FDIC Issues Proposal on Bank Merger Transactions, Signaling Modernized Approach to Merger Review

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September 18, 2026

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Executive Summary

- **What's new:** On September 17, 2026, the FDIC announced a proposed rule that would reform key facets of the agency's approach to processing and evaluating merger transactions subject to the Bank Merger Act, aiming to improve timeliness and expand predictability in the merger review framework.
- **Why it matters:** The proposal would introduce a "rapid processing" framework and certain safe harbors for merger evaluations and would significantly reduce the burden of the FDIC's review process for mergers by state nonmember banks, which account for approximately 2,700 of the approximately 4,500 currently operating banks and savings associations.
- **What to do next:** FDIC-supervised state nonmember banks will want to assess how the proposed changes could affect their M&A strategies and can provide the agency with practical feedback within the 60-day comment period.

On September 17, 2026, the Federal Deposit Insurance Corporation (FDIC) announced a proposed rule that would reform key facets of the agency's approach to processing and evaluating merger transactions subject to the Bank Merger Act (BMA). These reforms aim to both improve the timeliness of applications and modernize the analytical framework underlying the FDIC's bank merger review. The proposed update also adds a new approval requirement for significant asset transfers.

The FDIC's proposal, if finalized, would significantly reduce the burden of the FDIC's review process for mergers by state nonmember banks, which account for approximately 2,700 of the approximately 4,500 currently operating banks and savings associations.

Key Features of the FDIC's M&A Proposal

Updates under the proposed rule would include:

- **Defined timelines and processing categories, including a "rapid processing" framework for de minimis merger transactions.** The proposed rule requires that within 21 days after receipt of a merger application, the FDIC must provide a written explanation regarding the information required to render the application complete. Applicants would then have 30 days to provide the requested information or the application could be returned by the FDIC without rendering a decision. If the FDIC failed to provide a written explanation within 21 days, the application would be deemed substantially complete as of the date of receipt. In either case, the timelines for rapid, expedited and standard processing would begin on the date that the FDIC receives a substantially complete merger application.
  - The proposed rule establishes a new subcategory of de minimis merger transactions, including certain corporate reorganizations, that qualify for rapid processing. De minimis transactions would be subject to a less onerous, streamlined letter-filing requirement and deemed approved in as few as five business days, unless the U.S. Attorney General objects to the transaction on competition grounds.
  - The proposed rule would expand existing expedited processing procedures for eligible institutions to cover transactions to acquire assets equaling up to 25% (up from 10%) of the acquiring institution's total assets. For corporate reorganizations that qualify for

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expedited processing but are not de minimis merger transactions, the proposed rule would generally require the FDIC to act within 30 days. For eligible institutions that are not also corporate reorganizations or de minimis merger transactions, the proposed rule would generally require the FDIC to act within 45 days.

- The proposed rule would establish new tailored time frames for standard processing of merger applications, setting 90- or 150-day timelines for FDIC action, with review generally required within 90 days where the resulting institution has less than $50 billion in assets and consummation of the merger is not dependent upon action by another federal regulator (*e.g.*, the Federal Reserve's review of an application under the Bank Holding Company Act). The FDIC would be able to extend the processing timelines in extenuating circumstances, subject to a maximum of 180 days or 270 days, respectively.

- **A revised competitive effects analysis that accounts for competition from credit unions and out-of-market banks, establishes a safe harbor and signals potential relief for mergers in rural markets.** The proposed rule modernizes the competitive effects analysis by more appropriately reflecting nonbank competition in the initial Herfindahl-Hirschman Index (HHI) analysis. Specifically, the FDIC's initial HHI screen would incorporate the deposits of all banks and thrift institutions, as well as centrally booked deposits of banks and thrift institutions, and shares of credit unions. While these adjustments would not be directly incorporated into public-facing tools for analyzing the competitive effects of bank mergers (which are maintained by the Federal Reserve), the FDIC expects that this new calculation method would "more accurately reflect competition in the relevant geographic market," so that parties' initial *pro forma* analysis would function as a "ceiling" in evaluating the potential anticompetitive effects of a transaction.

  The proposed rule also codifies a safe harbor for transactions that fall under the FDIC's previously long-standing guidance under the agency's 1998 Statement of Policy on Bank Merger Transactions. Under that safe harbor, the FDIC would normally not deny a proposed merger on antitrust grounds (absent objection from the Department of Justice) if, in each relevant geographic market, the *pro forma* HHI either (i) is 1,800 points or less after consummation of the merger transaction, or (ii) the increase in HHI as a result of the merger transaction is less than 200 points (corporate reorganizations would also qualify for this safe harbor).

  Finally, where a merger transaction does not fall within the proposed rule's safe harbors, the FDIC will consider additional factors relating to the impact of a merger transaction on competition, including alternative geographic market definitions or other procompetitive effects such as the public interest, although any such mitigating factors must be "verifiable" and "merger-specific" (meaning that they could not be achieved without the merger). In the FDIC's discussion of the proposal, the agency emphasized that it expects this consideration to be particularly relevant for merger transactions in rural areas, where the FDIC would consider whether the combination of two local institutions may create a stronger competitor to national banks with a physical or online presence in the community. The FDIC also sought comment on whether the agency should further establish a separate HHI-based safe harbor for rural markets.

- **A reformed framework for evaluating the financial stability factor.** The proposed rule would establish a safe harbor to conclude that a merger transaction does not present a financial stability concern if:

  1. The resulting institution would not be a subsidiary of a global systemically important bank holding company, a Category II or III FDIC-supervised institution, or a Category IV banking organization based on definitions established by the Federal Reserve;
  2. The institution to be acquired is an insured depository institution with total consolidated assets of less than $20 billion as reported on the Call Report immediately preceding the filing;
  3. The merger transaction is a corporate reorganization in which all institutions involved are organized under the laws of the United States and have been affiliates for longer than 12 months, and the total consolidated assets of the institution to be acquired are less than $20 billion; *or*
  4. The merger transaction is a de minimis merger transaction.

  For merger transactions that do not satisfy the safe harbor, the FDIC proposed to codify the existing analytical framework in its Applications Procedures Manual balancing test, which considers (i) the size of the institution, (ii) the availability of substitute providers for any critical products and services offered by the resulting institution, (iii) the degree of interconnectedness of the resulting institution with the U.S. banking system, (iv) the extent to which the resulting institution contributes to the complexity of the financial system and (v) the extent of cross-border activities of the resulting institution. Additionally, the FDIC proposed to consider a comparison of the applicant before and after the merger transaction and the extent to which the merger transaction would support financial stability, including if the institution being acquired is at risk of failure.

- **A predictable standard for determining whether a transaction is a "merger in substance."** The proposed rule would replace the FDIC's current qualitative, facts-and-circumstances-based approach for identifying a merger in substance with a predictable asset-based threshold. Specifically, the proposed

rule would define a merger in substance as any merger transaction or series of merger transactions over a rolling 12-month period in which an institution directly or indirectly acquires all or substantially all (meaning 80% or more) of the assets of another institution.

- **Updates to filing requirements and application processing procedures.** The proposed rule contains changes intended to reduce burdens associated with the FDIC's current filing requirements and approach to reviewing merger transactions, particularly regarding comment period-related requirements that are more extensive than those under the BMA and that currently introduce uncertainty, delay or cost into the BMA application process. For example,
  1. The proposed rule clarifies that the FDIC expects the removal of a filing from expedited processing to be rare and based on a consideration of whether the allegations in the comments are sufficiently severe to impact the FDIC's analysis of the statutory factors under the BMA. The proposed rule also would require that adverse comments and Community Reinvestment Act protests must be supported by the supervisory record or other available information in order to warrant considering removal of a filing from expedited processing.
  2. The proposed rule would eliminate the public comment period for de minimis merger transactions and reduce the public comment period for corporate reorganizations that are not also de minimis merger transactions from 30 days to 15 days.
  3. The proposed rule would reduce the number of public notice publications required from three to two and decrease the number of communities in which notice must be provided.
- **A new application requirement for "significant asset transfers."** The proposed rule would require FDIC-supervised institutions to submit a prior notice and receive FDIC non-objection for any single transaction or series of transactions with the same counterparty or one or more affiliates of that counterparty in which the FDIC-supervised institution would increase its size by 25% or more over a rolling 12-month period (unless such transaction or transactions are already subject to FDIC review or approval). This requirement would generally align the FDIC's practice with the Office of the Comptroller of the Currency, which requires a similar notice and non-objection for substantial asset changes by national banks and federal savings associations. Non-objection requests would ordinarily be processed within 30 days — or a maximum of 90 days if extended.

Impact and Next Steps

The FDIC expects that the changes in the proposed rule will improve speed and efficiency, reduce regulatory burden and better align the FDIC's approach to evaluating merger transactions with the current market environment. While the FDIC's proposed rule would only apply to FDIC-supervised financial institutions, the update nonetheless suggests an openness to making favorable and long-awaited changes to the bank merger review process. FDIC-supervised state nonmember banks will want to assess how the FDIC's proposed changes to merger reviews could affect their M&A strategies and provide the agency with practical feedback on the proposal within the 60-day comment period.