

The OCC's New Bank Merger Act Rulemaking: Signs of Life in Bank Merger Reform?

A photograph of a modern building with a curved facade and large glass windows, partially visible on the right side of the page.

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On January 29, the Office of the Comptroller of the Currency (OCC) issued a [Notice of Proposed Rulemaking for Business Combinations Under the Bank Merger Act](#). One element of the rulemaking in particular stands out as a potential harbinger of things to come in the bank merger space: The OCC proposes to eliminate provisions permitting expedited review and a more streamlined application for certain specified transactions.

Under this proposed rule, even non-controversial bank mergers within the OCC's jurisdiction that do not raise concerns would still get a more searching review than is done under the current regulations, which deem certain transactions automatically approved if the OCC does not act within a prescribed time period. The removal of expedited review, if adopted, is apt to further depress bank M&A activity, which was already down in 2023.

These proposed changes echo the FTC's 2021 decision to suspend the granting of early termination of the HSR waiting period for transactions not likely to pose competition concerns. The OCC's elimination of faster-track reviews may suggest that it shares the antitrust agencies' increased skepticism toward mergers in general.

But while this may be a sign that some bank mergers are about to get more onerous, this proposed rulemaking is not the comprehensive update to bank merger review that President Biden called for in his [Executive Order on Promoting Competition in the American Economy](#).

back in July 2021. The OCC, an independent branch of the Treasury Department, is but one of the federal banking agencies involved in reviewing bank mergers (the others are the Federal Reserve and FDIC), so its decision to issue a rule in this space does not impact all banks. Nor does it represent the view of the other banking agencies or the DOJ, who provide the banking agencies with advice concerning the likely impact of proposed bank mergers on competition. And while the DOJ sought comments in December 2021 on revising the 1995 Bank Merger Competitive Review Guidelines, there has been no outward, formal progress since.

That said, Assistant Attorney General Jonathan Kanter and Acting Comptroller of the Currency Michael Hsu have indicated in public statements over the last half year that work on comprehensive bank merger review reform remains ongoing, and their respective agencies may be feeling pressure to issue revised guidelines in what could be the last year of the Biden administration. Gaining consensus across not only the DOJ and OCC but also the Federal Reserve and FDIC, however, is easier said than done, and all four agencies may not be on board with changes that will have the effect of discouraging mergers. As such, if a new version of 1995 guidelines are released this year, expect it to represent a less dramatic departure from past practices than did the revised merger guidelines that the DOJ and FTC adopted at the end of 2023.

“Any business combination subject to a filing is a significant corporate transaction requiring OCC decisioning, which should not be deemed approved solely due to the passage of time.”



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