



June 16, 2025

Office of the Comptroller of the Currency
Chief Counsel's Office
Attention: Comment Processing
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Re: Business Combinations Under the Bank Merger Act Rescission; RIN: 1557-AF29; Docket ID OCC-2025-0001; Document Number OCC-2025-08405; 90 Fed. Reg. 20561 (May 15, 2025)

Dear Ladies and Gentlemen:

Better Markets¹ appreciates the opportunity to comment on an interim final rule (“Proposal”) for business combinations of national banks and Federal savings associations (“mergers”).² The Proposal, issued by the Office of the Comptroller of the Currency (“OCC” or “Agency”), rescinds the Agency’s final rule on the same topic, published in the Federal Register on September 24, 2024.³

The Proposal makes two key changes⁴ that would once again allow certain mergers to receive expedited—and therefore limited—review:

1. Reinstatement of automatic merger approval 15 days after the close of the comment period related to the merger transaction, unless the OCC takes further action.
2. Reinstatement of a streamlined application process for some mergers, with less detail from the banks on the merging entities.

¹ Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans’ jobs, savings, retirements, and more.

² Business Combinations Under the Bank Merger Act Rescission; RIN: 1557-AF29; Docket ID OCC-2025-0001; Document Number OCC-2025-08405; 90 Fed. Reg. 20561 (May 15, 2025), <https://www.federalregister.gov/documents/2025/05/15/2025-08405/business-combinations-under-the-bank-merger-act-rescission>.

³ Business Combinations Under the Bank Merger Act; RIN: 1557-AF24; Docket ID OCC-2023-0017; Document Number OCC-2024-21560; 89 Fed. Reg. 78207 (Sep. 25, 2024), <https://www.federalregister.gov/documents/2024/09/25/2024-21560/business-combinations-under-the-bank-merger-act>.

⁴ Business Combinations Under the Bank Merger Act Rescission, *supra* note 2 at 20562.

The Proposal would also eliminate the Appendix in the prior Final Rule (“Policy Statement”), which contains a list of factors that OCC considers during the merger application process, including:

- General features of merger applications that are “consistent with approval” and those that “raise supervisory or regulatory concern,” and
- Financial stability; financial and managerial resources and future prospects; and convenience and needs aspects of the merger transaction, acquiring institution, and target institution.⁵

In the Proposal, the OCC justifies⁶ the changes by claiming that they reduce the “burden and uncertainty that the 2024 Final Rule added to the application process.” Acting Comptroller of the Currency Rodney Hood’s statement shows the OCC’s decision was intended to make the merger process easier *for the banks*:

The OCC’s actions today reduce burden and uncertainty for banks and supports a regulatory framework for bank mergers that is effective and not excessive . . . Making it easier for well-managed and well-capitalized banks to merge promotes competition and facilitates economic growth and innovation.⁷

This is a narrow and incomplete assessment of the array of stakeholders who are affected by bank mergers. The OCC’s action *favours the banking industry* and the potential for banks to increase profits or market power through mergers. *It completely ignores the very real harm that results from mergers, which concentrate power in larger banks, eliminate consumer choice, increase consumer costs, and remove community banks that lend and invest in local communities across America.*

Moreover, the *Proposal ignores the prudent, judicious, and appropriate deliberative process that led to the approval of the 2024 Final Rule*, less than one year ago. Worse, it contradicts *what the OCC itself said in support* of the 2024 Final Rule:

[T]he 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.⁸

Finally, the Proposal also goes against the *substantial public support* for the 2024 Final Rule:

⁵ *Id.*

⁶ *Id.*

⁷ Press Release, Office of the Comptroller of the Currency, *OCC Issues Interim Final Rule on Bank Mergers* (May 8, 2025), <https://www.occ.treas.gov/news-issuances/news-releases/2025/nr-occ-2025-44.html>.

⁸ Business Combinations Under the Bank Merger Act, *supra* note 3 at 78207.

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 . . .⁹

In summary, we oppose the Proposal and urge the OCC to reconsider and reverse its decision to rescind the 2024 Final Rule. While the 2024 Final Rule was not perfect, it ensured that merger proposals received appropriate analysis and scrutiny,¹⁰ which is vital given mergers' potential negative impact on consumers, local communities, and community banks.

BACKGROUND

As Better Markets has detailed, an insufficient merger review process, combined with changes in laws and economic events, has contributed to massive consolidation in the banking industry over the past several decades.¹¹

Since the mid-1980s, the number of commercial banks in the US has declined by roughly 70 percent.¹² This consolidation has overwhelmingly occurred among large banks (see Chart 1).¹³ Community banks' combined assets have stayed relatively stable during the last 30 years, while the count of larger banks—those with more than \$100 billion in total assets—has grown exponentially, from:

- Five large banks with combined assets of \$800 billion in 1993, to
- Eighteen large banks with combined assets of \$8.8 trillion in 2008, to

⁹ *Id.*

¹⁰ See, e.g., Press Release, Better Markets, *FDIC Policy and OCC's Final Rule on Bank Merger Policies Fall Short, Providing Only an Appearance of Increased Transparency* (Sept. 17, 2024), <https://bettermarkets.org/newsroom/fdic-policy-and-occs-final-rule-on-bank-merger-policies-fall-short-providing-only-an-appearance-of-increased-transparency/>.

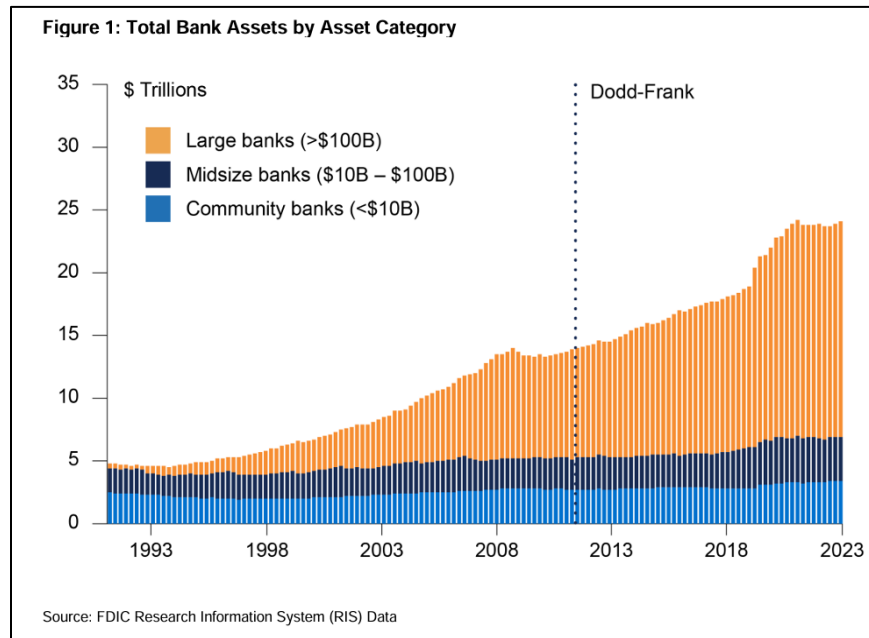
¹¹ See, e.g., Shayna Olesiuk, *Bank Mergers Require Robust Scrutiny to Ensure that Consumers' Interests Are Not Sacrificed for Wall Street's Profits*, Better Markets Fact Sheet (May 12, 2025), <https://bettermarkets.org/wp-content/uploads/2025/05/Better-Markets-Merger-Fact-Sheet-5.12.2025.pdf>; Better Markets Comment Letter, *Business Combinations Under the Bank Merger Act* (June 14, 2024), <https://bettermarkets.org/wp-content/uploads/2024/06/Better-Markets-Comment-Letter-OCC-Business-Combinations-Under-the-Bank-Merger-Act.pdf>; Better Markets Fact Sheet, *The Review Process for Bank Mergers and Acquisitions Is Seriously Deficient, Allows Too-Big-to-Fail to Proliferate, and Fails to Protect Consumers* (July 11, 2023), https://bettermarkets.org/wp-content/uploads/2023/07/Better_Markets_Merger_Fact_Sheet-7.11.23.pdf; OFFICE OF THE COMPTROLLER OF THE CURRENCY, OCC BANK MERGER SYMPOSIUM: PANEL III: FINANCIAL STABILITY (Feb. 10, 2023), <https://www.occ.gov/news-issuances/news-releases/2023/nr-occ-2023-6a.pdf> (last visited June 12, 2025).

¹² Federal Deposit Insurance Corporation, *BankFind Suite: Find Annual Historical Bank Data*, <https://banks.data.fdic.gov/bankfind-suite/historical> (last accessed June 12, 2025).

¹³ Acting Comptroller of the Currency Michael Hsu Remarks Before the Exchequer Club, Office of the Comptroller of the Currency, *Size, Complexity, and Polarization in Banking 2* (July 17, 2024), <https://www.occ.gov/news-issuances/speeches/2024/pub-speech-2024-79.pdf>.

- Thirty-two large banks with combined assets of more than \$17 trillion in 2023.¹⁴

Chart 1



The pace of mergers increased substantially after Congress passed a law in 1994 that codified the right to interstate banking at a national level.¹⁵ That consolidation became a frenzied merger wave after the 1999 Gramm-Leach-Bliley Act¹⁶ repealed the portion of the Glass-Steagall Act of 1933¹⁷ that required the separation of commercial banking, investment banking, and insurance, resulting in more than 30 banks being merged into just four gigantic, too-big-to-fail banks (see Chart 2).¹⁸

¹⁴ *Id.*

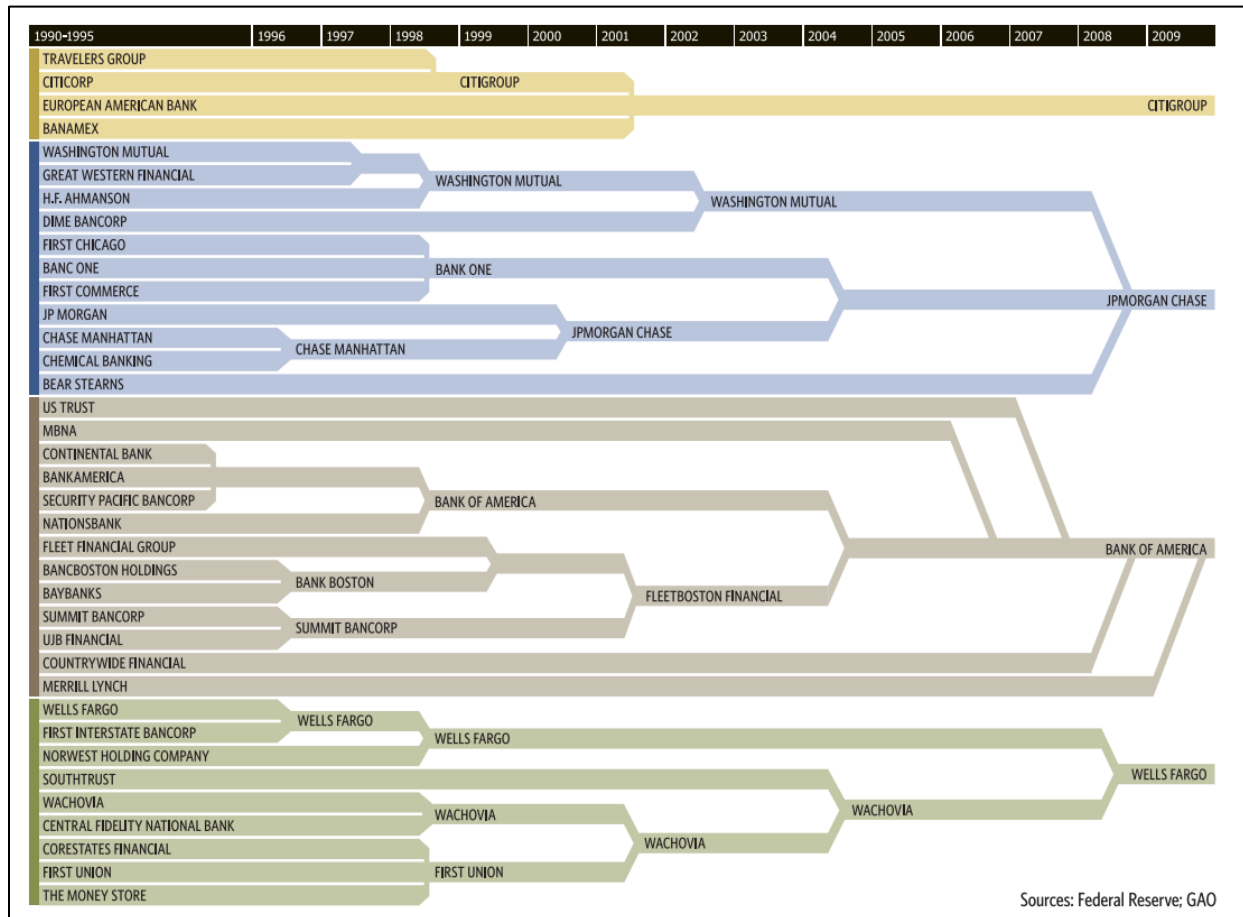
¹⁵ The Riegle-Neal Interstate Banking and Branching Efficiency Act, 12 U.S.C. § 1811.

¹⁶ The Gramm-Leach-Bliley Act, 15 USC § 6801-6809.

¹⁷ The Glass-Steagall Act of 1933, Public Law No. 66-73D.

¹⁸ *How Banks Got Too Big to Fail*, MOTHER JONES (Jan./Feb. 2010), <https://www.motherjones.com/politics/2010/01/bank-merger-history/>.

Chart 2



Confidential, back-room practices at the banking regulatory agencies that encourage and effectively grease the skids to make approval of merger applications a near certainty have also contributed to the merger volume:

[A]gencies have encouraged consolidation . . . by manipulating their application procedures to cater to the banking sector. In the late 1990s, the agencies effectively stopped denying merger applications. Instead, when an agency discovers a problem with a merger proposal, it now informs the applicant of the issue and gives the bank an opportunity to withdraw its application. A voluntary withdrawal shields the bank from bad publicity and the negative market reaction a public denial might cause. This informal process, however, leaves no publicly available, written record of the deficiencies in the merger proposal. . . .

The most significant end-run around the application process, however, occurs before a bank even executes a merger agreement. It is now common practice for the banking agencies to allow firms to vet potential deals confidentially before

announcing a merger. In these private meetings, a bank may ask regulators whether they foresee potential barriers to approval of a transaction. If regulators raise a concern about a proposal, the bank might not pursue the merger. But when regulators express no reservations, the bank may enter into a merger agreement with the agencies' implicit blessing.¹⁹

The evidence shows that large bank mergers present serious risks and costs to financial stability as well as to consumers. For example, research from the Federal Reserve and other academics concludes:

[D]istress at a single large bank poses a significantly greater threat to the economy than distress at several smaller banks with equivalent total assets. Meanwhile, large bank mergers pose serious integration risks and tend not to deliver promised efficiency gains or public benefits. Moreover, numerous empirical studies have found that bank mergers lower the availability and increase the cost of credit for borrowers, especially small businesses. And merging banks typically close branches, inconveniencing customers who rely on proximity to branch offices. In this light, the banking agencies' recent track record of quickly approving nearly every merger proposal suggests that they are neglecting their responsibility to consider all the statutory factors as Congress intended.²⁰

These risks are not just theoretical. **The OCC, along with other federal regulatory agencies, has too often overlooked or downplayed the risks of consolidation and harmful outcomes of mergers that endanger the economy, financial system, and the American public.** The following examples illustrate these risks and prove why the OCC should not revert to an even weaker merger rule:

1. The merger of Capital One and Discover, which was approved by the OCC on April 18, 2025,²¹ will harm Main Street Americans, small businesses, the economy, the financial

¹⁹ Jeremy C. Kress, *Modernizing Bank Merger Review*, 37 YALE J. ON REG. 435, 456–57 (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3440914.

²⁰ *Id.* at 439–40; see also Amy G. Lorenc & Jeffery Y. Zhang, *The Differential Impact of Bank Size on Systemic Risk* 12–18 FED. RESERVE BD. FIN. & ECON. DISCUSSION SERIES (2018), <https://www.federalreserve.gov/econres/feds/the-differential-impact-of-bank-size-on-systemic-risk.htm>; Arthur E. Wilmarth, Jr., *Too Big to Fail, Too Few to Serve? The Potential Risks of Nationwide Banks*, 77 IOWA L. REV. 957, 1010–12 (1992); Erik Devos *et al.*, *Efficiency and Market Power Gains in Bank Megamergers: Evidence from Value Line Forecasts*, 45 FIN. MGMT. 1011, 1029 (2016).

²¹ Press Release, Office of the Comptroller of the Currency, *OCC Announces Conditional Approval of Capital One, National Association to Acquire Discover Bank* (Apr. 18, 2025), <https://www.occ.treas.gov/news-issuances/news-releases/2025/nr-occ-2025-36.html>.

system, and financial stability.²² It will reduce competition, provide less consumer choice, enable higher fees and costs, and cause job losses. Adding insult to injury, both Capital One and Discover have a long history of illegal, willful, deceptive, and unfair actions that have repeatedly consumed regulatory attention and often resulted in fines for both banks,²³ but even that did not stop the merger from being approved.

2. The OCC's approval of the merger between New York Community Bank ("NYCB") and Flagstar Bank ("Flagstar") allowed regulatory arbitrage and enabled the bank to grow exponentially, despite clear regulatory concerns.²⁴ First, the bank was seeking merger approval from the FDIC. After about a year-long delay, and reports that the FDIC had serious concerns about fair lending failings at Flagstar, the bank changed its strategy and charter. It petitioned the OCC for merger approval instead, which was eventually granted, despite reports that the OCC also had concerns about the bank's record of discrimination.²⁵ Clearer, stronger merger guidelines could have prevented the regulatory arbitrage that occurred in this case and stopped fair lending violations that caused harm to innocent consumers. Furthermore, better coordination among regulators could have prevented the systemic risk that Flagstar now presents to the financial system and the American people after its mergers with both NYCB and Signature Bank ("Signature").
3. JPMorgan's acquisition of the failed First Republic Bank on May 1, 2023,²⁶ which resulted in JPMorgan growing by more than \$220 billion, proves the need for stronger merger policy and coordination among the banking regulators. In this case, the OCC concluded that the merger transaction "does not increase risk to the stability of the United States banking or financial system as it facilitates the orderly resolution of an insured depository institution in default" and that the standard 10% deposit concentration limitation does not

²² See, e.g., Press Release, Better Markets, *Anti-Competitive Capital One-Discover Merger Is Going to Cost Consumers, and Endanger the Economy and Financial Stability* (Apr. 18, 2025), <https://bettermarkets.org/newsroom/anti-competitive-capital-one-discover-merger-is-going-to-cost-consumers-and-endanger-the-economy-and-financial-stability/>; Better Markets Comment Letter, *Proposal by Capital One Financial Corporation to Acquire Discover Financial Services and Discover Bank, and for Discover Bank to Merge With and Into Capital One*, National Association (July 24, 2024), <https://bettermarkets.org/wp-content/uploads/2024/07/Better-Markets-Comment-Letter-OCC-FRB-Capital-One-Discover-Merger.pdf>.

²³ *Id.*

²⁴ See, e.g., Better Markets, *New York Community Bancorp: A Frankenstein Monster Federal Regulators Created* (Mar. 1, 2024), <https://bettermarkets.org/wp-content/uploads/2024/03/Fact-Sheet-NYCB-Flagstar-Update-3-1-2024.pdf>; *Flagstar Bancorp/New York Community Bancorp: When FDIC Rebuffed Merger Bid, Banks Restructured Deal So OCC Would Review It*, THE CAPITOL FORUM (Oct. 18, 2022), <https://thecapitolforum.com/flagstar-bancorp-new-york-community-bancorp-when-fdic-rebuffed-merger-bid-banks-restructured-deal-so-occ-would-review-it/>.

²⁵ See Jon Shazar, *Lending Discrimination Against Minorities Still *Technically* Illegal, But Not Something Banks Have To Sweat*, DEALBREAKER (July 14, 2020), <https://dealbreaker.com/2020/07/occ-no-redlining-fines>.

²⁶ See Press Release, Federal Deposit Insurance Corporation, *JPMorgan Chase Bank, National Association, Columbus, Ohio Assumes All the Deposits of First Republic Bank, San Francisco, California* (May 1, 2023), <https://www.fdic.gov/news/press-releases/2023/pr23034.html>.

apply because First Republic Bank was in receivership.²⁷ However, the merger made JPMorgan even larger and further solidified its too-big-to-fail status, which would undoubtedly result in an even greater likelihood than had previously existed of a government bailout if JPMorgan's condition deteriorates in the future.

Notwithstanding the serious risks detailed in this letter, *some mergers can be beneficial for local communities, consumers, and small businesses*. For example, research shows that community investment *increases* in areas where acquired community bank branches remain open, and the effect is stronger when a community bank is acquired by another community bank.²⁸ In other words, community bank mergers can create larger and stronger institutions that contribute more to community development.

Overall, the important and unique role that large banks play in the financial system, along with the potential risks they can pose to financial and economic stability, justifies elevated scrutiny beyond companies in other industries.²⁹ This scrutiny protects the public interest and limits negative externalities.³⁰ Therefore, it is imperative that the OCC not make the mistake of abruptly rescinding its 2024 Final Rule and failing to protect the banking system, financial stability, and the American public.

SUMMARY OF THE PROPOSAL

As detailed earlier, the Proposal would make two damaging changes that would once again allow certain mergers to receive expedited—and therefore limited—review:

1. Reinstatement of automatic approval of merger transactions 15 days after the close of the comment period related to the merger transaction, unless the OCC notifies the applicant that expedited processing is extended or not available.
2. Reinstatement of the streamlined application merger process.³¹

²⁷ *Application by JPMorgan Chase Bank, National Association, Columbus, Ohio, Charter Number 8 to purchase certain assets and assume certain liabilities of First Republic Bank, San Francisco, California*, Office of the Comptroller of the Currency (May 1, 2023), <https://www.occ.gov/topics/charters-and-licensing/app-by-jp-morgan-chase-bank.pdf>.

²⁸ Bernadette A. Minton, Alvaro G. Taboada, & Rohan Williamson, *Unexpected Gains: How Fewer Community Banks Boost Local Investment and Economic Development* (July 2024), https://www.communitybanking.org/-/media/files/communitybanking/2024-papers/unexpected-gains-community-banks-072924f.pdf?sc_lang=en.

²⁹ See, e.g., E. Gerald Corrigan, *Are Banks Special?*, Federal Reserve Bank of Minneapolis (Jan. 1, 1983), <https://www.minneapolisfed.org/article/1983/are-banks-special>; Mehrsa Baradaran, *Banking and the Social Contract*, 89 NOTRE DAME L. REV. 1283 (2014), <https://scholarship.law.nd.edu/ndlr/vol89/iss3/6>.

³⁰ Kress, *supra* note 19 at 466.

³¹ Business Combinations Under the Bank Merger Act Rescission, *supra* note 2 at 20562.

The Proposal would also eliminate the Appendix containing characteristics of merger applications that make a merger application more or less likely to be approved, including financial stability concerns; financial and managerial resource concerns; and convenience and needs.³²

SUMMARY OF COMMENTS

As stated earlier in this letter, we strongly oppose the Proposal because it reverts to a weaker merger policy with less clarity and less public transparency, which increases the risks to financial stability. It also prioritizes banks and their profits over consumers and local communities, who are harmed by higher costs and fewer banking services when there is a bank merger.

We also note that the Proposal aligns with the recent FDIC action to rescind its 2024 merger policy.³³ Better Markets also strongly opposed that FDIC action.³⁴

Instead of finalizing this Proposal, the OCC should:

- Keep the 2024 Final Rule in place while considering adjustments to improve and strengthen the merger framework and policy. While not perfect, the 2024 Policy contains vital components that consider the impact of mergers on consumers, communities, and financial stability. The 2024 Policy also contains expectations to hold public hearings for mergers that would be consequential in size. Without question, the American people and the banking industry will be hurt by the decision to roll back the 2024 Policy and lose these vital inputs to merger decisions.

With regard to factors that the OCC should consider for future modifications to its merger policy, we offer the following:

- Reinstate the Appendix from the 2024 Final Rule and revise its contents to be more specific and binding to increase clarity for banks, regulators, and the public. While the Appendix in the 2024 Final Rule was a step in the right direction, its components were too vague to actually be helpful.
- Increase cooperation and coordination of merger policies among the banking agencies to reduce regulatory arbitrage. As noted, the FDIC and the Federal Reserve have similar, yet separate and distinct, bank merger guidelines. This disjointed and apparently uncoordinated process leads to differences in decision outcomes among the banking regulatory agencies. A set of consistent standards followed by all three banking agencies that properly and fully protect the financial system and the American people

³² *Id.*

³³ FEDERAL DEPOSIT INSURANCE CORPORATION, FDIC BOARD MEETING: MAY 20, 2025, <https://www.fdic.gov/news/board-matters/2025/board-meeting-2025-05-20-1open> (last visited June 12, 2025).

³⁴ Better Markets Comment Letter, *Statement of Policy on Bank Merger Transactions* (Apr. 10, 2025), <https://bettermarkets.org/wp-content/uploads/2025/04/Better-Markets-Comment-Letter-FDIC-Merger-Policy.pdf>.

would better serve the country.

COMMENTS

I. KEEP THE 2024 FINAL RULE IN PLACE WHILE CONSIDERING ADJUSTMENTS TO IMPROVE AND STRENGTHEN THE MERGER FRAMEWORK AND POLICY.

As noted earlier, the 2024 Final Rule was a clear improvement from the prior policy. It removed the automatic approval of mergers when the Agency did not act in the first 15 days after the comment period, and it removed the streamlined application process. While the banking industry and its lobbyists view these changes as positive factors that removed roadblocks that complicate the merger process and added costs for the merging banks, these factors are actually vital to protect consumers and financial stability.

Moreover, the OCC itself said that the 2024 Final Rule was an improvement from the prior merger policy, for both banks and the public, because it added transparency to the process:

[T]he 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.³⁵

While many mergers do indeed concentrate market power among large, and often too-big-to-fail banks, *it is not the case that every merger will harm consumers or threaten financial stability*. In fact, the research and data show that mergers between strong community banks can actually increase lending and investment in local markets.³⁶ Therefore, the OCC should recommit to a robust and comprehensive merger approval process to allow for appropriate consideration of all the facts and unique circumstances in each merger application to make the best decisions for banks and the American people.

II. REINSTATE THE APPENDIX FROM THE 2024 FINAL RULE AND REVISE ITS CONTENTS TO BE MORE SPECIFIC AND BINDING TO INCREASE CLARITY FOR BANKS, REGULATORS, AND THE PUBLIC.

The Appendix in the 2024 Final Rule contains several factors that the OCC considers in the merger application and approval process. While the Appendix was a step in the right direction toward transparency and clarity for banks and the public, its contents should be made clearer in a future merger rule.

There were several problems with the Appendix in the 2024 Final Rule:

- First, the lists only codified general guidelines that the OCC uses in its evaluation of

³⁵ Business Combinations Under the Bank Merger Act, *supra* note 3 at 78207.

³⁶ Minton, Taboada, & Williamson, *supra* note 28.

bank merger applications, rather than actually strengthening the merger process. For example, former Comptroller Hsu stated, “a lot of this was unwritten, the point of this is to just write it down.”³⁷

- Second, the language used was unclear. For example, the Appendix in the 2024 Final Rule says, “Applications that tend to withstand scrutiny more easily and are more likely to be approved expeditiously generally feature all of the following indicators.”³⁸ This brings up many more questions. For instance, how many items can be missing for a merger to still be approved? Are there certain items that can never be missing, such as an institution being well capitalized or having no open enforcement actions? And does “consistent with approval” translate into “will be approved” in the future?
- Third, the combination of a list of factors that are consistent with approval and a list of factors that raise supervisory or regulatory concerns leaves a wide gap of characteristics that do not fit in either category and thus are presumably left to the OCC’s discretion. For example, the Appendix in the 2024 Final Rule says that resulting institutions that will have total assets less than \$50 billion are generally consistent with approval, while merger transactions involving global systemically important banking organizations (“GSIBs”) or their subsidiaries raise concerns.³⁹ However, it is silent on transactions that result in an institution with more than \$50 billion in total assets but do not involve GSIBs. Similarly, the 2024 Final Rule says that having no open enforcement actions is a feature of mergers that are typically approved,⁴⁰ but it does not address situations in which the acquirer or the target institution has a history of enforcement actions or discrimination, but does not have any actions that are currently open.
- Finally, the factors considered related to financial stability; financial and managerial resources and future prospects; and convenience and needs only present questions and topics with no specifics at all. For instance:
 - On the Financial Stability⁴¹ list, the first item is “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” but no details about the size at which this concern becomes relevant and how financial stability risk will be measured or evaluated are included.

³⁷ Pete Schroeder, *US Bank Regulator to Boost Transparency of Merger Reviews*, REUTERS (Jan. 29, 2024), <https://www.reuters.com/business/finance/us-bank-regulator-boost-transparency-merger-reviews-scrap-automatic-approvals-2024-01-29/>.

³⁸ Business Combinations Under the Bank Merger Act, *supra* note 3 at 78218.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 78219.

- On the Financial and Managerial Resources⁴² list, “[t]he 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,” without defining clearly what constitutes “sufficient resources.” Furthermore, the description states 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 at the target” but does not specify what “sufficiently robust risk management and financial resources” actually are.
- The Convenience and Needs⁴³ list contains a variety of factors such as plans to change branch presence in low- and moderate-income areas, change the cost of banking products, change the availability of banking products, or cut jobs within bank offices but does not include any clarity around what is, and is not, appropriate or acceptable with regard to those factors.

There are similar problems with clarity and detail in virtually every item on the lists within the Appendix of the 2024 Final Rule. Therefore, ***we recommend that it be revised to be much more specific.***

Furthermore, a rule that simply “writes down” the Agency’s practices will only be as strong as the Agency’s actual current framework and track record. In the case of the OCC’s track record on merger scrutiny, it is clear that improvements and changes from the current practices are needed. For instance, given the facts from Flagstar’s acquisitions of NYCB and Signature,⁴⁴ the OCC overlooked, ignored, or provided significant leeway on many factors. These specific factors were further detailed in Better Markets’ comment letter in response to the 2024 Final Rule proposal.⁴⁵

III. INCREASE COOPERATION AND COORDINATION OF MERGER POLICIES AMONG THE BANKING AGENCIES TO REDUCE REGULATORY ARBITRAGE.

Each of the banking regulators has separate and distinct merger rules, policies, and guidelines. This disjointed process leads to differences in policies among the banking regulatory agencies and uneven standards for protecting financial stability and consumers from the dangers of consolidation. It also leads to regulatory arbitrage. The financial system and the American

⁴² *Id.*

⁴³ *Id.* at 78220.

⁴⁴ See Better Markets, *New York Community Bancorp: A Frankenstein Monster Federal Regulators Created* (Mar. 1, 2024), <https://bettermarkets.org/wp-content/uploads/2024/03/Fact-Sheet-NYCB-Flagstar-Update-3-1-2024.pdf>.

⁴⁵ Better Markets Comment Letter, *supra* note 11 at 15-17.

people would be better served by a set of consistent standards that all three banking agencies follow to properly and fully protect the financial system and consumers.

The examples of Flagstar's acquisitions of NYCB and Signature prove the damage that can result from inconsistent policies among regulators and uneven application of those policies. Flagstar ballooned from \$25 billion in assets to \$90 billion in assets with its acquisition of NYCB. With the ink barely dry on this OCC-approved merger, the banking regulators—just 100 or so days later—approved Flagstar's acquisition of Signature, causing Flagstar's total assets to jump again, to \$123 billion.⁴⁶ Flagstar's ongoing well-publicized managerial and financial problems⁴⁷ demonstrate the risk it continues to pose to the OCC from a supervisory standpoint, as well as the financial stability challenges that it presents to the financial system as a whole. Simply put, the American people rely on the banking regulators to protect them and the broader financial system with robust rules and consistent application of those rules.

CONCLUSION

We hope these comments are helpful as the OCC works to strengthen its merger guidelines.

Sincerely,



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⁴⁶ See Better Markets, *supra* note 44 at 1.

⁴⁷ See, e.g., Caitlin Mullen, *Flagstar To Close Roughly 60 Retail Branches This Year*, BANKING DIVE (Jan. 30, 2025), <https://www.bankingdive.com/news/flagstar-close-60-branches-cre-real-estate-20-private-client-locations/738778/>; Claude Solnik, *Flagstar Laying Off Nearly 2,000, Taking \$20M Hit: A Closer Look At The LI Bank's Decline*, LONG ISLAND PRESS (Oct. 21, 2024), <https://www.longislandpress.com/2024/10/21/flagstar-bank-lay-offs/>; Allissa Kline, *NYCB To Sell Unit To Mr. Cooper, Expects More Near-Term Challenges*, AM. BANKER (July 25, 2024), <https://www.americanbanker.com/news/nycb-reports-quarterly-loss-plan-to-sell-mortgage-servicing-unit>.