question 125: Is $20 billion the appropriate asset threshold for the second prong of the safe harbor? If not, what asset threshold would be appropriate? Should the second prong be limited only to IDIs? If not why? Should the FDIC consider additional metrics by which to judge which institutions in addition to total consolidated assets? If so, which ones?

Question 126: Is $20 billion the appropriate asset threshold for the third prong of the safe harbor? If not, what asset threshold would be appropriate? Should the FDIC consider additional metrics by which to judge corporate reorganizations?

Question 127: Should the FDIC distinguish banking organizations with

[77] *See* sec. 604(f), Public Law 111–203, 124 Stat. 1376.

[78] For purposes of the proposed rule, the FDIC is relying on definitions established by the Federal Reserve Board. The FDIC may elect to adopt these definitions in whole or in part at a later date.

[79] *See* 84 FR 59230 (Nov. 1, 2019).

a single point of entry resolution strategy from other institutions in applying the safe harbor? If so, how?

b. Merger Transactions That Do Not Meet the Safe Harbor of no Financial Stability Concern (§ 333.5(g)(2))

If a merger transaction would not satisfy the financial stability safe harbor in new § 333.5(g)(1), then the FDIC would conduct a balancing test to evaluate the financial stability statutory factor, as outlined at new § 333.5(g)(2). Under the proposed rule, the FDIC would take the following elements into consideration as part of the balancing test: (1) the systemic importance of the resulting institution, (2) a comparison of the applicant before and after the merger transaction, and (3) the extent to which the merger transaction would support financial stability. When conducting the balancing test, the FDIC would evaluate each metric individually and in the aggregate.

Under the first prong of the financial stability balancing test, the FDIC would evaluate the systemic importance of the resulting institution utilizing the five categories in the Federal Reserve Board's systemic indicator score.[80] Specifically, the FDIC would evaluate the following five categories as applied to the resulting institution: (1) size, (2) substitutability, (3) interconnectedness, (4) complexity, and (5) cross-jurisdictional activity. When evaluating the resulting institution's interconnectedness, the FDIC would consider the institution's expected interconnectedness with other financial system participants, which would include consideration of intra-financial system assets, intra-financial system liabilities, and outstanding securities. When evaluating the resulting institution's substitutability, the FDIC would consider the availability of substitute providers for any critical products and services offered by the institution. When evaluating the resulting institution's complexity, the FDIC would consider the complexity of the institution's activities, assets, and liabilities. When evaluating the resulting institution's cross-jurisdictional activity, the FDIC would consider the institution's expected cross-jurisdictional claims and liabilities.

The second prong of the proposed rule's financial stability balancing test would require the FDIC to consider the applicant before and after the merger transaction, based on the factors mentioned in connection with the first prong, to assess the potential impact of the merger transaction on the overall stability of the U.S. banking or financial system. If the FDIC found that the applicant's change in size was relatively limited, then this could weigh in favor of finding favorably on the financial stability statutory factor. The FDIC notes that this prong would still be balanced with the first and third prongs. Thus, for example, if two regional banks of equal size merged, resulting in a materially larger institution, this would not necessarily by itself raise financial stability concerns, depending on the specific facts and circumstances.

Under the third prong of the financial stability balancing test, the FDIC would consider the extent to which the merger transaction would support the stability of the United States banking and financial system, including if the institution being acquired is an institution at risk of failure. For example, if the merger transaction would prevent an FDIC-insured institution from failing, but create a new systemically important IDI, the balancing test may weigh in favor of finding favorably on the financial stability statutory factor. A merger transaction that involves a combination of a large institution that is financially strong and a large institution that is financially weak may be highly beneficial for financial stability, by reducing the likelihood of a failure of a large institution, despite the creation of a much larger combined institution. The FDIC generally expects that the third prong would only be considered to the extent that the transaction supports the stability of the United States banking and financial system, whereas the absence of such a benefit would not be viewed negatively in light of the overall analysis.

Question 128: Should the FDIC adopt a balancing test for evaluating whether a merger transaction satisfies the financial stability statutory factor? Why or why not?

Question 129: Is the proposed rule's balancing test for evaluating the financial stability statutory factor appropriate? Why or why not? Would another test be more appropriate? If yes, please provide details regarding an alternative test.

J. Indexing of Thresholds (§ 314.1)

The FDIC proposes to index the dollar amounts in subpart D and the thresholds for the financial stability safe harbor at new § 333.5(g)(1). The proposed rule would update § 314.1(c) to include the baseline dollar thresholds in the proposed rule. As noted by the FDIC previously, the use of thresholds allows the FDIC to differentiate and tailor regulatory requirements based on an institution's size, risk profile, and level of complexity.[81] However, static dollar-based thresholds can lead to unintended policy consequences if threshold levels are not periodically updated or indexed to inflation. For example, smaller and mid-size institutions can become subject to asset-based requirements originally intended for relatively larger institutions solely as a result of growth in price levels, thereby increasing burden for reasons unrelated to changes in their inflation-adjusted size or risk profile. For this reason, the proposed rule would provide for indexing of the baseline dollar thresholds in the proposed rule. This is consistent with the FDIC's agency-wide initiative to index dollar values in the FDIC Rules and Regulations to ensure the FDIC's regulatory expectations are appropriately tailored.

The thresholds would also be measured from baseline dates under the proposed rule. The baseline date would be the effective date of the proposed rule. The first adjustment for dollar amounts listed in paragraph (c)(1), which are thresholds already subject to § 314.1, would be effective on October 1, 2027, and the first adjustment for dollar amounts listed in paragraph (c)(2), which would include thresholds added by the proposed rule, would be effective on October 1, 2029. Thereafter, adjustments would be effective on October 1 following each consecutive two-year period ending on August 30 since the last adjustment. Biennial adjustments of this nature would be calculated by multiplying the threshold value by one plus the cumulative percent change in the non-seasonally adjusted Index. If the cumulative percent change of the non-seasonally adjusted Index increased by 8 percent or more over the 12-month period ending on August 30 since the last adjustment, the thresholds would be adjusted by multiplying the threshold value by one plus the cumulative percent change in the non-seasonally adjusted Index.

Question 130: Should the proposed rule index the dollar amounts and thresholds in the proposed rule? Why or why not? Should the FDIC consider alternate approaches for indexing the thresholds?

V. Expected Effects

As previously discussed, the objectives of the proposed rule are to provide greater clarity and certainty to applicants, modernize how the agency evaluates the statutory factors, and

[80] *See* 12 CFR 217.404.

[81] *See* 90 FR 55789, 55790 (Dec. 4, 2025).

improve the speed and certainty of, and reduce the regulatory burden associated with, the FDIC's review of merger transactions under the BMA. This section evaluates the expected economic effects of the proposed rule using relevant supervisory and financial data as of the quarter ending on December 31, 2025. If adopted, the proposed rule would apply to (1) all merger transactions between an IDI and a noninsured institution; (2) all merger transactions where an FDIC-supervised institution is the resulting institution; and (3) all significant asset transfers, as defined in the proposed rule. As of the quarter ending on December 31, 2025, the FDIC insured 4,347 institutions and supervised 2,745 institutions.[82]

In the period from January 1, 2016, to December 31, 2025, the FDIC received 1,935 merger filings. Of those merger filings, 1,604 were to acquire a whole institution, and 331 were to acquire part of an institution, such as an acquisition of an insured branch or a business line that involved an assumption of deposits such that it triggered application of the BMA.[83]

Rapid and Expedited Processing

The proposed rule would adopt new rapid and expedited processing procedures and expand existing expedited processing procedures for eligible depository institutions, thus reducing processing timelines and filing requirements for many merger transactions. The proposed rule would also implement deadlines throughout the filing process, which the FDIC expects to reduce costs and have other, non-quantifiable benefits, including increased certainty and transparency as well as enabling applicants to consummate merger transactions more quickly.

The proposed rule would establish rapid processing procedures for *de minimis* merger transactions satisfying the requirements of new § 303.64(c). In the period from January 1, 2016, to December 31, 2025, the FDIC received 484 merger filings that may have qualified as *de minimis* merger transactions subject to the rapid processing procedures under § 303.64(c).[84] Of those transactions, 257 were corporate reorganizations with an average processing time of 80 days, and 227 were other types of merger transactions with an average processing time of 84 days.[85] For internal reporting purposes, some merger transactions (such as certain transactions that involve holding company mergers) that would otherwise be classified as merger transactions, are classified as corporate reorganizations. The number of true corporate reorganizations is likely lower, as are the associated processing times. Under the proposed rule, *de minimis* merger filings containing all the information required under § 303.64(c)(2) would generally be approved within five business days of receipt by the FDIC, or, for those transactions requiring a competitive factors report, within five business days of receipt of the report by the FDIC.[86] For *de minimis* merger transactions that are corporate reorganizations, and thus do not require a competitive factors report, the proposed rule would reduce processing time for eligible transactions by 75 days, on average, but that number may be lower. Such corporate reorganizations would also be authorized for immediate consummation. For other types of *de minimis* merger transactions that do require a competitive factors report, the proposed rule would reduce processing times by a minimum of 49 days, on average, depending upon when the FDIC receives the competitive factors report. If the Attorney General took the full 30 days to return the competitive factors report, 49 days would be the average; however, given the nature of *de minimis* transactions, the FDIC's experience is that the report typically is provided within an average of 12 days. While the FDIC does not have the information or data necessary to quantify this benefit, the FDIC expects that the reduction in processing time under the proposed rule would reduce costs associated with *de minimis* merger transactions.

De minimis merger transactions would also be subject to less onerous letter filing procedures. The FDIC recognizes that some potential applicants may have been dissuaded from engaging in small, routine merger transactions by the regulatory burden and cost associated with a merger filing, so the benefits for applicants and the public may be more than the FDIC is able to estimate based on available information and data. The FDIC estimates that the new rapid processing procedures for *de minimis* merger transactions would save applicants at least an estimated $3,500 in costs associated with a merger filing (while recognizing that in many cases savings could be substantially higher, for example, if an applicant previously needed to retain outside counsel in connection with the *de minimis* merger filing and no longer needs to do so as a result of the less onerous letter filing procedure under the proposed rule). The proposed letter filing procedures would also reduce other regulatory burdens and the processing time associated with such merger filings, which would likely lead to additional savings.

The proposed rule also would establish expedited processing for corporate reorganizations satisfying the requirements of new § 303.64(d) that are not *de minimis* merger transactions. In the period from January 1, 2016, to December 31, 2025, the FDIC received 437 merger filings that would qualify as corporate reorganizations subject to the expedited processing procedures under § 303.64(d).[87] Of those merger filings, 305 were processed under current expedited processing procedures, but as discussed, that number may be lower. The FDIC thus expects the proposed rule to expand the number of merger filings processed under expedited processing procedures for corporate reorganizations.

In the period from January 1, 2016, to December 31, 2025, the average processing time for corporate reorganizations that would be eligible for expedited processing procedures under § 303.64(d) was 69 days, but as discussed, the processing time is likely shorter.[88] By contrast, the proposed rule would generally require the FDIC to act within 30 days of receiving a substantially complete merger filing, thus reducing the processing timeline by a minimum of 39 days on average for similar corporate reorganizations (if the FDIC took the full thirty days in all cases). Such corporate reorganizations also would be authorized for immediate consummation upon FDIC approval of the merger filing.[89] Although the FDIC

[82] FDIC Call Report Data, Dec. 31, 2025.

[83] FDIC supervisory data.

[84] *Id.*

[85] FDIC supervisory data.

[86] New § 303.64(c)(1) provides that a substantially complete letter filing for a *de minimis* merger transaction submitted under Subpart D shall, unless the Attorney General objects to the transaction on competitive grounds within the timeframe permitted in section 18(c)(4) of the FDI Act (12 U.S.C. 1828(c)(4)), be deemed approved on the date that is the latest of: (i) 5 business days after the date of the FDIC's receipt of a substantially complete letter filing; or (ii) if the transaction is not a corporate reorganization, 5 business days after (A) receipt of a competitive factors report confirming that the Attorney General does not object to the transaction on competition grounds; or (B) the expiration of the timeframe permitted in section 18(c)(4) of the FDI Act (12 U.S.C. 1828(c)(4)) if no competitive factors report has been received.

[87] FDIC supervisory data.

[88] *Id.*

[89] New § 303.64(d)(2) provides that for corporate reorganization filings submitted under new § 303.64(d)(1), the FDIC shall take action on a filing by the date that is the latest of: (i) 30 days after the date of the FDIC's receipt of a substantially

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does not have the information or data necessary to quantify this benefit, the FDIC expects that applicants would benefit from reduced regulatory burden, processing time, and cost. Furthermore, applicants would have greater certainty on processing timelines to better gauge key dates to facilitate the consummation of their transactions.

The proposed rule would expand expedited processing for eligible depository institutions engaging in merger transactions that are not also corporate reorganizations or *de minimis* merger transactions and that satisfy the requirements of new § 303.64(e). In the period from January 1, 2016, to December 31, 2025, the FDIC received 685 merger filings that would qualify as merger transactions subject to the expedited processing procedures established under § 303.64(e).[90] Of those merger filings, 459 would have qualified for expedited processing under the current rule, with an average processing time of 54 days. The proposed rule would also increase the maximum total assets eligibility criteria for this category of expedited processing, thus increasing the number of transactions that would qualify by 221. The processing time for those transactions was 109 days, on average. By contrast, the proposed rule would generally require the FDIC to act within 45 days of receiving a substantially complete merger filing.[91] Although the 45 day timeframe for this category of expedited processing remains the same under the proposed rule, the proposed rule would require the FDIC to take action on a merger filing within the applicable processing time,[92] meaning the proposed rule would impose more discipline on the FDIC's processing timeframes and therefore reduce the average processing time for this category of expedited processing by a minimum of 9 days for transactions that would have qualified for expedited processing under the current rule and 64 days for transactions that would not have qualified for expedited processing under the current rule (if the FDIC took the full 45 days in all cases). While the FDIC does not have the data or information necessary to quantify the effects of this aspect of the proposed rule, it expects that the increase in the maximum asset eligibility criteria for this category of expedited processing and the associated reduction in processing times would be beneficial to applicants.

Standard Processing

The proposed rule would establish new tailored timeframes for standard processing. One category of standard processing for qualifying merger transactions under new § 303.64(f) would be subject to a 90-day processing timeframe, with the option for a one-time extension of 90 days, for a potential total processing timeframe of 180 days.[93] In the period from January 1, 2016, to December 31, 2025, the FDIC received 301 merger filings that would have qualified for standard processing under § 303.64(f).[94] These filings had an average processing time of 112 days. By contrast, under the proposed rule, the FDIC anticipates that extensions would be rare, and therefore the vast majority of merger filings under this category of standard processing would benefit from an average reduction in processing time of 22 days (if the FDIC took the full 90 days in every case).

The second category of standard processing in new § 303.64(g) would capture all other merger transactions not subject to rapid processing, expedited processing, or 90-day standard processing.[95] Such transactions would be subject to a 150-day processing timeframe, with the option for a one-time extension of 120 days, for a potential total processing timeframe of 270 days. In the period from January 1, 2016, to December 31, 2025, the FDIC received 4 merger filings that would have qualified for standard processing under new § 303.64(g). These filings had an average processing timeframe of 345 days. By contrast, under the proposed rule, the FDIC anticipates that extensions would be rare, and therefore the vast majority of merger filings under this category of standard processing would benefit from an average reduction in processing time of 192 days. While the FDIC does not have the data or information necessary to quantify the effects of this aspect of the proposed rule, it expects that the new tailored timeframes for standard processing would be beneficial to applicants.

Substantially Complete Determination

Under the proposed rule, if a merger filing was submitted that was incomplete, the FDIC would notify the applicant within 21 days of receipt and provide a written explanation of the information needed to render the merger filing substantially complete. The FDIC would have the ability to return the merger filing as incomplete. Based on a representative sampling of merger filings, the FDIC has determined that a merger filing was substantially complete within 30 days, on average. The proposed rule would therefore improve the FDIC's merger review framework by reducing the number of days that it takes the FDIC to determine whether a merger filing is substantially complete by 7 days, at a minimum (if the FDIC takes the full 21 days in every case). The proposed rule would also provide the FDIC with needed flexibility to return merger filings (and all filings under part 303) as incomplete. The FDIC does not have the necessary data to quantify the benefits of this aspect of the proposed rule, but the FDIC expects that it will improve the speed of the FDIC's merger review framework, reduce regulatory burden associated with multiple Additional Information Requests, and provide transparency and certainty to applicants. Moreover, the FDIC anticipates that it would be easier for applicants to gauge key dates to facilitate the consummation of their transactions.

complete filing; or (ii) For an interstate merger transaction subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u), 5 business days after the FDIC receives confirmation from the host State (as defined in § 303.41(e)) that the applicant has both complied with the filing requirements of the host State and submitted a copy of the filing to the host State bank's supervisor.

[90] FDIC supervisory data.

[91] New § 303.64(e)(2) provides that for applicable merger filings submitted under new § 303.64(e)(1), the FDIC shall take action on a filing by the date that is the latest of: (i) 45 days after the date of the FDIC's receipt of a substantially complete filing; (ii) 10 days after the date of the last notice publication required under § 303.65 of Subpart D; (iii) 5 business days after (A) receipt of a competitive factors report confirming that the Attorney General does not object to the transaction on competition grounds; or (B) the expiration of the time frame permitted in section 18(c)(4) of the FDI Act (12 U.S.C. 1828(c)(4)) if no competitive factors report has been received; or (iv) For an interstate merger transaction subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u), 5 business days after the FDIC receives confirmation from the host State (as defined in § 303.41(e)) that the applicant has both complied with the filing requirements of the host State and submitted a copy of the filing to the host State's bank supervisor.

[92] New § 303.64(a)(1) provides that the FDIC shall render a decision on a substantially complete filing within the applicable processing timelines in this subpart and shall issue written notice of its decision.

[93] New § 303.64(f) provides that for merger filings not processed pursuant to rapid or expedited processing procedures and that meet the criteria of new § 303.64(f)(1), the FDIC shall take action on a filing within 90 days after receipt of a substantially complete filing if (i) the resulting institution will have less than $50 billion in assets, (ii) authority to act on the filing is not reserved to the FDIC's Board of Directors, and (iii) consummation of the merger transaction is not dependent upon action by another Federal regulator.

[94] This number reflects the inclusion of merger filings that may be dependent upon action by another Federal regulator.

[95] New § 303.64(g) provides that for merger filings subject to standard processing that do not satisfy the aforementioned criteria or otherwise qualify for rapid or expedited processing, the FDIC shall take action within 150 days of receipt of a substantially complete filing.

Public Notice and Comment

The proposed rule would also reduce the number of publications required to satisfy the requirements of the BMA for merger transactions that are not also corporate reorganizations from three to two and only in the location of the bank(s) or savings association(s) involved in the merger transaction. For corporate reorganizations, the number of publications required to satisfy the requirements of the BMA would be further reduced to one. The FDIC expects these reductions to the number of required publications to reduce regulatory burden and costs associated with merger filings. Furthermore, the proposed rule would reduce the public comment period for corporate reorganizations that are not *de minimis* merger transactions from 30 days to 15 days and eliminate the public comment period for *de minimis* merger transactions. The FDIC does not have the information necessary to quantify the benefits of these changes but believes that the reduction in regulatory burden is likely to be meaningful, with minimal impact on the public's awareness of pending transactions.

Mergers in Substance

The proposed rule would define ''merger in substance'' and clarify that mergers in substance are subject to merger filing and processing requirements. As noted above, the proposed definition of merger in substance is generally consistent with the FDIC's longstanding practice of applying the BMA to certain transactions that are substantively and economically equivalent to a merger transaction, while at the same time embedding substantially more transparency and predictability into such determinations. The proposed rule would provide additional certainty regarding the types of transactions the FDIC considers to be mergers in substance and ensure consistency in the FDIC's treatment of such transactions. Improved certainty and consistency regarding mergers in substance would reduce both (1) the likelihood that the FDIC requires merger filings for transactions that should not be subject to the BMA, and (2) the costs incurred by prospective applicants in order to analyze whether a transaction is in fact a merger in substance, thus necessitating a merger filing. The FDIC does not have the information necessary to estimate the number of transactions that would be affected by this aspect of the proposed rule.

Significant Asset Transfers

The proposed rule would require an FDIC-supervised institution to notify the FDIC and obtain the FDIC's non-objection before engaging in a significant asset transfer. A ''significant asset transfer'' would be defined as a transaction that is not a merger transaction but that is a single transaction or a part of a series of transactions with the same counterparty or one or more affiliates of the same counterparty that would increase the size of the acquiring FDIC-supervised institution's assets by 25 percent or more over a rolling 12-month period. Although the FDIC does not currently collect data on significant asset transfers, the FDIC identified 27 filings received from January 1, 2016, to December 31, 2025 in which an acquiring institution's assets would have increased by at least 25 percent and uses this as a proxy estimate for the expected number of significant asset transfer filings under the proposed rule.[96] The FDIC estimates that the proposed notice and non-objection procedures for significant asset transfers would cost filers a minimum of $1,100 per filing (while recognizing that in many cases this cost could be substantially higher). However, for any significant asset transfers that would require a merger filing (such as a merger in substance) under the FDIC's current regulations, the proposed rule would substantially reduce filing costs. By contrast, the cost to submit a merger filing is estimated at a minimum of $4,500, so a notice filing produces a cost savings when compared to a more comprehensive merger filing.

Statutory Factors

As described above, in new § 333.5, the proposed rule modifies and codifies how the FDIC would review merger filings within the context of the applicable statutory factors under the BMA. Although the FDIC lacks the data necessary to quantify the impacts of new § 333.5, based on its supervisory experience processing mergers under the existing regulations and the SOP, the FDIC believes the provisions of new § 333.5 would modernize how the agency evaluates and resolves the statutory factors. The FDIC expects that potential applicants and the broader public will benefit from a clearer, more predictable approach to the statutory factors that more closely aligns with market realities. For example, the proposed analysis of the competition factor would more closely reflect the industry's competitive landscape.

Indexing of Thresholds

The proposed rule would index the dollar amounts in the proposed rule. The indexing provision would preserve the level of thresholds set forth in the proposed rule in real terms, thereby avoiding the undesirable and unintended outcome where the asset threshold changes due solely to inflation rather than actual changes in an institution's size, risk profile, or level of complexity.

VI. Alternatives Considered

The FDIC considered amending its current SOP on Bank Merger Transactions instead of amending subpart D. However, the FDIC determined that its objectives of improving certainty in the processing of merger filings and reducing regulatory burden associated with processing merger transactions would be better achieved through codifying key aspects of the SOP as a regulation through a formal notice and comment rulemaking that considers feedback from all stakeholders.

The FDIC will submit the proposed revisions to these information collections to OMB for review under section 3507(d) of the PRA [97] and 5 CFR 1320.11 of the OMB's implementing regulations.

Title of Information Collection: Interagency Bank Merger Application.

OMB Number: 3064–0015.

Affected Public: Insured Depository Institutions.

VII. Regulatory Analysis

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[98] However, an initial regulatory flexibility analysis is not required if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $850 million.[99]

[96] FDIC supervisory data.

[97] 5 U.S.C. 801(a)(1).

[98] 5 U.S.C. 601 *et seq.*

[99] The SBA defines a small banking organization as having $850 million or less in assets, where an organization's ''assets are determined by averaging

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Generally, the FDIC considers a significant economic impact to be a quantified effect in excess of 5 percent of total annual salaries and benefits or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of one or more of these thresholds typically represent significant economic impacts for FDIC-supervised institutions. For the reasons provided below, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

As discussed in Section IV, the proposed rule introduces certain procedural changes and clarifies how the FDIC reviews merger transactions under the statutory factors. The proposed rule expands expedited processing for merger transactions, codifies the considerations that the FDIC takes into account in its review under the statutory factors, and indexes thresholds. These proposed changes are intended to promote greater transparency and predictability and are expected to reduce processing timelines, reduce regulatory burden, and produce other non-quantifiable benefits, such as increased certainty and clarity for institutions planning transactions.

As of the quarter ending December 31, 2025, the FDIC supervised 2,745 depository institutions. Of these, 2,011 were ''small entities'' as defined by RFA.[100] In the last ten calendar years ending December 31, 2025, the FDIC received 1,935 merger filings, of which 841 filings were from 644 small entities. For a detailed analysis of the potential costs and benefits for affected entities, including small entities, please review Section V. The following information includes quantitative effects on small entities associated with the proposed rule.

The proposed rule would establish expedited processing for corporate reorganizations that do not qualify as *de minimis* merger transactions. Under the proposed rule, the FDIC would take action on a corporate reorganization filing by the later of 30 days after receipt of a substantially complete filing, or, for interstate merger transactions, 5 days after the FDIC received confirmation from the host State that the applicant has both complied with the filing requirements of the host State and submitted a copy of the filing to the host State's bank supervisor. Also, corporate reorganizations would be authorized for immediate consummation upon written receipt of the FDIC's approval under the proposed rule.

Over the last ten calendar years ending December 31, 2025, the FDIC received 194 corporate reorganization merger filings from small entities. The FDIC took 65 days, on average, to process these filings. This aspect of the proposed rule would benefit prospective small entity applicants by reducing the processing time by 35 days, on average.[101] While the FDIC does not have the information to quantify this benefit, it could be material for some small entity applicants.

Additionally, the proposed rule would establish a streamlined filing process for *de minimis* transactions. Generally, merger transactions that are not part of a series of acquisitions, would not result in the IDI being less than ''well-capitalized'' upon consummation, where the amount of assets acquired is less than five percent of the assets of the acquiring IDI and, for transactions that are not corporate reorganizations, also less than an adjusted threshold (currently $133.9 million), would be eligible for rapid processing under the proposed rule. Small entities submitted 138 merger filings over the last ten calendar years ending December 31, 2025, that may have qualified for streamlined treatment under the proposed rule's *de minimis* merger transaction thresholds. The FDIC took 93 days on average to process these filings. Under the proposed rule, such filings could see reductions in processing time of 88 days, on average.[102] While the FDIC does not have the information to quantify the benefits described above, they could be material for some small entity applicants.

The FDIC does not have the information to quantify all of the benefits of the proposed rule on small entities described above. For purposes of this analysis, the FDIC assumes that every small entity that filed a merger filing over the last ten calendar years would have been significantly impacted by the proposed rule. As mentioned above, the FDIC received merger filings from 644 small entities over the previous ten years. Thus, by assumption, the proposed rule would significantly impact 64 small entities annually, on average. This represents only 3 percent of small entities supervised by the FDIC and the FDIC does not consider 3 percent of small entities to represent a ''substantial number'' of small entities.

Based on the preceding statement of factual basis, the FDIC certifies that the proposed rule would not have a significant impact on a substantial number of small entities. The FDIC welcomes comments on all aspects of this analysis.

Question: Are there any effects on small entities the FDIC has not identified?

B. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),[103] the FDIC may not conduct or sponsor, and the 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 FDIC has reviewed the proposed rule and determined that it revises certain information collection requests under OMB Control No. 3064–0015.

Title of Information Collection: Interagency Bank Merger Application.

the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended by 87 FR 69118, effective Dec. 19, 2022). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses an IDI's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the IDI is ''small'' for the purposes of RFA.

[100] The SBA defines a small banking organization as having $850 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended by 87 FR 69118, effective Dec. 19, 2022). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the FDIC-supervised institution is ''small'' for the purposes of RFA.

[101] New § 303.64(d)(2) provides that for corporate reorganization filings submitted under new § 303.64(d)(1), the FDIC shall take action on a filing by the date that is the latest of: (i) 30 days after the date of the FDIC's receipt of a substantially complete filing; or (ii) For an interstate merger transaction subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u), 5 business days after the FDIC receives confirmation from the host State (as defined in § 303.41(e)) that the applicant has both complied with the filing requirements of the host State and submitted a copy of the filing to the host State bank's supervisor.

[102] New § 303.64(c)(1) provides that a substantially complete letter filing for a *de minimis* merger transaction submitted under Subpart D shall, unless the Attorney General objects to the transaction on competitive grounds within the timeframe permitted in section 18(c)(4) of the FDI Act (12 U.S.C. 1828(c)(4)), be deemed approved on the date that is the latest of: (i) 5 business days after the date of the FDIC's receipt of a substantially complete letter filing; or (ii) if the transaction is not a corporate reorganization, 5 business days after (A) receipt of a competitive factors report confirming that the Attorney General does not object to the transaction on competition grounds; or (B) the expiration of the timeframe permitted in section 18(c)(4) of the FDI Act (12 U.S.C. 1828(c)(4)) if no competitive factors report has been received.

[103] 44 U.S.C. 3501 *et seq.*

OMB Number: 3064–0015.

Affected Public: IDIs.

Current Actions: The proposed rule would tailor the merger filing content and processing requirements in 12 CFR part 303, subpart D (subpart D) to reduce burden and processing times for certain merger transactions, such as corporate reorganizations and *de minimis* merger transactions. As a result of those changes, the FDIC estimates a total annual burden of 4,184 hours, a decrease of 1,400 hours from the currently approved information collection.

C. Plain Language

Section 722 of the Gramm-Leach Bliley Act [104] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invites your comments on how to make the proposed rule easier to understand, including the following:

Question: Has the FDIC organized the material to suit your needs? If not, how could the proposed rule be more clearly stated?

Question: Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?

Question: Does the proposed rule contain language or jargon that is not clear? If so, which language requires clarification?

Question: Would a different format (grouping and order of sections, use of headings or paragraphs) make the proposed rule easier to understand? If so, what changes to the format would make the proposed rule easier to understand?

Question: What else could the FDIC do to make the proposed rule easier to understand?

D. Reigle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Reigle Community Development and Regulatory Improvement Act of 1994 (RCDRIA),[105] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency shall consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on affected 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 the RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs 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.[106] The FDIC invites comments that will further inform its consideration of the RCDRIA.

E. Executive Order 12866

Executive Order 12866, titled ‘‘Regulatory Planning and Review,’’ as amended, requires the Office of Information and Regulatory Affairs (OIRA), OMB to determine whether a proposed rule is a ‘‘significant regulatory action’’ prior to the disclosure of the proposed rule to the public. If OIRA finds the proposed rule to be a ‘‘significant regulatory action,’’ Executive Order 12866 requires the agency to conduct a cost-benefit analysis of the proposed rule. Executive Order 12866 defines ‘‘significant regulatory action’’ to mean a regulatory action that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

OIRA has deemed that this proposed rule is an economically significant regulatory action under section 3(f)(1) of Executive Order 12866 and, therefore, is subject to review under Executive Order 12866. Accordingly, the proposed rule was submitted to OIRA for review.

F. Executive Order 14192

Executive Order 14192, titled ‘‘Unleashing Prosperity through Deregulation,’’ requires that an agency, unless prohibited by law, identify at least 10 existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation with total costs greater than zero. Executive Order 14192 further requires that new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least ten prior regulations. This proposed rule, if finalized as proposed, is expected to be an E.O. 14192 deregulatory action.

G. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 [107] requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet.

The FDIC proposes to reform its approach to merger transactions under the Bank Merger Act (BMA). Reforms would include: accounting for credit unions and centrally booked deposits in the initial competitive effects analysis; establishing a letter filing process with ‘‘deemed approval’’ for *de minimis* merger transactions; tailoring other merger filing requirements to reduce burden and processing times based on the size and risk profile of a merger transaction and the attributes of the acquiring and resulting institution; limiting the FDIC's discretion to remove a filing from expedited processing; and codifying the FDIC's reformed approach to evaluating the BMA statutory factors.

The proposed rule and the required summary can be found at *https://www.fdic.gov/federal-register-publications.*

List of Subjects in 12 CFR Parts 303, 314, 333

Administrative practice and procedure, Bank deposit insurance, Bank merger, Banks, banking, Branching, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR parts 303, 314, and 333 as follows:

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

PART 303—FILING PROCEDURES

■ 1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1464, 1813, 1815, 1817, 1818, 1819(a) (Seventh and

[104] Sec. 722, Public Law 106–102, 113 Stat. 1338 (12 U.S.C. 4809).

[105] 12 U.S.C. 4802(a).

[106] 12 U.S.C. 4802(b).

[107] 12 U.S.C. 553(b)(4).

Tenth), 1820, 1823, 1828, 1829, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5414, 5415, and 15 U.S.C. 1601–1607.

§ 303.7 [Amended]

■ 2. Amend § 303.7 by revising paragraph (a) to read as follows:

(a) The public must be provided with prior notice of a filing to engage in a merger transaction, initiate a change of control transaction, or request deposit insurance. The public may comment on, during the relevant comment period, filings to initiate a change of control transaction, request deposit insurance, or engage in merger transactions identified in § 303.65(e). In order to fully apprise the public of the opportunity to comment, an applicant shall publish a public notice in a newspaper of general circulation. For specific publication requirements, consult subparts B (Deposit Insurance), D (Merger Transactions), and E (Change in Bank Control) of this part.

* * * * *

§ 303.8 [Amended]

■ 3. Amend § 303.8 by revising paragraph (a) to read as follows:

(a) *General.* For filings subject to a public notice requirement, any person may inspect or request a copy of the non-confidential portions of a filing (the public file) until 180 days following final disposition of a filing. Following the 180-day period, the public file shall be made available in accordance with § 303.8(c). The public file generally consists of portions of the filing, supporting data, supplementary information, and comments submitted by interested persons (if any) to the extent that the documents have not been afforded confidential treatment. To view or request photocopies of the public file, an oral or written request should be submitted to the appropriate FDIC office. The public file shall be provided to a requestor not more than one business day after preparation of the file is complete. The FDIC may impose a fee for photocopying in accordance with § 309.5(f) of this chapter at the rates the FDIC publishes annually in the **Federal Register**.

* * * * *

§ 303.11 [Amended]

■ 4. Amend § 303.11 by:

■ a. Revising paragraph (c)(2)(i) and (ii);

■ b. Adding paragraph (c)(5); and

■ c. Revising and replacing paragraph (e).

The revisions and additions read as follows:

§ 303.11 Decisions.

* * * * *

(c) * * *

(1) * * *

(2) *Removal of filing from expedited processing.* The FDIC may remove a filing from expedited processing at any time prior to final disposition if:

(i) For filings subject to public notice under § 303.7, an adverse comment is received that is supported by the supervisory record or other available information and warrants additional investigation or review;

(ii) For filings subject to evaluation of CRA performance under § 303.5, a CRA protest is received that raises a significant CRA concern, is supported by the supervisory record or other available information, and warrants additional investigation or review;

* * * * *

(5) The FDIC expects the removal of a filing from expedited processing to be rare. The filing of an adverse comment or CRA protest shall not automatically remove a filing from expedited processing. Rather, the FDIC shall determine if it is necessary to remove a filing pursuant to paragraph (c)(2) of this section because the allegations are sufficiently severe to impact the FDIC's analysis of the statutory factors.

* * * * *

(e) *Return of filing.* A filing shall contain all information set forth in the applicable subpart of this part. To the extent necessary to evaluate a filing, the FDIC may require an applicant to provide additional information. If the filing does not contain all information set forth in the applicable subpart of this part, or information requested by the FDIC is not provided within the time period specified by the agency, the FDIC may return the filing and shall provide written notification to the applicant and any interested parties that submitted comments to the FDIC that the filing has been returned to the applicant and the FDIC has not rendered a decision on the filing.

* * * * *

§ 303.60 [Amended]

■ 5. Amend § 303.60 by revising the introductory paragraph to read as follows:

§ 303.60 Scope.

This subpart sets forth the filing requirements and procedures for transactions subject to FDIC approval under the Bank Merger Act, section 18(c) of the FDI Act (12 U.S.C. 1828(c)). The FDIC also takes into account the requirements and considerations set forth in § 333.5 of this chapter when evaluating the relevant statutory factors under the Bank Merger Act.

* * * * *

§ 303.61 [Amended]

■ 6. Amend § 303.61 by:

■ a. Revising paragraphs (a) through (d); and

■ b. Adding paragraphs (e) through (l).

The revisions and additions read as follows:

§ 303.61 Definitions.

(a) *Centrally booked deposits* means deposits that are recorded at a central office and not attributed to a branch based on the location of the depositor.

(b) *Corporate reorganization* means a merger transaction that involves solely an insured depository institution and one or more affiliates of the insured depository institution. A transaction satisfies the definition of a corporate reorganization if the affiliation between the insured depository institution and the affiliate(s) exists at the time of filing. A transaction does not satisfy the definition of a corporate reorganization if the affiliation occurs by means of a related contemporaneous transaction involving the control parties of the insured depository institution and the other institution(s).

(c) De minimis *merger transaction* means a transaction in which—

(1) The transaction is either:

(i) A merger transaction in which the amount of assets acquired by the insured depository institution is less than both (A) the adjusted lower threshold under section 7A(a)(2)(B)(i) of the Clayton Act (15 U.S.C. 18a(a)(2)(B)(i)) and (B) 5 percent of the assets of the acquiring insured depository institution; or

(ii) A corporate reorganization in which (A) an insured depository institution acquires one or more operating subsidiaries; and (B) the legal and financial risk that the insured depository institution is exposed to is substantially identical before and after the transaction;

(2) All institutions involved in the transaction, to the extent applicable:

(i) Received an FDIC-assigned composite rating of 3 or better under the Uniform Financial Institutions Rating System (UFIRS) as a result of its most recent Federal or State examination;

(ii) Received a satisfactory or better Community Reinvestment Act (CRA) rating from its primary Federal regulator at its most recent examination, if the depository institution is subject to examination under part 345 of this chapter;

(iii) Received a compliance rating of 1, 2, or 3 from its primary Federal regulator at its most recent examination;

(iv) Is well-capitalized as defined in the appropriate capital regulation and guidance of the institution's primary Federal regulator; and

(v) Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its primary Federal regulator or chartering authority; and

(3) The resulting institution will be ''well-capitalized'' pursuant to subpart H of part 324 of this chapter (12 CFR part 324), 12 CFR part 3, or 12 CFR part 217, as applicable, immediately following the merger transaction.

(d) *Interim institution* means a State- or Federally-chartered depository institution that does not operate independently but exists solely as a vehicle to accomplish a merger transaction.

(e) *Interim merger transaction* means a merger transaction (other than a purchase and assumption transaction) between an operating depository institution and a newly formed depository institution or interim institution.

(f) *Interstate merger transaction* means any merger transaction that results in a State nonmember bank operating a branch in a State that is not its home State or in which it does not currently operate a branch.

(g) *Merger in substance* means any merger transaction or series of merger transactions over a rolling 12-month period in which an insured depository institution directly or indirectly acquires all or substantially all, meaning 80 percent or more, of the assets of another insured depository institution, noninsured bank, or other institution.

(h) *Merger transaction* means a transaction in which an insured depository institution:

(1) Merges or consolidates with any other insured depository institution;

(2) Either directly or indirectly acquires the assets of any other insured depository institution in a manner that would constitute a merger in substance;

(3) Assumes liability to pay any deposits made in any other insured depository institution;

(4) Merges or consolidates with any noninsured institution, including in a manner that would constitute a merger in substance;

(5) Assumes liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution; or

(6) Transfers assets to any noninsured bank or institution in consideration of the assumption of liabilities for any portion of the deposits made in the insured depository institution.

(i) *Operating subsidiary* has the same meaning as in the regulations of the Board of Governors of the Federal Reserve System at 12 CFR 223.3(aa).

(j) *Significant asset transfer* means a transaction or series of transactions with the same counterparty or one or more affiliates of the same counterparty that is not a merger transaction but that increases the size of the acquiring FDIC-supervised institution's assets by 25 percent or more over a rolling 12-month period. The term ''significant asset transfer'' does not include a change in the assets of an FDIC-supervised institution that is otherwise subject to FDIC approval or filing requirements.

(k) *Substantially complete* means the FDIC has received information sufficient to evaluate and make a determination on the statutory factors in section 18(c) of the FDI Act (12 U.S.C. 1828(c)), as described in § 333.5, and confirm the applicant has complied with its obligations under applicable law.

(l) *Relevant geographic market* means the relevant banking market(s) of the acquiring institution and the institution to be acquired as defined by the Board of Governors of the Federal Reserve System at the time a filing is submitted. If a relevant banking market has not been defined by the Board of Governors of the Federal Reserve System, the relevant geographic market shall consist of each county in which both the acquiring institution and the institution to be acquired have branch locations, as adjusted to reflect factors that influence how customers in the market seek and obtain banking products and services.

* * * * *

§ 303.62 [Amended]

■ 7. Amend § 303.62 by revising and republishing paragraphs (a) and (b) to read as follows:

§ 303.62 Transactions requiring prior approval.

(a) *Merger transactions.* The following transactions, which include a merger in substance, require the prior written approval of the FDIC under this subpart:

(1) Any merger transaction in which the resulting institution would be an FDIC-supervised institution; and

(2) Any merger transaction that involves a bank or institution that is not insured by the FDIC.

(b) *Related regulations.* Transactions covered by this subpart also may be subject to other restrictions, regulations, or filing requirements, including the following:

(1) *Interstate merger transactions.* Interstate merger transactions are subject to the restrictions and requirements of section 44 of the FDI Act (12 U.S.C. 1831u). In the case of a merger transaction that consists of the acquisition by an out-of-State bank of a branch without acquisition of the bank, the branch is treated for section 44 purposes as a bank whose home State is the State in which the branch is located.

(2) *Deposit insurance for interim institutions.* Procedures for applying for deposit insurance for interim institutions are set forth in § 303.24.

(i) *State interim institutions.* An application for deposit insurance shall be required in connection with a merger transaction between a State interim institution and an insured depository institution if the related merger filing is being acted upon by a Federal banking agency other than the FDIC. State interim institutions are not insured by operation of law. Therefore, FDIC action is needed to either grant deposit insurance to the State interim institution or to act on the merger filing of a noninsured State interim institution with an insured depository institution under the Bank Merger Act.

(ii) *Federal interim institutions.* Where the resulting institution is FDIC-supervised and FDIC action is required under the Bank Merger Act, an additional deposit insurance application is unnecessary. An application for deposit insurance shall not be required in connection with a merger transaction (other than a purchase and assumption transaction) involving a Federal interim institution and an insured institution, even if the resulting institution is to operate under the charter of the Federal interim institution. Federal interim institutions that do not open for business are insured by operation of law pursuant to section 5(a)(2) of the FDI Act (12 U.S.C. 1815(a)(2)). Therefore, the merger of a Federal interim institution with another insured depository institution is not subject to FDIC approval if the Federal interim institution has not been and will not be open for business.

(3) *Branch closings.* Branch closings in connection with a merger transaction shall comply with the notice requirements of section 42 of the FDI Act (12 U.S.C. 1831r–1), including requirements for notice to customers.

(4) *Undercapitalized institutions.* Filings for a merger transaction by applicants subject to section 38 of the FDI Act (12 U.S.C. 1831o) shall provide the information required by § 303.204. Filings pursuant to sections 38 and 18(c) of the FDI Act (12 U.S.C. 1831o and 1828(c)) may be filed concurrently or as a single filing.

(5) *Certification of assumption of deposit liability.* Whenever all of the deposit liabilities of an insured depository institution are assumed by one or more insured depository

institutions by merger, consolidation, other statutory assumption, or by contract, the transferring insured depository institution, or its legal successor, shall provide an accurate written certification to the FDIC that its deposit liabilities have been assumed, in accordance with 12 CFR part 307.

* * * * *

§ 303.63 [Amended]

■ 8. Amend § 303.63 by revising and republishing paragraphs (a) through (c) to read as follows:

§ 303.63 Filing procedures.

(a) *General.* Filings required under this subpart shall be submitted to the appropriate FDIC office. The appropriate forms and instructions may be obtained on the FDIC website or requested from any FDIC regional office.

(b) *Submission requirements.* Filings shall be accompanied by copies of all agreements or proposed agreements relating to the merger transaction. The FDIC may request additional information as necessary to reach a decision on the filing. An applicant may voluntarily submit additional information for consideration under the provisions of § 333.5.

(c) *Interim merger transactions.* Filings for approval of interim merger transactions and any related deposit insurance applications shall be made by submitting the forms and other documents required by paragraphs (a) and (b) of this section and such other information as necessary for the FDIC to reach a decision on the request for deposit insurance.

* * * * *

§ 303.64 [Amended]

■ 9. Amend § 303.64 by:

■ a. Revising and republishing paragraphs (a) through (c); and

■ b. Adding paragraphs (d) through (h).

The revision and additions read as follows:

§ 303.64 Processing.

(a) *Filing decisions.*

(1) *Timeliness.* The FDIC shall render a decision on a substantially complete filing within the applicable processing timelines in this subpart and shall issue written notice of its decision.

(2) *Immediate consummation.* Corporate reorganizations shall be authorized for immediate consummation on receipt of the FDIC's written approval.

(b) *Substantially complete filings.*

(1) If a filing is submitted that is not substantially complete, the FDIC shall, within 21 days after receipt of the submission, notify the applicant and provide a written explanation regarding the information needed to render the filing substantially complete.

(2) If the FDIC does not provide notice that a filing is not substantially complete within 21 days after receipt of the submission, the filing shall be deemed substantially complete as of the date of receipt.

(3) If an applicant fails to provide the information necessary to render the filing substantially complete within 30 days after receipt of notice from the FDIC, then the FDIC may return the filing to the applicant as incomplete without rendering a decision on the filing. An applicant may subsequently resubmit a filing that is returned.

(c) *Rapid processing for* de minimis *merger transactions.*

(1) *General.* A substantially complete letter filing for a *de minimis* merger transaction submitted under this subpart shall, unless the Attorney General objects to the transaction on competitive grounds within the timeframe permitted in section 18(c)(4) of the FDI Act (12 U.S.C. 1828(c)(4)), be deemed approved on the date that is the latest of:

(i) 5 business days after the date of the FDIC's receipt of a substantially complete letter filing; or

(ii) If the transaction is not a corporate reorganization, 5 business days after (A) receipt of a competitive factors report confirming that the Attorney General does not object to the transaction on competition grounds; (B) the expiration of the timeframe permitted in section 18(c)(4) of the FDI Act (12 U.S.C. 1828(c)(4)) if no competitive factors report has been received; or (C) the end of the time period set forth in a request by the Attorney General for additional time to analyze competitive concerns.

(2) *Letter filing content.* A letter filing containing all the information in this paragraph (c)(2) shall be deemed substantially complete. The letter filing shall include the following information or indicate why such information is inapplicable to the transaction:

(i) Copies of the following documents: (A) draft and, when available, executed merger or transaction agreement(s), including any amendments; (B) any board of directors' resolutions related to the transaction; and (C) charter, articles of association, and related governance documents for any interim institution (if applicable);

(ii) Financial information as of the end of the most recent quarter for the acquiring institution and the institution being acquired and pro forma financial information for the resulting institution, including balance sheets and regulatory capital schedules; and

(iii) Confirmation of the public notice publication consistent with § 303.65, including a statement containing the name and address of the newspaper of general circulation in which the notice was published and date(s) of publication.

(d) *Expedited processing for a corporate reorganization that is not a* de minimis *merger transaction.*

(1) *General.* A filing for a corporate reorganization that is not a *de minimis* merger transaction submitted under this subpart and which meets the additional criteria in paragraph (d)(3) of this section shall receive the expedited processing described in this paragraph (d), unless the applicant is notified in writing to the contrary and provided with a basis for that decision. The FDIC may remove a filing made under this paragraph (d) from expedited processing for any of the reasons set forth in § 303.11(c)(2).

(2) *Timing.* For corporate reorganization filings submitted under paragraph (d)(1) of this section, the FDIC shall take action on a filing by the date that is the latest of:

(i) 30 days after the date of the FDIC's receipt of a substantially complete filing; or

(ii) For an interstate merger transaction subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u), 5 business days after the FDIC receives confirmation from the host State (as defined in § 303.41(e)) that the applicant has both complied with the filing requirements of the host State and submitted a copy of the filing to the host State bank's supervisor.

(3) *Criteria.* The FDIC shall process a filing using expedited procedures for a corporate reorganization in this paragraph (d) if:

(i) Immediately following the merger transaction, the resulting institution will be ''well-capitalized'' pursuant to subpart H of part 324 of this chapter (12 CFR part 324), 12 CFR part 3, or 12 CFR part 217, as applicable; and

(ii)(A) All parties to the merger transaction received an FDIC-assigned composite rating of 3 or better under the UFIRS as a result of the most recent Federal or State examination, to the extent applicable; or

(B) The acquiring party is an eligible depository institution as defined in § 303.2(r) and the amount of the total assets to be acquired does not exceed an amount equal to 25 percent of the acquiring institution's total assets as reported on its Consolidated Report of Condition and Income (Call Report) for the quarter immediately preceding the filing.

(e) *Expedited processing for eligible depository institutions engaging in merger transactions that are not corporate reorganizations eligible for expedited processing under § 303.64(d) or* de minimis *merger transactions.*

(1) *General.* A filing under this subpart by an eligible depository institution as defined in § 303.2(r) and which meets the additional criteria in paragraph (e)(3) of this section shall receive the expedited processing described in this paragraph (e), unless the applicant is notified in writing to the contrary and provided with a basis for that decision. The FDIC may remove a filing made under this paragraph (e) from expedited processing for any of the reasons set forth in § 303.11(c)(2).

(2) *Timing.* For merger filings submitted under paragraph (e)(1) of this section, the FDIC shall, unless the Attorney General objects to the transaction on competitive grounds within the timeframe permitted in section 18(c)(4) of the FDI Act (12 U.S.C. 1828(c)(4)), take action on a filing by the date that is the latest of:

(i) 45 days after the date of the FDIC's receipt of a substantially complete filing;

(ii) 10 days after the date of the last notice publication required under § 303.65 of this subpart;

(iii) 5 business days after (A) receipt of a competitive factors report confirming that the Attorney General does not object to the transaction on competition grounds; or (B) the expiration of the time frame permitted in section 18(c)(4) of the FDI Act (12 U.S.C. 1828(c)(4)) if no competitive factors report has been received; or

(iv) For an interstate merger transaction subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u), 5 business days after the FDIC receives confirmation from the host State (as defined in § 303.41(e)) that the applicant has both complied with the filing requirements of the host State and submitted a copy of the filing to the host State's bank supervisor.

(3) *Criteria.* The FDIC shall process a filing using expedited procedures in this paragraph (e) if:

(i) Immediately following the merger transaction, the resulting institution will be ''well-capitalized'' pursuant to subpart H of part 324 of this chapter (12 CFR part 324), 12 CFR part 3, or 12 CFR part 217, as applicable; and

(ii)(A) All parties to the merger transaction are, to the extent applicable, eligible depository institutions as defined in § 303.2(r); or

(B) The acquiring party is an eligible depository institution as defined in § 303.2(r) and the amount of the total assets to be acquired does not exceed an amount equal to 25 percent of the acquiring institution's total assets as reported in its Consolidated Report of Condition and Income (Call Report) for the quarter immediately preceding the filing.

(f) *Standard processing for qualifying merger transactions.* For merger filings not processed pursuant to rapid or expedited processing procedures and that meet the criteria of paragraph (f)(1), the standard processing procedures in this paragraph (f) shall apply.

(1) *Action taken within 90 days.* The FDIC shall take action on a filing within 90 days after receipt of a substantially complete filing if (i) the resulting institution will have less than $50 billion in assets, (ii) authority to act on the filing is not reserved to the FDIC's Board of Directors, and (iii) consummation of the merger transaction is not dependent upon action by another Federal regulator.

(2) *One-time 90-day extension.* The FDIC may extend the 90-day timeframe, if necessary, due to extenuating circumstances, to complete its review of a substantially complete filing under this paragraph (f), with notice to the applicant describing the extenuating circumstances with specificity, for a maximum of 90 days. The FDIC shall take action on all filings that satisfy the criteria of this paragraph (f) within a maximum of 180 days.

(g) *Standard processing for all other merger transactions.* For merger filings subject to standard processing that do not satisfy the criteria in paragraph (f) of this section or otherwise qualify for rapid or expedited processing, the standard processing procedures in this paragraph (g) shall apply.

(1) *Action taken within 150 days.* The FDIC shall take action on a filing within 150 days of receipt of a substantially complete filing.

(2) *One-time extension for 120 days.* The FDIC may extend the 150-day timeframe, if necessary, due to extenuating circumstances, to complete its review of a substantially complete filing under this paragraph (g), with notice to the applicant describing the extenuating circumstances with specificity, for a maximum of 120 days. The FDIC shall take action on all filings subject to standard processing under this paragraph (g) within a maximum of 270 days.

(h) *Standard processing for State savings associations.* The FDIC shall take action on a filing by a State savings association to acquire or be acquired by another insured depository institution by the earlier of—

(1) 60 days after the date of the FDIC's receipt of a substantially complete filing, subject to the FDIC's discretion to extend such period by an additional 30 days if any material information submitted is substantially inaccurate or incomplete; or

(2) the date by which the FDIC is required to take action under paragraphs (c), (d), or (e) of this section, if the transaction is eligible for rapid or expedited processing under such paragraphs.

* * * * *

§ 303.65 [Amended]

■ 10. Amend § 303.65 by:

■ a. Revising and republishing paragraph (a);

■ b. Redesignating paragraphs (b), (c), and (d) to paragraphs (c), (d), and (e) respectively;

■ c. Adding new paragraph (b); and

■ d. Revising and republishing redesignated paragraphs (c) through (e).

The revisions and additions read as follows:

§ 303.65 Public notice requirements.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, an applicant that has submitted a filing for approval of a merger transaction that is not also a corporate reorganization shall publish notice of the transaction on at least two occasions in a newspaper of general circulation in the community or communities where the main offices of the banks or savings associations are located or, if there is no such newspaper in the community, then in a newspaper of general circulation published nearest thereto.

(1) *First publication.* The first publication of the notice shall be as close as practicable to the date on which the filing is submitted to the FDIC, but no more than 5 days prior to the filing date.

(2) *Second publication.* The last publication of the notice shall be on the 20th day after the first publication or, if published in a newspaper that does not publish on the 20th day, on the newspaper's publication date that is closest to the 20th day.

(b) *Corporate reorganizations.* An applicant that has submitted a filing for approval of a corporate reorganization shall publish notice of the transaction on at least one occasion in a newspaper of general circulation in the community where the main office of the bank or savings association is located or, if there is no such newspaper in the community, then in the newspaper of general circulation published nearest thereto as close as practicable to the date on which the filing is submitted to the FDIC, but no more than 5 days prior to the filing date.

(c) *Exceptions.*

(1) *Emergency requiring expeditious action.* If the FDIC determines that an emergency exists requiring expeditious action, notice shall be published once. The notice shall be published as soon as possible after the FDIC notifies the applicant of such determination.

(2) *Probable failure.* If the FDIC determines that it must act immediately to prevent the probable failure of one of the institutions involved in a merger transaction, publication is not required.

(d) *Content of notice.*

(1) *General.* The notice shall conform to the public notice requirements set forth in § 303.7.

(2) *Branches.*

(i) If it is contemplated that the resulting institution will continue to operate all offices and branches, the following statement shall be included in the notice required in § 303.7(b):

It is contemplated that all offices of the above-named institutions will continue to be operated.

(ii) If it is contemplated that the resulting institution will not operate all of the offices and branches, the following statement shall be included in the notice required in § 303.7(b):

The following offices will not be operated: [insert identity and location of each office that will not be operated].

(e) *Public comments.*

(1) *General.* In general, comments regarding filings submitted under § 303.64(e) through (h) must be received by the appropriate FDIC office within 30 days after the first publication of the notice, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2).

(2) *Emergencies.* If the FDIC has determined that an emergency exists requiring expeditious action, comments must be received by the appropriate FDIC office within 10 days after the single publication.

(3) *Corporate reorganizations.* For corporate reorganizations that are not also *de minimis* merger transactions under § 303.64(c), comments must be received by the appropriate FDIC office within 15 days after publication.

* * * * *

§ 303.66 [Added]

■ 11. Add new § 303.66 to read as follows:

§ 303.66 Significant asset transfers.

(a) *Notice and processing procedures.* The notice and processing procedures in this paragraph (a) shall apply to significant asset transfers.

(1) *Notice.* An FDIC-supervised institution shall provide written notice of a significant asset transfer to the FDIC; and

(2) *Processing.*

(i) *Action taken within 30 days.* The FDIC shall issue a written decision to the applicant of a notice of significant asset transfer within 30 days of receipt. If the FDIC does not issue a written decision or otherwise notify the applicant of an extension in accordance with paragraph (a)(ii) within 30 days of receipt, the notice shall be deemed approved.

(ii) *One time extension of 60 days.* The FDIC may extend the 30-day timeframe, if necessary, for a maximum of 60 days due to extenuating circumstances, to complete its review of a notice under this paragraph (a). The FDIC shall provide the applicant written notice of the extension and describe in the notice the extenuating circumstances with specificity. The FDIC shall issue a written decision on all notices under this paragraph (a) within a maximum of 90 days. If the FDIC does not issue a written decision on a notice subject to an extension within 90 days, the notice shall be deemed approved.

(b) *Consideration of significant asset transfers.*

(1) In determining whether to issue a non-objection to a filing under paragraph (a), the FDIC shall consider the following factors:

(i) The capital level of the resulting institution following the significant asset transfer;

(ii) The conformity of the significant asset transfer to applicable law, regulation, and supervisory policy;

(iii) The purpose of the significant asset transfer; and

(iv) The impact of the significant asset transfer on the safety and soundness of the institution(s) involved in the transaction.

(2) The FDIC may issue an objection if it determines the significant asset transfer will have a negative impact on one or more of the factors in paragraph (b)(1) that cannot be appropriately mitigated by the institutions involved in the transaction.

(c) *Exceptions to rules of general applicability.* Sections 303.7, 303.9, and 303.10 do not apply with respect to filings under this section.

§ 303.67 [Added]

■ 12. Add new § 303.67 to read as follows:

§ 303.67 Severability.

If any provision of this subpart or its application to any person or to certain circumstances is held to be invalid, the remainder of the regulations in this subpart and their application remain in force.

PART 314—INDEXING OF SPECIFIED REGULATORY THRESHOLDS

■ 1. The authority citation for part 314 continues to read as follows:

Authority : 12 U.S.C. 378, 1464, 1813, 1815, 1817, 1818, 1819, 1819(a) (Seventh and Tenth), 1820, 1821(p), 1823, 1828, 1829, 1831a, 1831e, 1831m, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3103, 3104, 3105, 3108, 3109, 3207, 5385(h), 5389, 5390(s)(3), 5390(b)(1)(C), 5390(a)(7)(D), 5381(b), 5390(r), 5390(a)(16)(D), 5414, 5415, and 15 U.S.C. 78j–1, 78l(i), 78m, 78n, 78p, 78w, U.S.C. 1601–1607, 5412, 5414, 5415, 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265; Pub. L. No. 111–203, section 939A, 124 Stat. 1376, 1887 (July 21, 2010) (codified 15 U.S.C. 78o–7 note).

§ 314.1 [Amended]

■ 2. Amend § 314.1 by revising and republishing paragraphs (a) through (c) to read as follows:

§ 314.1 Threshold indexing.

(a) *Methodology.* The dollar thresholds specified in paragraph (c) of this section shall be adjusted by multiplying the baseline threshold values specified in paragraph (c) of this section by one plus the cumulative percent change in the non-seasonally adjusted Consumer Price Index for Urban Wage Earners and Clerical Workers, measured from the baseline dates specified in paragraph (c), as applicable, as further described in paragraph (b) of this section, and shall be rounded in accordance with paragraph (d) of this section.

(b) *Frequency.*

(1) *In general—biennial adjustments.* Except as otherwise provided in paragraph (b)(2), (b)(3), or (b)(4) of this section, the adjustments described in paragraph (a) of this section shall be effective on October 1 following each consecutive two-year period ending August 30, using the non-seasonally adjusted Consumer Price Index for Urban Wage Earners and Clerical Workers as of August 30 of that year.

(2) *First adjustments after baseline dates.*

(i) The first adjustment described in paragraph (a) of this section shall, with respect to the thresholds specified in paragraph (c)(1), be effective on October 1, 2027, and shall be made using one plus the cumulative percent change in the non-seasonally adjusted Consumer Price Index for Urban Wage Earners and Clerical Workers through August 30, 2027.

(ii) The first adjustment described in paragraph (a) of this section shall, with respect to the thresholds specified in paragraph (c)(2), be effective on October 1, 2029, and shall be made using one plus the cumulative percent change in the non-seasonally adjusted Consumer Price Index for Urban Wage Earners and Clerical Workers through August 30, 2029.

(3) *Periods of high inflation—annual adjustments.* If the cumulative percent change of the non-seasonally adjusted Consumer Price Index for Urban Wage Earners and Clerical Workers, measured over the 12-month period ending August 30 following the year in which the most recent adjustment was made exceeds 8 percent, then the dollar thresholds shall be adjusted in accordance with paragraph (a) of this section using the cumulative percent change of the non-seasonally adjusted Consumer Price Index for Urban Wage Earners and Clerical Workers, measured over the 12-month period ending August 30 with an effective date of October 1 following the year in which the most recent adjustment was made.

(4) *Periods of negative inflation—no adjustments.* Notwithstanding paragraph (b)(1) or (b)(2) of this section, if an adjustment of dollar thresholds using the cumulative percent change of the non-seasonally adjusted Consumer Price Index for Urban Wage Earners and Clerical Workers from the applicable baseline date, or the most recent adjustment, as applicable, would not result in an increase from the current dollar thresholds, no adjustment will be made pursuant to paragraph (a) of this section.

(c) *Specified Thresholds.*

(1) The thresholds in the following sections shall be adjusted in accordance with paragraph (a) of this section relative to the baseline threshold values as a baseline date of January 1, 2026, specified in paragraphs (i) through (xxxi) of this section:

(i) Section 303.227(a)(2) of this chapter, baseline threshold value $3,500;

(ii) Section 303.227(b)(3)(i) of this chapter, baseline threshold value $1,225;

(iii) Section 335.801(d) of this chapter, baseline threshold value $10,000,000;

(iv) Section 340.2(h)(1) of this chapter, baseline threshold value $100,000;

(v) Section 340.2(h)(2) of this chapter, baseline threshold value $100,000;

(vi) Section 340.2(h)(3) of this chapter, baseline threshold value $100,000;

(vii) Section 340.2(h)(4) of this chapter, baseline threshold value $100,000;

(vii) Section 347.111(a)(1) of this chapter, baseline threshold value $120,000,000;

(ix) Section 347.111(b)(1) of this chapter, baseline threshold value $60,000,000;

(x) Section 363.1(a) of this chapter, baseline threshold value $1,000,000,000;

(xi) Section 363.2(b)(3) of this chapter, baseline threshold value $5,000,000,000;

(xii) Section 363.3(b) of this chapter, baseline threshold value $5,000,000,000;

(xiii) Section 363.4(a)(2) of this chapter, baseline threshold value $5,000,000,000;

(xiv) Section 363.4(c)(3) of this chapter, baseline threshold value $5,000,000,000;

(xv) Section 363.5(a)(1) of this chapter, baseline threshold value $5,000,000,000;

(xvi) Both thresholds in § 363.5(a)(2) of this chapter, baseline threshold values of $1,000,000,000 or more but less than $5,000,000,000;

(xvii) Section 363.5(b) of this chapter, baseline threshold value $5,000,000,000;

(xviii) Both thresholds in paragraph (8)(A) of appendix A of part 363 of this chapter, baseline threshold value $5,000,000,000;

(xix) Paragraph (10) of appendix A of part 363 of this chapter, baseline threshold value $5,000,000,000;

(xx) Paragraph (18)A of appendix A of part 363 of this chapter, baseline threshold value $5,000,000,000;

(xxi) All three thresholds in paragraph (27) of appendix A of part 363 of this chapter, with the first baseline threshold value being $5,000,000,000 or more and the second and third baseline threshold values being $1,000,000,000 or more but less than $5,000,000,000;

(xxii) Paragraph (30)(b) of appendix A of part 363 of this chapter, baseline threshold value $5,000,000,000;

(xxiii) Both thresholds in paragraph (30)(c) of appendix A of part 363 of this chapter, baseline threshold value $1,000,000,000 or more but less than $5,000,000,000;

(xxiv) Paragraph (35)(a) of appendix A of part 363 of this chapter, baseline threshold value $1,000,000,000;

(xxv) Paragraph (35)(b) of appendix A of part 363 of this chapter, baseline threshold value $5,000,000,000;

(xxvi) Paragraph (35)(c) of appendix A of part 363 of this chapter, baseline threshold value $5,000,000,000;

(xxvii) Paragraph 2(b) of appendix B of part 363 of this chapter, baseline threshold value $5,000,000,000;

(xxvii) § 380.13(b)(6)(i) of this chapter, baseline threshold value $100,000;

(xxix) § 380.13(b)(6)(ii) of this chapter, baseline threshold value $100,000;

(xxx) § 380.13(b)(6)(iii) of this chapter, baseline threshold value $100,000; and

(xxxi) § 380.13(b)(6)(iv) of this chapter, baseline threshold value $100,000.

(2) The thresholds in the following sections shall be adjusted in accordance with paragraph (a) of this section relative to the baseline threshold values as a baseline date of [EFFECTIVE DATE OF FINAL RULE], specified in paragraphs (i) through (iv) of this section:

(i) Section 303.64(f)(1) of this chapter, baseline threshold value $50 billion;

(ii) Section 333.5(e)(1)(ii) of this chapter, baseline threshold value $50 billion;

(iii) Section 333.5(g)(1)(ii) of this chapter, baseline threshold value $20 billion; and

(iv) Section 333.5(g)(1)(iii)(C) of this chapter, baseline threshold value $20 billion.

* * * * *

PART 333—EXTENSION OF CORPORATE POWERS

■ 1. The authority citation for part 333 continues to read as follows:

Authority: 12 U.S.C. 1816; 1817(i); 1818; 1819(a) (Seventh, Eighth, and Tenth), 1828, 1828(m), 1831p–1(c), 5414, and 5415.

§ 333.5 [Added]

■ 2. Add new § 333.5 to read as follows:

§ 333.5 Bank Merger Act transactions.

(a) *Scope.* This section applies to merger transactions subject to FDIC approval under the Bank Merger Act, section 18(c) of the FDI Act (12 U.S.C. 1828(c)). It supplements the procedural and other requirements for such transactions in subpart D of part 303 of this chapter. The definitions in § 303.61 apply to this section.

(b) *General.*

(1) *Factors considered.* Consistent with the statutory factors under the Bank Merger Act, when reviewing a merger filing, the FDIC shall take into consideration the impact on 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 U.S. banking or financial system, and the effectiveness of the parties in combatting money laundering activities.

(2) *Tailored review.* The FDIC shall conduct a tailored review of a merger filing as appropriate to the facts and circumstances, including consideration

of the structure, scale, and materiality of the merger transaction.

(3) *Remediation plans.* The FDIC shall consider the applicant's plans to timely remediate any previously unresolved deficiencies identified in the supervisory record of the acquiring institution, institution being acquired, or resulting institution. Effective remediation plans may result in a favorable finding on a statutory factor despite identified weaknesses.

(4) *Focus on resulting institution.* Consistent with the Bank Merger Act, the FDIC shall take into account the acquiring institution, institution being acquired, and resulting institution in its review of the statutory factors, with emphasis on the resulting institution and the cumulative benefits and impact of the merger transaction.

(c) *Competition.*

(1) *Generally.* The FDIC shall not approve:

(i) Any merger transaction which would result in a monopoly, or which would be in the furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States; or

(ii) Any other merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the merger transaction are clearly outweighed in the public interest by the probable effect of the merger transaction in meeting the convenience and needs of the community to be served.

(2) *Initial Herfindahl-Hirschman Index (HHI) screen.* The FDIC shall conduct an initial HHI screen to assess the potential competitive effect of the merger transaction. In conducting the initial HHI screen, the FDIC shall consider the deposits of all banks and thrift institutions and the shares of all credit unions in a relevant geographic market, as described in paragraphs (i) through (iv) of this paragraph (c)(2).

(i) *Banks.* The FDIC shall include in the initial HHI screen the entirety of the deposits of a bank branch located in a relevant geographic market.

(ii) *Credit unions.*

(A) The FDIC shall include in the initial HHI screen the entirety of the shares of a credit union located in a relevant geographic market where all branches of the credit union are located in the relevant geographic market.

(B)(1) The FDIC shall include in the initial HHI screen a representative portion of shares of a credit union located in a relevant geographic market where some but not all branches of the credit union are located in the relevant geographic market.

(2) For purposes of this paragraph (B), the FDIC shall calculate the representative portion of shares by dividing the credit union's total shares by its total number of branches and multiplying that quotient by the number of the credit union's branches located in a relevant geographic market.

(iii) *Thrift institutions.* The FDIC shall include in the initial HHI screen the entirety of the deposits of a thrift institution branch located in a relevant geographic market.

(iv) *Banks and thrift institutions with centrally booked deposits.* The FDIC shall include in the initial HHI screen a representative portion of the centrally booked deposits of a bank or thrift institution. For purposes of this paragraph (C), the FDIC shall calculate the representative portion of deposits by dividing the total population of a relevant geographic market by the total U.S. population and multiplying that quotient by the total amount of centrally booked deposits of the bank or thrift institution. For purposes of this paragraph (C), the total population of a relevant geographic market shall be determined using census tract data.

(3) *Safe harbor for transactions falling within specified HHI thresholds.* The FDIC shall not, on competition grounds, deny:

(i) Absent objection from the Attorney General, a merger filing where: (i) the initial HHI screen in paragraph (c)(2) is 1,800 points or less in each relevant geographic market after consummation of the merger transaction; or (ii) if the initial HHI screen in paragraph (c)(2) is more than 1,800 in a relevant geographic market after consummation of the merger transaction, the increase is less than 200 points from the HHI prior to the merger transaction; or

(ii) A corporate reorganization.

(4) *Additional considerations for merger transactions that exceed the safe harbor.* To the extent that the initial HHI screen in paragraph (c)(2) exceeds the safe harbor thresholds in paragraph (c), the FDIC shall consider other factors related to the impact of the transaction on competition, including alternative geographic market definitions, the extent to which the initial HHI screen accurately reflects the competitive effects of the merger transaction, and any procompetitive effects of the merger transaction, including those that are in the public interest, in its analysis of the competition factor.

(d) *Financial and managerial resources and future prospects.*

(1) *Financial resources.* The FDIC shall consider the following:

(i) *Capital.* The regulatory capital levels of the applicant at both the insured depository institution level and on a consolidated basis, including the availability of additional capital or resources to support consummation of the merger transaction and subsequent integration of the institutions while satisfying all minimum regulatory capital and buffer requirements.

(ii) *Funding and liquidity.* (A) Whether the applicant has adequate liquidity and funding sources to support the merger transaction in the ordinary course, and (B) whether the applicant will need to access contingency funding to support unforeseen circumstances as determined under scenario testing.

(iii) *Key financials.* The historical financial performance of the applicant using additional financial metrics typically referenced by market participants to evaluate the financial strength of a banking organization.

(2) *Managerial resources.* The FDIC shall consider the following:

(i) *Qualifications and experience.* Management's relevant qualifications and experience to operate the resulting institution.

(ii) *Supervisory history.* Prior supervisory ratings and, to the extent applicable, the responsiveness of the resulting institution's management to supervisory concerns.

(3) *Future prospects.* The FDIC shall consider the following:

(i) *Business plan.* Whether the relevant business, integration, and strategic plans are appropriate for the resulting institution's risk profile.

(ii) *Pro formas.* The pro forma balance sheet of the resulting institution under various scenarios.

(iii) *Integration plan.* Whether the integration plan sufficiently demonstrates the applicant's ability to efficiently integrate the assets, systems, and personnel acquired under a range of scenarios.

(iv) *Other.* Scenario test results or other information relevant to the resulting institution's future prospects.

(e) *Convenience and needs of the community.* The FDIC shall consider:

(1) *Supervisory records.* The supervisory records of the applicant and the institution being acquired for:

(i) *Compliance.* Compliance with applicable statutes and regulations, including the Community Reinvestment Act (CRA); and

(ii) *Fair banking.* When the resulting institution has total assets of more than $50 billion, treatment by the applicant or the institution being acquired of existing or potential customers less favorably than other existing or potential customers based on political, social, cultural, or religious considerations and not on an individualized, objective, and risk-based analysis.

(2) *Changes to branches, products and services.* Whether the merger transaction will result in any changes to branches, products, and services offered in the community to be served, including but not limited to:

(i) The extent to which the resulting institution would offer products or services to a broader (or smaller) customer base and/or at lower (or higher) prices; and

(ii) Any reduction in products and services offered in the case of a merger transaction between an insured depository institution and a credit union.

(f) *Record of combatting money laundering activities.* The FDIC shall take into consideration the effectiveness of any insured depository institution involved in the merger transaction in combatting money laundering activities, including in overseas branches.

(g) *Financial stability.*

(1) *Financial stability safe harbor.* A merger transaction does not raise financial stability concerns if:

(i) The resulting institution would not be:

(A) A subsidiary of a global systemically important BHC, as defined in 12 CFR 252.5(b);

(B) A Category II FDIC-supervised institution, as defined in 12 CFR 324.2;

(C) A Category III FDIC-supervised institution, also as defined in 12 CFR 324.2; or

(D) A Category IV banking organization, as defined in 12 CFR 252.5(e);

(ii) The institution to be acquired is an insured depository institution with total consolidated assets of less than $20 billion, as reported in the institution's Call Report for the quarter immediately preceding the filing;

(iii) The merger transaction is a corporate reorganization in which:

(A) All institutions involved in the transaction are organized under the laws of the United States;

(B) All institutions involved in the transaction have been affiliates for longer than 12 months; and

(C) The total consolidated assets of the institution to be acquired are less than $20 billion; or

(iv) The merger transaction is a *de minimis* merger transaction, as defined at § 303.61(c).

(2) *Merger transactions that do not meet the safe harbor of no financial stability concern.* If a merger transaction does not satisfy the safe harbor in paragraph (g)(1), the FDIC shall evaluate the transaction's impact on financial stability by conducting a balancing test, taking the following elements into consideration:

(A) The systemic importance of the resulting institution, based on consideration of: (i) the size of the institution, (ii) the availability of substitute providers for any critical products and services offered by the resulting institution, (iii) the degree of interconnectedness of the resulting institution with the U.S. banking system, (iv) the extent to which the resulting institution contributes to the complexity of the financial system, and (v) the extent of cross-border activities of the resulting institution;

(B) A comparison of the applicant before and after the merger transaction, based on the factors listed in paragraph (g)(2)(A); and

(C) The extent to which the merger transaction would support financial stability, including if the institution being acquired is an institution at risk of failure.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on September 17, 2026.

Hanoi Veras,

Executive Secretary

[FR Doc. 2026–19308 Filed 9–21–26; 8:45 am]

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