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WASHINGTON POLICY STRATEGY

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On Monday, the Office of the Comptroller of the Currency (OCC) proposed a policy statement on bank merger applications. For the most part, the statement is a reiteration of current policy and not controversial. However, it also raises questions about mergers for banks over \$50 billion in assets, officially recognizes that merger applications from global systemically important banks (GSIBs) are unlikely to be approved, and raises a question about mergers of equals.

The OCC also proposed to eliminate expedited application procedures, but those procedures seem to be used so infrequently that this part of the plan will have little impact.

Acting Comptroller of the Currency Michael Hsu gave a speech Monday on bank mergers during which he announced two regulatory initiatives: 1. The Office of the Comptroller of the Currency (OCC) proposed the elimination of expedited procedures for bank merger applications; and 2. the OCC proposed guidance regarding its bank merger rules which would clarify existing rules and would establish initial guidelines for the financial stability test merger applicants must satisfy.

The elimination of the expedited procedures is likely a non-event, while the proposed policy statement raises some key questions regarding bank mergers – especially for mergers that would result in banks over \$50 billion in assets and for mergers of equals.

ELIMINATING EXPEDITED APPLICATION PROCEDURES

The OCC proposed the elimination of expedited procedures to consider an application as well as the use of a streamlined application. Under these procedures (which are intended for well-capitalized banks) a merger application 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. The OCC's proposal does not indicate how many applications the OCC has considered under the expedited process and, when asked about this during his speech, Comptroller Hsu said he did know the number. The lack of data suggests that the expedited review process is used infrequently and its elimination will not have a material impact on bank mergers. We view this proposal as a way for the OCC to look like it is responding to concerns over bank mergers without actually having much impact.

BANK MERGER APPLICATION GUIDELINES

The OCC also proposed a policy statement that is intended to provide greater clarity to banks and transparency to the public regarding general principles the agency uses in its review of applications under the Bank Merger Act (BMA). It also gives details on which factors the OCC considers as mandated by the BMA, including: financial stability, financial and managerial resources and future prospects, and convenience and needs factors. The policy statement would also discuss the criteria that the OCC intends to utilize to decide on whether to hold a public meeting on an application subject to the BMA.

The policy statement seems to be mostly a reiteration of current policy. The proposed statement includes a list of indicators which, if all are present, are consistent with approval of an application. Some of the indicators are neither surprising nor controversial. For example, a merger application where the acquirer and the resulting bank are both well capitalized is consistent with approval. However, some of the proposed indicators raise questions.

1. “The resulting institution will have total assets less than \$50 billion.” Does that mean mergers that result in a bank with over \$50 billion in assets is not consistent with approval?
2. In another part of the proposed policy statement, the OCC states that the agency is “unlikely to find that the statutory factors under the Bank Merger Act are consistent with approval” if the acquirer is a global systemically important bank (GSIB) or a subsidiary thereof. This might be the first time this presumption has been explicitly stated and raises legal questions about the OCC’s authority to make such a presumption. Furthermore, it adds to the confusion about the status of merger applications which would result in banks with over \$50 billion in assets, but which are not GSIBs.
3. Also, according to the proposal, an application is consistent with approval if, among the other factors, “the target’s combined total assets are less than or equal to 50% of acquirer’s total assets.” This raises the question about the OCC’s view regarding mergers of equals.

These and other issues will likely receive scrutiny during the 60-day public comment period.

For several years, federal banking regulators have been discussing in various public forums the need to update their bank merger rules. Officials from the OCC, the Federal Reserve Board, and the Federal Deposit Insurance Corporation (FDIC), as well as the Department of Justice, have been discussing amongst themselves various changes to the current bank merger rules. The fact that the OCC has now proposed its own guidelines suggests the regulatory agencies might not be close to issuing a proposal to update the merger rules. This announcement seems to be intended to either jolt interagency talks or to make it appear that the OCC is taking at least some action on the bank merger front. We think it would be odd for the OCC to release these proposals if a joint proposal to update the bank merger rules was imminent. The odds of a full, multi-agency revision of the bank merger rules seems unlikely until after the 2024 election, but the OCC proposal is still a significant development for bank merger policy.

[Click here](#) for the OCC’s notice of proposed rulemaking.

[Click here](#) for the OCC’s overview of its NPR.

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