DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket ID OCC-2023-0017]

RIN 1557-AF24

Business Combinations Under the Bank Merger Act

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

ACTION: Final rule.

SUMMARY: The OCC is adopting a final rule to amend its procedures for reviewing applications under the Bank Merger Act and adding, as an appendix, a policy statement that summarizes the principles the OCC uses when it reviews proposed bank merger transactions under the Bank Merger Act.

DATES: The final rule is effective on January 1, 2025.

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SUPPLEMENTARY INFORMATION:

I. Background

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

The OCC has issued several publications that provide additional information about the procedures that the OCC follows in reviewing and acting on proposed business combinations. For example, the "Business Combinations" booklet of the *Comptroller's Licensing Manual* details the OCC's review of applications under the BMA. The "Public Notice and Comments" booklet of the *Comptroller's Licensing Manual* sets forth policies

[1] A business combination for these purposes includes an assumption of deposits in addition to a merger or consolidation.
[2] 12 U.S.C. 1828(c)(5), (11).
[3] 12 U.S.C. 1828(c)(4).
[4] 12 CFR 5.8(b), 5.10(b)(1).
[5] 12 CFR 5.11.

related to the public notice and comment process, including hearings and meetings. The *Comptroller's Licensing Manual* provides OCC staff, institutions, and the public with information about the procedures applicable to corporate applications filed with the OCC.

After reviewing these materials, the OCC determined that additional transparency about the standards and procedures that the agency applies when reviewing bank business combinations may be helpful to institutions and the public.

To better reflect the OCC's view that a business combination is a significant corporate transaction, the OCC proposed amendments to 12 CFR 5.33 to remove provisions related to expedited review and the use of streamlined applications. The OCC also proposed adding a policy statement at appendix A to 12 CFR part 5, subpart C, that would discuss both the general principles the agency uses to review applications under the BMA and how it considers financial stability, financial and managerial resources and future prospects, and convenience and needs factors. Proposed appendix A also described the criteria informing the OCC's decision on whether to hold a public meeting on an application subject to the BMA.

The OCC received 34 substantive written comments on this proposal from banks, trade groups, academics, and members of the public. Most commenters agreed that the OCC should update its merger regulations and guidelines, but expressed varying views on the proposed changes. The comments are addressed below with the relevant discussion of 12 CFR 5.33 and appendix A. After careful consideration of these comments, the OCC is adopting its proposed amendments to 12 CFR 5.33 in final form and making minor, clarifying modifications to proposed appendix A.

II. Description of the Final Policy Statement and Regulatory Amendments

Regulatory Amendments

The OCC proposed two substantive changes to its business combination regulation at 12 CFR 5.33. First, the OCC proposed removing the expedited review procedures in § 5.33(i). Paragraph (i) currently provides that a filing that qualifies either as a business reorganization as defined in § 5.33(d)(3) or for a streamlined application under § 5.33(j) is deemed approved as of the 15th day after the close of the comment period, unless the OCC notifies the applicant that the filing is not eligible for expedited review or the expedited review process is extended under § 5.13(a)(2).[6]

Some commenters opposed eliminating the expedited review procedures. These commenters argued that eliminating the expedited review procedures would unnecessarily increase the complexity and cost of the application process for categories of transactions that are unlikely to present issues under the BMA, such as reorganizations. Further, many commenters expressed concern that removing § 5.33(i) would increase the burden on smaller institutions, including community banks. Some of these commenters suggested that the OCC continue to allow expedited processing for banks under a certain size. Other commenters supported eliminating expedited review, stating that eliminating the possibility that an application will be deemed approved solely due to the passage of time is necessary to address the systemic risks posed by large banks and the harms of consolidation. Further, some commenters that supported eliminating expedited review noted that the current expedited review process fails to adequately prevent anti-competitive mergers and the proposed changes to the review process would

[6] Under the proposal, the provisions in 12 CFR 5.13(a)(2) regarding adverse comments would no longer apply to business combination applications because they only apply to filings that qualify for expedited review.

allow for a more comprehensive evaluation of merger application. Nevertheless, some supportive commenters noted that the proposed changes, including the removal of expedited review, do not go far enough to effectively address the issues raised by large bank consolidations.

The OCC reviews business combination applications to determine whether applicable procedural[7] and substantive[8] requirements are met. The only benefit conferred by the expedited review provisions in § 5.33(i) is that these applications are deemed approved as of the 15th day after the close of the comment period[9] unless the OCC takes action to remove the application from expedited review or extends the expedited review process. As described in the OCC's Annual Report, Licensing Activity section, the OCC's current target time frame for licensing decisions on merger applications is 45 days for expedited review and 60 days for standard review.[10] However, as noted in § 5.33(i), the OCC can remove an application from expedited review. Additionally, as noted in the OCC's Annual Report, the OCC may extend the standard review target time frame if it needs additional information to reach a decision, process a group of related filings as a single transaction, or extend the public comment period. The OCC's practice has been to approve or deny an application on expedited review within 15 days after the close of the comment period or remove the application from expedited review. The OCC is not aware of any application for a business combination having been deemed approved solely due to the passage of time. Accordingly, the OCC does not expect that removing this provision will result in a significant change to the time in which the OCC processes

[7] *See, e.g.*, 12 U.S.C. 215a (procedures for mergers resulting in a national bank).
[8] *See, e.g.*, 12 U.S.C. 1828(c) (BMA).
[9] The public comment period is typically 30 days. *See* 12 CFR 5.10(b)(1).
[10] *See, e.g.*, Office of the Comptroller of the Currency, 2023 Annual Report, at 36.

merger applications. Instead, this change will more closely align the regulatory framework with the OCC's current practices and promote transparency. Further, it is consistent with the OCC's view that any business combination subject to a filing under § 5.33 is a significant corporate transaction requiring active OCC consideration and decisioning of the application. The principles underlying the expedited process in § 5.33(i) (*i.e.*, transactions with certain indicators are likely to satisfy the statutory factors, do not otherwise raise supervisory or regulatory concerns, and therefore can be processed more expeditiously) are reflected in section II of proposed appendix A.

Second, the OCC proposed removing § 5.33(j), which specifies four situations in which an applicant may use the OCC's streamlined business combination application, rather than the Interagency Bank Merger Act Application.[11] The streamlined application requests information about topics similar to those addressed in Interagency Bank Merger

[11] 12 CFR 5.33(j) authorizes the use of a streamlined application if: (i) At least one party to the transaction is an eligible bank or eligible savings association, and all other parties to the transaction are eligible banks, eligible savings associations, or eligible depository institutions, the resulting national bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the total assets of the target institution are no more than 50 percent of the total assets of the acquiring bank or Federal savings association, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application; (ii) The acquiring bank or Federal savings association is an eligible bank or eligible savings association, the target bank or savings association is not an eligible bank, eligible savings association, or an eligible depository institution, the resulting national bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the filers in a prefiling communication request and obtain approval from the appropriate OCC licensing office to use the streamlined application; (iii) The acquiring bank or Federal savings association is an eligible bank or eligible savings association, the target bank or savings association is not an eligible bank, eligible savings association, or an eligible depository institution, the resulting bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank or acquiring Federal savings association, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application; or (iv) In the case of a transaction under 12 CFR 5.33(g)(4), the acquiring bank is an eligible bank, the resulting national bank will be well capitalized immediately following consummation of the transaction, the filers in a prefiling communication request and obtain approval from the appropriate OCC licensing office to use the streamlined application, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank, as reported in the bank's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application.

Act Application, but the former only requires an applicant to provide detailed information if the applicant answers in the affirmative to any one of a series of yes or no questions.

Many commenters opposed eliminating the streamlined application. Commenters stated that it is easy to complete and generally more efficient. Commenters stated that its removal would lead to longer processing times and higher costs for applicants. Several commenters emphasized that eliminating the streamlined application would disproportionately affect smaller banks, which often have limited resources to devote to a more complex, administratively burdensome, and detailed application process. Commenters critical of eliminating the streamlined application focused on the increased burden of associated with the Interagency Bank Merger Act Application. On the other hand, some commenters supported removing the streamlined application, with one also supporting the adoption of a more robust interagency merger application that would include a question on community benefit agreements or commitments.

The OCC believes that the more complete record created with the Interagency Bank Merger Act Application provides the appropriate basis for the OCC to consider a business combination application. Further, the removal of the streamlined business combination form should not significantly increase the burden on applicants. Although the Interagency Bank Merger Act Application requires the submission of additional information with the initial application, in practice, the OCC often requests additional information from many applicants, including those that file a streamlined application. Eliminating the streamlined application may decrease the likelihood the OCC requests additional information from applicants, which slows down the agency's processing an application and increases the burden on applicants. Further, the OCC may tailor the

information applicants must submit in the Interagency Bank Merger Act Application as appropriate to reduce the information that the applicant needs to provide.[12] For example, there may be situations where a discussion of all items in the Interagency Bank Merger Act Application may not be appropriate, such as in a purchase and assumption transaction from an insured depository institution in Federal Deposit Insurance Corporation receivership.

Additionally, the U.S. Small Business Administration's (SBA's) Office of Advocacy and one other commenter stated that the OCC's Regulatory Flexibility Act (RFA) certification in the proposal lacked a factual basis. The SBA's Office of Advocacy and others recommended that the OCC continue to allow small entities to have access to expedited review and use the streamlined application form. Specifically with respect to the RFA certification, the commenters stated it lacked sufficient information about (1) the number of small entities that would be impacted (because the OCC only estimated the number of entities that apply for business combinations in a given year and did not explain how many of those entities were small entities) and (2) the basis for its conclusion that the impact on affected institutions would be *de minimis*.

In response to these comments, the OCC has revised the number of small entities that will be impacted by this rulemaking. (This change is reflected in its discussion of the RFA below.) Further, as discussed above, the OCC's process for reviewing business combination applications allows the agency to vary the information that applicants must

[12] Under 12 CFR 5.2(b), the OCC may adopt materially different procedures for a particular filing or class of filings as it deems necessary (*e.g.*, in exceptional circumstances or for unusual transactions) after providing notice of the change to the filer and any other party that the OCC determines appropriate. For example, the OCC may use this authority, if appropriate, to reduce the information it requires in a transaction involving a failing bank, given the limited time available to prepare the application.

submit on a case-by-case basis and to request additional information not required on the initial application, if necessary. The OCC also may remove an application from expedited review if it needs additional review time. Accordingly, the OCC expects these changes will have a *de minimis* impact on small entities.

For the reasons discussed above, the final rule removes §§ 5.33(i) and (j) as proposed. Further, because the term "business reorganization," as defined in § 5.33(d)(3), is only used to define a class of applications eligible for expedited review under § 5.33(i), the final rule also removes § 5.33(d)(3).

Policy Statement

As discussed in Section I, *Introduction*, of proposed appendix A, the policy statement would have provided institutions and the public with a better understanding of how the OCC reviews applications subject to the BMA and thus provided greater transparency, facilitate interagency coordination, and enhance public engagement. Specifically, proposed appendix A would have outlined the general principles the OCC applies when reviewing applications and provided information about how the OCC considers the BMA statutory factors of financial stability, financial and managerial resources, and convenience and needs of the community.[13] Proposed appendix A would have provided transparency regarding the public comment period and the factors the OCC considers in determining whether to hold public meetings.

Commenters generally supported the OCC's goals of increasing transparency; however, some commenters stated that by merely codifying current practices, the

[13] Proposed appendix A would not have addressed the BMA statutory factors of competition and the effectiveness of any insured depository institution involved in combatting money laundering activities, including in overseas branches. 12 U.S.C. 1828(c)(5), (11).

proposed appendix A did not go far enough in fulfilling the OCC's statutory obligations in reviewing bank mergers or preventing anti-competitive mergers in the banking industry. Several commenters also urged the OCC to coordinate closely with other regulators, such as the Federal Deposit Insurance Corporation, in finalizing the proposed policy statement and in updating the 1995 interagency document, Bank Merger Competitive Review—Introduction and Overview.

Other commenters suggested that appendix A should address the uncertainty surrounding the processing considerations and timelines of the OCC's review of BMA applications, noting that uncertainty in the timelines for regulatory approval could deter beneficial merger transactions. Several commenters offered additional ways to increase transparency, including by releasing some of the confidential supervisory information (*e.g.*, ratings) that the OCC uses in evaluating the statutory factors, televising live coverage of internal OCC deliberations, making all agency requests for additional information and bank responses public, and responding to all comments raised by the public in merger approval orders.

Several commenters suggested topics that the OCC should add to proposed appendix A. For example, several commenters suggested appendix A should provide details of the OCC's analysis of the BMA statutory factor of competition, generally and particularly with regard to how improvements in convenience and needs can outweigh anticompetitive effects. These commenters provided several suggested approaches. Other commenters urged the OCC to be more transparent when an applicant withdraws an application. One commenter also suggested the OCC take steps to reduce "charter shopping." Another commenter urged the OCC to avoid the use of non-standard

conditions to approve problematic mergers. Some commenters expressed concerns with the OCC's practice of holding prefiling meetings described in the *Explanatory Calls or Meetings* section of the "Business Combinations" booklet of the *Comptroller's Licensing Manual* and were concerned that such communications could unduly influence the agency. Suggestions to resolve this issue included automatically making transcripts or summaries of the calls or meetings public or ending the practice of holding the meetings.

The OCC is finalizing appendix A generally as proposed, with minor grammatical changes, except as noted below. The OCC intends for appendix A to provide substantive information on how it evaluates many of the BMA's statutory factors. Given complexities of the competition factor review and the involvement of the Department of Justice, the OCC does not believe that appendix A is the appropriate vehicle for discussing its current approach to competition issues.[14] The OCC's existing regulations govern the standards for impositions of conditions.[15] Similarly, the OCC does not intend appendix A to address OCC processing issues such as the disclosure of confidential supervisory information, the reasons for withdrawal of applications, its internal decision-making process, or its practice of holding pre-filing meetings. Accordingly, the OCC is finalizing Section I, *Introduction*, as proposed, with minor grammatical changes.

[14] The OCC notes that the convenience and needs analysis is relevant to the competition analysis in some instances. Under 12 U.S.C. 1828(c)(5)(B), the OCC may approve a merger 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 if it finds that the anticompetitive effects of the proposed 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.

[15] 12 CFR 5.13(a)(1) governs the OCC's imposition of conditions to address a significant supervisory, Community Reinvestment Act (CRA), or compliance concern if the OCC determines that the conditions are necessary or appropriate to ensure that approval is consistent with relevant statutory and regulatory standards, including those designed to ensure the fair treatment of consumers and fair access to financial services, and OCC policies thereunder and safe and sound banking practices. The OCC imposes conditions on a case-by-case basis and makes a determination of appropriate conditions based on a merger's facts and circumstances.

Section II, *General Principles of OCC Review*, of proposed appendix A would have discussed the OCC's review of and action on an application. Although, the OCC aims to act promptly on all applications, proposed appendix A identified certain indicators that, in the OCC's experience, generally feature in applications that are consistent with approval. These indicators included: (i) attributes regarding the acquirer's financial condition; size; Uniform Financial Institution Ratings System (UFIRS)[16] or risk management, operational controls, compliance, and asset quality (ROCA)[17] ratings; Uniform Interagency Consumer Compliance Rating System (CC Rating System) rating; Community Reinvestment Act (CRA) rating; the effectiveness of its Bank Secrecy Act/anti-money laundering program; and the absence of fair lending concerns; (ii) attributes regarding the target's size and status as a eligible depository institution, as defined in § 5.3; (iii) the transaction clearly not having a significant adverse effect on competition; and (iv) the absence of significant CRA or consumer compliance concerns, as indicated in any comments or supervisory information.

The *General Principles of OCC Review* section of proposed appendix A would have also recognized that there are indicators that raise supervisory or regulatory concerns. Based on the OCC's experience, if any of these indicators are present, the OCC is unlikely to find the statutory factors under the BMA to be consistent with approval unless and until the applicant has adequately addressed or remediated the concern. Proposed appendix A would have stated that these indicators include: (i) the acquirer has a CRA rating of Needs to Improve or Substantial Noncompliance; (ii) the acquirer has a

[16] UFIRS is also known as the CAMELS system.
[17] The ROCA System is the interagency uniform supervisory rating system for U.S. branches and agencies of foreign banking organizations.

UFIRS or ROCA composite or management rating of 3 or worse; (iii) the acquirer has a consumer compliance rating of 3 or worse; (iv) the acquirer is a global systemically important banking organization (G-SIB), or subsidiary thereof;[18] (v) the acquirer has an open or pending Bank Secrecy Act/Anti-Money Laundering enforcement or fair lending action, including referrals or notification to other agencies;[19] (v) failure by the acquirer to adopt, implement, and adhere to all the corrective actions required by a formal enforcement action in a timely manner; and (vi) multiple enforcement actions against the acquirer executed or outstanding during a three-year period.

Commenters expressed confusion about how these indicators apply and how the OCC's reviews applications that meet some, but not all, of the indicators that generally feature in applications consistent with approval. For example, numerous commenters interpreted the proposed policy statement as indicating that the OCC would not approve an application if one of the first set of indicators was absent. Commenters also requested clarification about how an absence or resolution of any or most of the listed indicators of supervisory or regulatory concerns would expedite a positive decision on an application.

The OCC understands the confusion of some commenters with respect to appendix A as proposed. In addition to the two categories of transactions recognized in proposed Section II, there is a middle category of transactions that do not feature all of the indicators in the first category but also have none of the indicators that raise supervisory or regulatory concerns. The OCC believes that most transactions will be in

[18] The Basel Committee on Bank Supervision annually identifies certain banking organizations as global systemically important.

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

this middle category and that many of these transactions are likely consistent with approval.

The OCC is revising proposed appendix A to eliminate this confusion and clarify the significance of the two types of indicators. The final appendix A includes prefatory text that notes that applications that feature all of the first set of indicators tend to be more likely to withstand scrutiny and to be approved expeditiously. In the OCC's experience, these indicators reflect a national bank or Federal savings association's condition or other features that the OCC is likely to quickly find consistent with approval. However, these indicators are not *required* for a transaction to be approved. For example, the OCC has approved many transactions where the target is not an eligible depository institution and the acquirer brings the appropriate financial and managerial resources to bear to mitigate deficiencies at the target.

With respect to the individual indicators, some commenters objected to $50 billion in total assets serving as a ceiling for transactions consistent with approval. One commenter requested that the OCC raise indicator to $100 billion or more in total assets. Another commenter noted that having $50 billion dollars as a threshold could prevent or make it more difficult for regional and midsized institutions to combine and compete with the largest banks. As clarified in final appendix A, the $50 billion indicator merely reflects the likelihood of an expeditious approval. The OCC recognizes that national banks and Federal savings associations with $50 billion or more in total assets tend to be more complex than smaller banks. For example, insured national banks and Federal savings associations with at least $50 billion in total assets are subject to the *OCC Guidelines Establishing Heightened Standards for Certain Large Insured National*

Banks, Insured Federal Savings Associations, and Insured Federal Branches. In light of the increased complexity of these institutions, the OCC may require additional time for review of the application. The OCC believes that many transactions where the resulting institution will have total assets of more than $50 billion are consistent with approval. Accordingly, the OCC is finalizing the indicator as proposed at $50 billion or more in total assets, as clarified by a modification to the prefatory text to the indicators.

Two commenters expressed concern with the indicator focusing on transactions where the target's total assets are less than or equal to 50 percent of acquirer's total assets. The indicator is not intended to discourage mergers of equals. It was included because, in the OCC's supervisory experience, mergers between institutions of similar sizes are likely to require more review than transactions where the target is much smaller than the acquirer. In transactions with significant size disparities, the acquirer is more likely to use its existing policies, procedures, and control framework, with which the OCC is already familiar. Integration of two similarly sized institutions is more likely to result in more changes to resulting institution, which the OCC will need to review for consistency with the applicable BMA factors. The inclusion of this indicator simply highlights that applications for mergers between institutions that are similar in size may require additional time to assess but does not indicate that those applications will not be approved. The OCC is, however, deleting the word "combined" referring to the target's total assets in this indicator for clarity. The OCC is thus finalizing this indicator as proposed, as clarified by a modification of the prefatory text to the indicators which emphasizes that the first set of indicators are intended to identify applications that are more likely to withstand scrutiny and to be approved expeditiously.

Commenters also asserted that the proposed indicators regarding lack of enforcement actions, lack of fair lending concerns, clear absence of a "significant adverse effect" on competition, and no adverse public comments are inconsistent with the applicable standards under the BMA. Other commenters supported these indicators but had additional suggestions including urging the OCC to include language about coordinating with the Consumer Financial Protection Bureau regarding fair lending and consumer protection matters; barring applicants with records of noncompliance with fair lending, CRA, and other consumer protection laws from being acquired; and requiring merging parties to undergo new fair lending and CRA reviews under heightened scrutiny. The OCC does not require that all of these indicators are present for a transaction to be consistent with the BMA's statutory factors. Rather, the OCC can more quickly find that applications with all of these indicators are consistent with the BMA factors and approve the transactions. For example, a merger between two institutions without an overlapping footprint and few products in common will require less analysis with respect to competition compared to a merger between institutions with significant overlap. Similarly, the OCC approves mergers on which the public has commented after reviewing all comments. The OCC recognizes that while comments play an important role in the review process, some comments may fail to raise a significant supervisory, CRA, or compliance concern.[20] The OCC does not expect such comments, on their own, to warrant less expeditious processing of the application. Therefore, OCC is finalizing these indicators as proposed, as clarified by a modification of the prefatory language to the indicators.

[20] *See* 12 CFR 5.13(a)(2)(ii) (describing comments that do not warrant removing a filing from expedited review).

With respect to the indicators of supervisory or regulatory concern, commenters expressed concern with any indication in the proposed appendix A that the acquirer is a G-SIB or subsidiary thereof would be unlikely to be consistent with approval. Some commenters noted that the indicator could restrict internal reorganizations by a G-SIB and its subsidiaries. Additionally, two commenters noted that Congress has already addressed large-bank concentration by prohibiting bank acquisitions based on deposit concentrations and that the OCC's use of the G-SIB designation was inconsistent with Congressional intent. Other commenters expressed concern that the indicator could be interpreted to include proposed business combinations involving U.S.-based bank subsidiaries of non-U.S. G-SIBs. These commenters assert that applications for combinations involving such entities could bring diversity to the U.S. banking system. On the other hand, another commenter supported increased scrutiny of transactions involving G-SIBs but asserted that transactions undertaken by large, non-G-SIBs should also trigger enhanced scrutiny.

The indicators of regulatory or supervisory concern do not preclude OCC approval of a BMA application by an institution that exhibits one or more of the indicators. For example, internal corporate reorganizations are frequently consistent with the BMA, notwithstanding many regulatory or supervisory concerns, particularly where the transaction enhances the resolvability of the institution. The OCC views these factors regarding size as independent from limits that Congress established in the BMA and the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal).[21] For certain interstate transactions, the BMA contains a national deposit cap, and Riegle-

[21] Pub. L. 103-328, 108 Stat. 2338 (Sept. 29, 1994)

Neal has national and state deposit caps.[22] Similarly, there is a liability cap imposed by the Dodd-Frank Wall Street Reform and Consumer Protection Act[23] that applies to both holding companies and banks.[24] These are all limits that a bank may not exceed absent a specific statutory exception. In contrast, the G-SIB indicator in the proposal reflects the OCC's supervisory experience with organizations of that size and the impact of size and complexity on the review of a business combination.

Similarly, even though the U.S. operations of a foreign-based G-SIB may be smaller than those of domestic G-SIBs, the potential for supervisory issues remains high, particularly if the foreign G-SIB's U.S. operations are material. G-SIBs are among the most complex financial institutions and, in the OCC's supervisory experience, they often present supervisory issues such that inclusion of this indicator is warranted. The OCC recognizes, however, that G-SIB status is unlikely to be remediated. While the OCC continues to believe that the G-SIB indicator is appropriate, it will evaluate all applications from foreign and domestic G-SIBs on their individual merits and undertake a fulsome analysis under the BMA and other applicable law.

Another commenter noted that a less than "Satisfactory" CRA rating should not preclude an internal reorganization that would simplify the banking organization and make it safer and sounder. Congress has mandated that the OCC consider an institution's CRA rating when acting on any BMA application.[25] The OCC recognizes that internal reorganizations present facts and analysis distinguishable from many other BMA applications, and while the inclusion of this indicator does not indicate those applications

[22] 12 U.S.C. 1828(c)(13), 1831u(b)(2).
[23] Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010).
[24] *See* 12 U.S.C. 1852.
[25] 12 U.S.C. 2903(a)(2).

will not be approved, additional scrutiny may be warranted. In some instances, the benefits of a reorganization may overcome the less than "Satisfactory" CRA rating. Nevertheless, the OCC regards a less than "Satisfactory" CRA rating as raising significant regulatory or supervisory concerns and warranting inclusion on the list of indicators. One commenter also praised the inclusion of instances where an acquirer has experienced rapid growth as an indicator of supervisory or regulatory concern.

The OCC is making one change to the indicator regarding open enforcement actions. Proposed appendix A was specific to Bank Secrecy Act/Anti-money Laundering or fair lending actions, including referrals or notifications to other agencies. The OCC is including all types of consumer compliance enforcement actions in final appendix A to reflect the seriousness of these types of enforcement actions. Accordingly, the OCC is generally finalizing these indicators as proposed, as clarified by a modification to the prefatory language to the indicators and the addition of consumer compliance enforcement actions.

Section III, *Financial Stability*, of proposed appendix A would have provided additional information about how the OCC considers "the risk to the stability of the United States banking or financial system" as required by the BMA, including (i) the factors the OCC considers (which are currently described in the "Business Combinations" booklet of the *Comptroller's Licensing Manual*); (ii) the balancing test that the OCC applies; and (iii) the OCC's ability to consider imposing conditions on the approval of any such transaction. The OCC's approach to considering the risk to the stability of the financial system set forth in proposed appendix A is consistent with

longstanding OCC practice and principles.[26] Specifically, the OCC considers (i) whether the size of the combined institutions would result in material increases in risk to financial stability; (ii) any potential reduction in the availability of substitute providers for the services offered by the combining institutions; (iii) whether the resulting institution would engage in any business activities or participate in markets in a manner that , in the event of financial distress of the resulting institution, would cause significant risks to other institutions; (iv) the extent to which the combining institutions contribute to the complexity of the financial system; (v) the extent of cross-border activities of the combining institutions; (vi) whether the proposed transaction would increase the relative degree of difficulty of resolving or winding up the resulting institution's business in the event of failure or insolvency; and (vii) any other factors that could indicate that the transaction poses a risk to the U.S. banking or financial system.

Section III, *Financial Stability*, of proposed appendix A would have clarified that the OCC applies a balancing test when considering the financial stability factor and weighs the financial stability risk of approving the proposed transaction against the financial stability risk of denying it, particularly if the proposed transaction involves a troubled target. Specifically, the OCC considers each factor individually and in combination. Even if only a single factor indicates a risk to the stability of the U.S. banking or financial system, the OCC may determine that the proposal would have an adverse effect on the stability of the U.S. banking or financial system.[27] The OCC also considers whether the proposed transaction would provide any stability benefits and the

[26] *See, e.g.*, OCC Conditional Approval #1298 (November 2022); OCC Corporate Decision #2012-05 (April 2012).
[27] *See, e.g.*, FRB Order No. 2012-2 (February 14, 2012) at 30.

enhanced prudential standards that would be applicable as a result of the proposed transaction would offset any potential risks.[28]

Section III also would have noted that, consistent with current OCC practice,[29] the OCC's review of the financial stability factors may result in a decision to approve a proposed transaction, subject to conditions that are enforceable under 12 U.S.C. 1818. These conditions may include asset divestitures or higher minimum capital requirements and are intended to address and mitigate financial stability risk concerns.

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

Commenters generally supported the OCC's goal of providing additional transparency about how the OCC considers the effect of a transaction on financial stability. However, some commenters criticized the OCC's balancing test approach to

[28] *See, e.g.*, FRB Order No. 2021-04 (May 14, 2021) at 24.
[29] *See, e.g.*, OCC Conditional Approval #1298 (November 2022).
[30] For example, many business combinations under the BMA are part of a larger transaction that requires a filing with the Board under the Bank Holding Company Act.

evaluating financial stability as too lenient to protect financial institutions and the broader economy, especially for G-SIBs. These commenters noted that the OCC should not rely on enhanced prudential standards to offset risks. One commenter also objected to the OCC's consideration of the financial stability risk associated with denying an application in the balancing test and noted that the OCC should use the supervisory process and not business combinations to address concerns about troubled institutions. Some commenters suggested options including other, scored risk factors like the list of systemic risk factors used to calculate the G-SIB surcharge in 12 CFR, Part 217, Subpart H. Additionally, commenters expressed concern that the OCC's review would consider the representations made in other pending applications and noted that applicants may not have detailed knowledge of pending or future applications. Another commenter suggested that the OCC revise proposed appendix A to promote more actively the acquisition of a troubled institution before it fails. One commenter suggested automatically categorizing transactions involving institutions below $10 billion in assets as low risk to financial stability unless specific factors suggest otherwise. Other commenters suggested that considerations of financial stability risks under the BMA must include an evaluation of climate-related financial risks and the impact of a resulting institution's activities on financial stability in that regard.

The proposed appendix A described the OCC's long-standing approach to considering the risk to the stability of the financial system and would have provided additional clarity on the factors considered, the balancing test applied, and the possibility that the OCC may impose conditions in certain situations. Although the OCC's considerations are not scored, the OCC considers each factor individually and in

combination to develop a holistic view of the potential transaction's effect on financial stability. The OCC believes this balancing test allows it to consider all factors relevant to financial stability and results in determinations that fully incorporate the effect of the transaction on financial stability. Additionally, the OCC's review would have only considered the representations of other concurrent applications for related transactions, not unrelated applications that have no nexus to the application under consideration.

The OCC is removing the word "requirements" from the discussion of the OCC's consideration of the impact of the proposed transaction in light of the standards applicable to the resulting institution's recovery planning in Section III, *Financial Stability*, to more accurately describe the standards in 12 CFR 30, appendix E, "OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches". The OCC is otherwise generally finalizing Section III, *Financial Stability*, as proposed.

Section IV, *Financial and Managerial Resources and Future Prospects,* of proposed appendix A would have discussed the BMA's requirement that the OCC consider the managerial resources, financial resources, and future prospects of any proposed transaction. Under the BMA, the OCC must consider each of these factors independently for both the combining and resulting institutions.[31] However, because these factors are directly related to one another, the OCC also considers these factors holistically. This section of proposed appendix A would have described the overarching considerations of the OCC's review of these factors and provide additional details about what the OCC considers while reviewing these factors. The overarching considerations of

[31] 12 U.S.C. 1828(c)(5).

this proposed section would have noted that the OCC would consider the size, complexity, and risk profile of the combining and resulting institutions.

Further, proposed appendix A would have expanded the discussion in the *Comptroller's Licensing Manual* about the types of transactions the OCC would normally not approve to provide additional details about acquirer characteristics with respect to financial and managerial resources and future prospects that are less likely to result in an approval. Specifically, the OCC is less likely to approve an application when the acquirer (i) has a less than satisfactory supervisory record, including its financial and managerial resources; (ii) has experienced rapid growth; (iii) has engaged in multiple acquisitions with overlapping integration periods; (iv) has failed to comply with conditions imposed in prior OCC licensing decisions; or (v) is functionally the target in the transaction.[32] The OCC also normally does not approve a combination that would result in a depository institution with less than adequate capital, less than satisfactory management, or poor earnings prospects.

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

Section IV of proposed appendix A would have next discussed the OCC's consideration of the financial resources, managerial resources, and future prospects

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

factors. With respect to financial resources, proposed appendix A would have discussed the OCC's review of pro forma capital levels. Additionally, the OCC is generally prohibited by statute from approving business combination applications filed by an institution that is undercapitalized as defined in 12 CFR 6.4.[33] Proposed appendix A also would have specified that the OCC closely scrutinizes transactions that increase the risk to the bank's financial condition and resilience, including risk to the bank's capital, liquidity, and earnings that can arise from any of the eight categories of risk included in the OCC's Risk Assessment System.[34] Further, with respect to the financial resources factor, the OCC considers the ability of management to address increased risks that would result from the transaction. Finally, proposed appendix A would have clarified that a transaction involving an acquirer with a strong supervisory record is more likely to satisfy the review factors. By contrast, a transaction involving an acquirer with a recent less than satisfactory supervisory record is less likely to satisfy this factor.

Section IV of proposed appendix A would have also discussed the OCC's approach to the managerial resources standard. The OCC considers the supervisory record and current condition of both the acquirer and target to determine if the resulting institutions will have sufficient managerial resources. For example, a significant number of matters requiring attention (MRA), or lack thereof, may impact the determination as to whether there are sufficient managerial resources. The OCC also reviews (i) both institutions' management ratings under the UFIRS or ROCA system, as well as their

[33] 12 U.S.C. 1831o(e)(4). The OCC may only approve a combination application by an undercapitalized institution if the agency has accepted the institution's capital restoration plan and determines that the proposed combination is consistent with and will further the achievement of the plan or if the Board of Directors of the Federal Deposit Insurance Corporation determines that the proposed combination will further the purposes of 12 U.S.C.1831o. 12 U.S.C. 1831o(e)(4)(A)-(B).

[34] These are credit, interest rate, liquidity, price, operational, compliance, strategic, and reputation risks. *See Comptroller's Handbook*, "Bank Supervision Process" at 26-28 (Version 1.1, September 2019).

component ratings under the CC Rating System, Uniform Rating System for Information Technology, and Uniform Interagency Trust Rating System, as applicable; and (ii) relevant Risk Assessment System (RAS) conclusions for the applicant as well as the RAS conclusions for an OCC-supervised target. The OCC also considers the context in which the rating or RAS element was assigned and any additional information resulting from ongoing supervision. Finally, proposed appendix A would have noted that less than satisfactory ratings at the target do not preclude the approval of a transaction, provided that the acquirer can employ sufficiently robust risk management and financial resources to correct the weaknesses.

Proposed appendix A would have stated that the OCC considers whether the acquirer has conducted sufficient due diligence of the target depository institution to understand its business model, systems compatibility, and weaknesses. This consideration includes the acquirer's plans and ability to address its own previously identified weaknesses, remediate the target's weaknesses, and exercise appropriate risk management for the size, complexity, and risk profile of the resulting institution. Similarly, the OCC considers the acquirer's plans for and history of integrating combining institutions' operations, including systems and information security processes, products, services, employees, and cultures.

Proposed appendix A next would have discussed the OCC's consideration of the acquirer's plans to identify and manage systems compatibility and integration issues, such as information technology compatibility and implications for business continuity and resilience. A critical component of these plans includes identifying overreliance on manual controls, strategies for automating critical processes, and capacity and

modernization of aging and legacy information technology systems. The OCC may conduct additional reviews where there are concerns with systems integration and, in some cases, the OCC may impose conditions that are enforceable pursuant to 12 U.S.C. 1818 to address those concerns. The OCC may deny an application if the integration or other issues present significant supervisory concerns, and the issues cannot be resolved through appropriate conditions or otherwise.[35]

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

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

[35] *See* 12 CFR 5.13(b).

implement it in a safe and sound manner. Finally, the OCC considers the combination's potential impacts on the resulting institution's continuity planning and operational resilience.

One commenter highlighted the importance of assessing managerial resources and firm culture when considering an application under the BMA. This commenter urged the OCC to make it clear that, when considering the managerial resources factor, the OCC would take into consideration whether the acquirer and target have implemented governance solutions that generate outcomes that meet or exceed the OCC's expectations and suggested using artificial intelligence and machine learning tools to do so. Other commenters suggested that an assessment of financial and managerial resources and future prospects should include climate-related financial risk expertise. Several other commenters suggested the OCC include a requirement that banks describe their efforts to promote gender, racial, and ethnic diversity in their boards, senior management, and branch personnel, with some commenters suggesting that such information be considered under the managerial resources factor. One commenter also suggested that applicants submit an integration plan as part of their application. Given the varied nature of institutions' operations and proposed mergers, the OCC is declining to require these items as part of its review of all applications under the BMA. To the extent that it is relevant to any particular transaction, the OCC may, based on its supervisory expertise, request information on these or other items that are relevant to the financial and managerial and future prospects factors.

The OCC is thus generally finalizing Section IV as proposed with one addition to make explicit a consideration that was implicit in the proposal. The OCC is adding a new

overarching consideration in Section IV of appendix A. Specifically, Section IV will state that the OCC considers the financial and managerial resources and future prospects factors within the context of the prevailing economic and operating environment. The OCC recognizes that the financial resources and future prospects of institutions, and those of community institutions in particular, are likely to be highly dependent on the economic and other environments within which they operate. As such, a combined institution's financial resources and future prospects may in some cases be significantly greater than those of the individual institutions if no merger were to occur.

Section V of proposed appendix A would have expanded on the discussion in the *Comptroller's Licensing Handbook* of the OCC's consideration of the probable effects of the proposed business combination on the community to be served. Specifically, this section would have clarified that the OCC's consideration of the impacts of any proposed combination on the convenience and needs of the community is prospective and considers the likely impact on the community of the resulting institution after the transaction is consummated.[36] For this factor, the OCC considers, among other things (i) the proposed changes to branch locations, branching services, banking services or products, or credit availability offered by the target and acquirer, including in low- or moderate-income (LMI) communities; (ii) any job losses or lost job opportunities from branching changes; and (iii) any community investment or development initiatives, including particularly those that support affordable housing and small businesses. With respect to (i) above, the OCC also sought comment on whether to specify communities in addition to LMI communities as part of these considerations.

[36] As the OCC's review of this factor is with respect to the resulting institution, it necessarily includes review of the record, products, and services of both the acquirer and target.

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

Commenters expressed varying viewpoints on Section V, *Convenience and Needs,* of proposed appendix A. Some commenters criticized the OCC's inclusion of job losses or reduced job opportunities, and one commenter stated that such consideration lacked a statutory basis and diverged from longstanding regulatory precedent. Other commenters encouraged the OCC to place greater emphasis on factors such as potential job losses; projected branch losses in LMI and majority-minority census tracts; impacts to communities of color and underserved census tracts, including small businesses in those communities; reduced reinvestment; increased fees; and other factors that could affect access to banking services when evaluating the community and needs factor. One commenter suggested the OCC consider past bank branch closures. Another commenter recommended that the OCC require applicants to submit a list of branch closures planned for the three years following the consummation of a merger and a discussion of the impact on local communities and stated that applicants should be prohibited from closing other branches for three years. Some commenters suggested that a merger should not be approved unless applicants can demonstrate that the transaction will better meet the convenience and needs of the community, with several commenters specifically noting that the OCC should only approve transactions that better serve vulnerable communities, including low-income communities and communities of color. Several commenters

suggested that the OCC's review of the convenience and needs factor should include broad consideration of the climate-related impact of the transaction, including financial risk, impacts resulting from bank activities that may impact climate change, and the climate related transition plans. One commenter suggested that the OCC should provide additional clarity on how it weighs the various impacts it considers. Other commenters noted that the OCC should specifically consider how the impacts of the expansion of digital banking affects underserved communities in the context of merger reviews.

Several commenters emphasized the importance of community benefit agreements and plans and collaboration with community groups and urged the OCC to use its policy statement to elevate the importance of these agreements, plans, and collaborations. Suggestions included signaling that the OCC would enforce community benefit commitments made during merger applications or imposing a condition of approval on the acquirer requiring it to adhere to the elements of such commitments. Another commenter requested additional transparency with respect to conditional approvals for convenience and needs, CRA, or fair lending concerns.[37]

The OCC considers the convenience and needs factor in light of the specific facts of each transaction. The factors listed in proposed Section V are indicators of whether the proposed transaction will enable the resulting institution to better meet the convenience and needs of its community. A net positive impact on its ability to meet the convenience and needs of community is, in the OCC's experience, generally consistent with approval

[37] Additionally, one commenter recommended increased scrutiny of convenience and needs in transactions where credit unions acquire national banks because credit unions are not subject to CRA. The Federal Deposit Insurance Corporation, not the OCC, is the responsible agency for BMA transactions where national bank or Federal savings association assets and deposit liabilities are transferred to an institution that is not covered by the Deposit Insurance Fund, such as a credit union. *See* 12 U.S.C. 1828(c)(1)(C). To the extent an application with the OCC is required, such as a substantial asset change under 12 CFR 5.33, the OCC will examine the proposed transaction under all applicable standards.

with respect to this factor. Applicants need not make a showing with respect to any or all of these items for the application to be consistent with approval. The OCC agrees with commenters that the BMA does not require consideration of particular facts such as job losses with respect to the convenience and needs of the community. Consistent with the BMA, the OCC will evaluate the facts of each application and determine whether particular items are relevant to its consideration of convenience and needs of the specific community to be served. For example, job losses or reduced job opportunities may have an impact on the local community as a whole in certain circumstances. Additionally, the OCC will consider any plans regarding the availability or cost of banking services or products to the community in the context of the communities affected, including LMI communities. Based on its supervisory experience, including its review of business combination applications, the OCC believes that the existing information requirements in the Interagency Bank Merger Act Application provide the appropriate initial level of information. The OCC may request additional information regarding branch closures or other facts impacting the convenience and needs of the community to be served. Further, the OCC believes that the items listed in proposed Section V are appropriately tailored to cover the full range of BMA applications it receives.

Another commenter suggested that unless material changes are expected post-consummation, the OCC should use the acquirer's and target's CRA ratings as the primary method of assessing a merger's impact on the convenience and needs of the community. Other commenters asserted that CRA alone is not sufficient for determining a merger's impact on the convenience and needs of the community. As discussed in the Business Combinations booklet of the *Comptroller's Licensing Manual*, a CRA rating is

based on past performance, while the convenience and needs factor is prospective.[38] Accordingly, analysis of past CRA performance is not sufficient to analyze the prospective convenience and needs of the community. The OCC believes that Section V correctly articulated this standard as proposed.

The OCC is making clarifying edits to Section V of appendix A. The OCC is changing the order of the discussion of an institution's plans to close, consolidate, limit, or expand branches to have the activities in a more logical sequence. Likewise, with respect to credit availability, the OCC is specifying that it considers an institution's plans to maintain, reduce, or improvement credit availability, including access to specific types of loans. Accordingly, the OCC is finalizing Section V generally as proposed.

Section VI, *Public Comments and Meetings*, of proposed appendix A would have provided additional details about the process and procedures relating to the OCC's receipt of public comments and considerations related to public meetings and clarified the information contained within 12 CFR part 5 and the "Public Notice and Comments" booklet of the *Comptroller's Licensing Manual*.[39] Specifically, the public comments subsection would have articulated the circumstances under which the OCC may extend the usual 30-day comment period[40] pursuant to § 5.10(b)(2).[41] It also would have provided additional clarity by noting that the OCC may find that additional time is

[38] *See Comptroller's Licensing Manual*, "Business Combinations" (Jan. 2021) at 7.
[39] While the BMA does not require the OCC to hold meetings or hearings, 12 CFR 5.11 describes the consideration and procedures for public hearings and notes the availability of several other types of meetings. The OCC considers three options for seeking oral input: (1) public hearing, (2) public meeting, and (3) private meeting.
[40] *See* 12 CFR 5.10(b)(1).
[41] Specifically, part 5 notes that the OCC may extend the comment period when: (1) a filer fails to file all required publicly-available information on a timely basis or makes a request for confidential treatment not granted by the OCC; (2) a person requesting an extension demonstrates to the OCC that additional time is necessary to develop factual information the OCC determines is necessary to consider the filing; and (3) the OCC determines that other extenuating circumstances exist.

necessary to develop factual information, and thus warrant extending the comment period. This could happen, for example, if a filer's response to a comment does not fully address the matters raised in the comment and the commenter requests an opportunity to respond. This subsection also would have provided examples of extenuating circumstances when the OCC may determine that an extension is needed, including if a public meeting is held, the transaction is novel or complex, or a natural disaster has occurred that affects the public's ability to timely submit comments.

With respect to the discussion of public comments, some commenters supported the proposal's discussion of how a comment period can be extended when a filer does not adequately respond to a commenter. However, other commenters expressed concern that the OCC's ability to extend the comment period based on the completeness of a filer's response to a comment may create a risk of commenters repeatedly filing comments in bad faith, which will result in delay. Two commenters suggested that the OCC consider extending the comment period in some instances, with one commenter suggesting that the OCC use an initial 60-day comment period for larger transactions. Other commenters also encouraged the OCC to minimize the negative impacts of prolonged review periods on affected communities and stakeholders. One commenter also requested that the OCC develop policies to address the abuse of the public comment process, including via the use of artificial intelligence.

The OCC did not propose any changes to its regulations regarding its acceptance and review of public comments, which are broadly applicable to transactions covered by 12 CFR part 5 and not only business combinations. The OCC periodically considers which of its regulations would benefit from proposed changes and will consider whether

to propose changes to the public comment regulations at an appropriate time.[42] The OCC is mindful of the effects of the length of review periods on all relevant parties. The OCC uses the standard 30-day notice period prescribed by the BMA[43] and will extend the comment period pursuant to the factors discussed in Section VI as appropriate. The OCC intends to act on applications in a timely fashion, consistent with a fulsome review of applications and safety and soundness. To clarify that the purpose of Section VI is to address considerations regarding the public comment period and not the OCC's acceptance and review of public comments, the OCC is revising the headings in Section VI to specifically reference the public comment period.

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

[42] For example, the OCC decennially reviews its regulations as required by the Economic Growth and Regulatory Paperwork Reduction Act. 12 USC 3311. *See, e.g.*, Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, 89 Fed. Reg. 8084 (February 6, 2024).
[43] *See* 12 U.S.C. 1828(c)(3).

as applicable. Several commenters proposed additional triggers for holding public meetings, including when there is a significant overlap in branch networks, when CRA ratings are lower in affected geographies, when the resulting entity will exceed a certain asset size, or when there is a merger protest. These commenters also suggested several ways that the OCC could improve outreach to underserved communities and dialogue about the impact of potential mergers. These included adopting a public registry for CRA examinations and mergers, improving the format of public meetings, and providing clearer information on regulatory websites on how to engage with regulators on particular mergers. One commenter objected to what it characterized as the OCC's implication that input from the public could be harmful to the OCC's decision-making process. This commenter suggested a public meeting should be held when requested.

As discussed in proposed Section VI, the OCC considers the significance of the transaction to the communities affected, as well as applicable CRA ratings. The OCC believes that these considerations are sufficiently broad to cover issues such as a significant overlap in branch networks. Further, the OCC believes that a decision to hold a public meeting should be based on the individual facts and circumstances of each proposed merger. For example, the considerations for whether to hold a public meeting on an internal corporate reorganization likely differ from those in a transaction between unaffiliated institutions. Additionally, the OCC believes that the fact that a comment is filed with respect to a proposed merger is insufficient alone to warrant a meeting. For example, through requests for additional information, the OCC can often obtain the information it needs to fully consider the comment without organizing a meeting. Consistent with applicable law, the OCC makes public all CRA performance evaluations

on its website[44] and all applications under the BMA in its Freedom of Information Act Reading Room.[45] While the OCC may consider additional methods to provide information to the public it believes that this issue is outside the scope of appendix A. Similarly, 12 CFR -5.11(i) provides the OCC with broad discretion in the conduct of public meetings. The OCC may tailor the format and structure of public meetings as needed based on the specific circumstance. The OCC believes that the information contained in proposed Section VI is appropriate for general consideration of public meetings. Accordingly, besides the revision to the headings in Section VI to specifically reference the public comment period, the OCC is generally finalizing Section VI as proposed.

IV. Regulatory Analysis

A. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[46] the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements in this proposed rule have been submitted to OMB under OMB control number 1557-0014 (Licensing Manual).

The final rule amends 12 CFR 5.33 by removing the expedited review procedures in § 5.33(i), which currently allow an application to be deemed approved by the OCC as of the 15th day after the close of the comment period, unless the OCC notifies the filer that the filing is not eligible for expedited review or the expedited review process is extended.

[44] OCC, CRA Performance Evaluations, https://occ.gov/publications-and-resources/tools/index-cra-search.html.
[45] OCC, Freedom of Information Act, https://foia-pal.occ.gov/.
[46] 44 U.S.C. 3501-3521.

The final rule also removes the streamlined application in § 5.33(j), which removes the ability of eligible institutions to file for certain types of business combinations using a streamlined application form.

Title: Licensing Manual.

OMB control number: 1557-0014.

Frequency of Response: Occasional.

Affected Public: National banks and Federal savings associations.

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

Estimated Number of Respondents: 3,694.

Estimated Total Annual Burden: 12,481.15.

B. Regulatory Flexibility Act

The RFA[47] requires an agency, in connection with a proposal and final rule, to prepare and make available to the public a Regulatory Flexibility Analysis that describes the impact of the rule on small entities (defined by the SBA for purposes of the RFA to include commercial banks and savings institutions with total assets of $850 million or less and trust companies with total assets of $47 million or less). However, under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the Federal Register along with its rule. The OCC included an RFA certification in the Federal Register along with its proposal.

[47] 5 U.S.C. 601 *et seq.*

As discussed above, the SBA's Office of Advocacy and one other commenter stated that the proposal's RFA certification lacked a factual basis. The SBA's Office of Advocacy, along with other commenters, recommended that the OCC continue to allow expedited review for applications from small entities and allow those entities to continue to use the streamlined application form. Specifically, with respect to the proposal's RFA certification, the SBA's Office of Advocacy's comment and the other comment addressing the RFA stated that it lacked sufficient information about (1) the number of small entities that would be impacted because it only estimated the number of entities that would apply for business combinations in a given year and did not explain how many of those entities were small entities and (2) the basis for its conclusion that the impact on affected institutions would be de minimis.

The OCC currently supervises 1,040 institutions (commercial banks, trust companies, Federal savings associations, and branches or agencies of foreign banks),[48] of which approximately 636 are small entities.[49] As the SBA's Office of Advocacy noted, all of the 636 small entities may have been impacted by the proposed rule to the extent that they elected to submit applications to the OCC for approval of business combination activities. However, in practice and based on the number of merger applications that the OCC has received annually over the past five years, the agency expects the annual impact

[48] Based on data accessed using FINDRS on August 18, 2024.

[49] The estimate of the number of small entities is based on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $850 million and $47 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if it should classify an OCC-supervised institution as a small entity. The OCC uses December 31, 2023, to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." *See* footnote 8 of the SBA's *Table of Size Standards*.

of the final rulemaking could be 78 OCC-supervised small institutions in a given year, assuming that all merger applications are submitted by small banks.

In terms of the potential economic impact of the final rule on affected institutions, the OCC does not expect that the changes will result in (1) a different outcome for merger applications or (2) additional burden on affected institutions. First, the final appendix A aims to provide transparency with respect to the OCC's BMA review process, including consideration of certain statutory factors under the BMA. This should provide regulated institutions with additional clarity and transparency about the OCC's decision-making process. Second, the removal of the expedited review process will likely not result in any change to the timing of the OCC's processing of licensing applications. The only benefit conferred by the expedited review provisions in § 5.33(i) is that applications are deemed approved as of the 15th day after the close of the comment period unless the OCC takes action to remove the application from expedited review or extends the process. However, the OCC is not aware of an application for a business combination being deemed approved due to the passage of time under § 5.33(i). Third, the OCC expects that the removal of the streamlined application form will not result in a substantive impact on affected institutions or on the information collected. Although the Interagency Bank Merger Act Application requires the submission of additional documentation and information with the initial application, that documentation and information is largely related to the same categories of information. Further, in practice, the OCC may request additional information from applicants to enable it to conclude on the applicable statutory factors. Eliminating the streamlined application may decrease the likelihood the OCC needs to request additional information from applicants, which could otherwise slow

down the processing of an application. The agency also does not expect that the removal of the streamlined application will result in a material change to the time it takes to OCC to respond to submitting banks and, therefore, does not expect any subsequent impact on bank operations that could otherwise result from a delayed response from the OCC. Accordingly, the OCC expects these changes to have a *de minimis* impact on small entities.

In general, the OCC classifies the economic impact on an individual small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense. Furthermore, the OCC considers 5 percent or more of OCC-supervised small entities to be a substantial number. At present, 32 OCC-supervised small entities constitute a substantial number. Therefore, the final rule will potentially affect a substantial number of OCC-supervised small entities in any given year.

However, based on the thresholds for a significant economic impact, the OCC expects that, if implemented, the final rule will not have a significant economic impact on any small entities. For these reasons, the OCC certifies that the final rule would not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act)[50] requires that the OCC prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by state, local,

[50] 2 U.S.C. 1532.

and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation, currently $183 million) in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act[51] also requires the OCC to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The OCC estimates that the annual aggregate cost of the final rule once fully phased in will be *de minimis*. Furthermore, the rule's changes are not new substantive or information requirements for OCC-supervised institutions but rather describe considerations and principles that guide the OCC's review of applications under the BMA. Therefore, the OCC concludes that the final rule will not result in an expenditure of $183 million or more annually by state, local, and tribal governments or by the private sector.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA) of 1994[52] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC must consider, consistent with principles of safety and soundness and the public interest (1) any administrative burdens that the final rule would place on depository institutions, including small depository institutions and customers of depository institutions, and (2) the benefits of the final rule. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures,

[51] 2 U.S.C. 1535.
[52] 12 U.S.C. 4802(a)

or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[53] The OCC considered the changes made by this final rule and believes that the effective date of January 1, 2025, will provide OCC-regulated institutions with adequate time to comply with the rule. The final rule will not impose any new administrative compliance requirements, and the administrative burdens from the removal of the Streamlined Application are *de minimis*.

E. Congressional Review Act

For purposes of the Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a "major rule."[54] If a rule is deemed a "major rule" by OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[55]

The Congressional Review Act defines a "major rule" as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in: (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on

[53] 12 U.S.C. 4802(b).

[54] 5 U.S.C. 801 *et seq*.

[55] 5 U.S.C. 801(a)(3).

the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[56]

As required by the Congressional Review Act, the OCC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects

12 CFR Part 5

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

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

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

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

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

§ 5.33 [Amended]

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

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

Policy Statement Regarding Statutory Factors Under the Bank Merger Act

[56] 5 U.S.C. 804(2).

I. Introduction

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

II. General Principles of OCC Review

The OCC aims to act promptly on all applications. The agency's range of potential actions on applications includes approval, denial, and requesting that an applicant withdraw the application because any shortcomings are unlikely to be resolved in a timely manner. Applications that tend to withstand scrutiny more easily and are more likely to be approved expeditiously generally feature all of the following indicators:

1. The acquirer is well capitalized under § 5.3, and the resulting institution will be well capitalized;
2. The resulting institution will have total assets less than $50 billion;
3. The acquirer has a Community Reinvestment Act (CRA) rating of Outstanding or Satisfactory;
4. The acquirer has composite and management ratings of 1 or 2 under the Uniform Financial Institution Ratings System (UFIRS) or ROCA rating system;

5. The acquirer has a consumer compliance rating of 1 or 2 under the Uniform Interagency Consumer Compliance Rating System (CC Rating System), if applicable;
6. The acquirer has no open formal or informal enforcement actions;
7. The acquirer has no open or pending fair lending actions, including referrals or notifications to other agencies;
8. The acquirer is effective in combatting money laundering activities;
9. The target's total assets are less than or equal to 50% of acquirer's total assets;
10. The target is an eligible depository institution as defined in § 5.3;
11. The proposed transaction clearly would not have a significant adverse effect on competition;
12. The OCC has not identified a significant legal or policy issue; and
13. No adverse comment has raised a significant CRA or consumer compliance concern.

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

1. The acquirer has a CRA rating of Needs to Improve or Substantial Noncompliance.
2. The acquirer has a consumer compliance rating of 3 or worse.

3. The acquirer has UFIRS or ROCA composite or management ratings of 3 or worse or the most recent report of examination otherwise indicates that the acquirer is not financially sound or well managed.
4. The acquirer is a global systemically important banking organization or subsidiary thereof.
5. The acquirer has open or pending Bank Secrecy Act/Anti-money Laundering, fair lending, or consumer compliance actions, including enforcement actions, referrals, or notifications to other agencies.
6. The acquirer has failed to adopt, implement, and adhere to all the corrective actions required by a formal enforcement action in a timely manner, or there have been multiple enforcement actions against the acquirer executed or outstanding during a three-year period.

III. Financial Stability

A. Factors considered:

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

1. Whether the proposed transaction would result in a material increase in risks to financial system stability due to an increase in size of the combining institutions.

2. Whether the proposed transaction would result in a reduction in the availability of substitute providers for the services offered by the combining institutions.
3. Whether the resulting institution would engage in any business activities or participate in markets in a manner that, in the event of financial distress of the resulting institution, would cause significant risks to other institutions.
4. Whether the proposed transaction would materially increase the extent to which the combining institutions contribute to the complexity of the financial system.
5. Whether the proposed transaction would materially increase the extent of cross-border activities of the combining institutions.
6. Whether the proposed transaction would increase the relative degree of difficulty of resolving or winding up the resulting institution's business in the event of failure or insolvency.
7. Any other factors that could indicate that the transaction poses a risk to the U.S. banking or financial system.

B. Balancing test:

1. *In general*: The OCC applies a balancing test when considering the factors in section III(A) in light of all the facts and circumstances available regarding the proposed transaction, including weighing the financial stability risk posed by the proposed transaction against the financial stability risk posed by denial of the proposed transaction, particularly if

the proposed transaction involves a troubled target. The OCC considers each factor both individually and in combination with others. Even if only a single factor indicates that the proposed transaction would pose a risk to the stability of the U.S. banking or financial system, the OCC may determine that there would be an adverse effect of the proposal on the stability of the U.S. banking or financial system. Finally, the OCC also considers whether the proposed transaction would provide any stability benefits and whether enhanced prudential standards applicable as a result of the proposed transaction would offset any potential risks.

2. *Conditions*: The OCC's review of the financial stability factors will include, as appropriate, whether to impose conditions on approval of the transaction. The OCC may impose conditions, enforceable under 12 U.S.C. 1818, to address and mitigate financial stability risk concerns, such as requiring asset divestitures by the resulting institution, imposing higher minimum capital requirements, or imposing other financial stability-related conditions.
3. *Recovery planning and heightened standards*: The OCC's review of the financial stability factors will consider the impact of the proposed transaction in light of:
    b. Standards applicable to the resulting institution pursuant to 12 CFR 30, appendix D, "OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches"; and

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

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

IV. Financial and Managerial Resources and Future Prospects

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

A. Overarching Considerations

1. The OCC tailors its consideration of the financial and managerial resources and future prospects of the combining and resulting institutions to their size, complexity, and risk profile.
2. The OCC considers these factors within the context of the prevailing economic and operating environment.

3. The OCC is more likely to approve combinations where the acquirer has sufficient financial and managerial resources to ensure safe and sound operations of the resulting institution than when:
    a. The acquirer has a less than satisfactory supervisory record, including its financial and managerial resources;
    b. The acquirer has experienced rapid growth;
    c. The acquirer has engaged in multiple acquisitions with overlapping integration periods;
    d. The acquirer has failed to comply with conditions imposed in prior OCC licensing decisions; or
    e. The acquirer is functionally the target in the transaction.
4. The OCC normally does not approve a combination that would result in a depository institution with less than adequate capital or liquidity, less than satisfactory management, or poor earnings prospects.
5. The OCC considers all comments received on proposed business combinations. However, the OCC's consideration of an institution's financial and managerial resources and future prospects are necessarily based on confidential supervisory information. While the OCC will provide an appropriate discussion of comments pertaining to the financial resources, managerial resources, and future prospects factors, it will generally not discuss or otherwise disclose confidential supervisory information in public decision letters.

B. Individual Factors

1. *Financial Resources*:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. *Future Prospects*:

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

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

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

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

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

V. Convenience and Needs

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

1. any plans to close, consolidate, limit, or expand branches or branching services, including in low- or moderate-income (LMI) areas;
2. any plans to reduce the availability or increase the cost of banking services or products, or plans to provide expanded or less costly banking services or products to the community;
3. any plans to maintain, reduce, or improve credit availability throughout the community, including, for example, access to home mortgage, consumer, small business, and small farm loans;
4. job losses or reduced job opportunities from branch staffing changes, including branch closures or consolidations;

5. community investment or development initiatives, including, for example, community reinvestment, community development investment, and community outreach and engagement strategies; and
6. efforts to support affordable housing initiatives and small businesses.

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

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

VI. Public Comment Period and Public Meetings

A. Public Comment Period

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

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

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

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

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

3. Examples of extenuating circumstances necessitating an extension include:

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

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

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

B. Public Meetings

1. While the BMA does not require the OCC to hold meetings or hearings, the OCC has three methods for seeking oral input: (1) public hearing, (2)

public meeting, and (3) private meeting. Public meetings are the most-employed public option.

2. The OCC will balance the public's interest in the transaction with the value or harm of a public meeting to the decision-making process (*e.g.*, although there may be increased public interest in a transaction, a public meeting will not be held if it would not inform the OCC's decision on an application or would otherwise harm the decision-making process).
3. Criteria informing the OCC's decision on whether to hold public meetings include:
    a. the extent of public interest in the proposed transaction.
    b. whether a public meeting is appropriate in order to document or clarify issues presented by a particular transaction based on issues the public raises during the public comment process.
    c. whether a public meeting would provide useful information that the OCC would not otherwise be able to obtain in writing.
    d. the significance of the transaction to the banking industry. Relevant considerations may include the asset sizes of the institutions involved (*e.g.*, resulting institution will have $50 billion or more in total assets) and concentration of the resulting institution in one or more markets.
    e. the significance of the transaction to the communities affected. Relevant considerations may include the effects of the transaction on the convenience and needs of the community to be

served, including a consideration of a bank's CRA strategy and the extent to which the acquirer and target are currently serving the convenience and needs of their communities.

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

Michael J. Hsu,
Acting Comptroller of the Currency.