



# *FedFin Client Report*

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Wednesday, May 1, 2024

## **GOP Merger-Process Bill Set to Advance**

### **Client Report: MERGER16**

#### **Executive Summary**

At today's HFSC Financial Institutions Subcommittee hearing on bank mergers, Democrats said that larger mergers pose numerous risks while Republicans criticized the application-and-approval process as opaque and time-consuming. However, Rep. Casten (D-IL) said that GSIB organic growth outstrips that of even large regional banks, meaning that a halt on bank mergers could accelerate banking-system concentration. Subcommittee Chair Barr (R-KY) referenced a [comment](#) from BofA's CEO at the GSIB hearing that a super-regional, Truist, was more of a competitive threat than the banks which preceded it. Chair Barr referenced his bill, H.R. 7403, to revise the merger process, a bill likely now being prepared for HFSC mark-up. Democrats also targeted specific mergers, with Reps. Sherman (D-CA) and Waters (D-CA) focusing on Capital One/Discover and Rep. Beatty (D-OH) criticizing UMB/Heartland.

#### **Analysis**

##### ***Opening Statements***

Chair Barr called for clear merger-review expectations for requirements and timelines, stating that the OCC proposal ([see FSM Report MERGER14](#)) and companion one from the FDIC's ([see FSM Report MERGER15](#)) will harm a broad and diverse banking system. He also warned that the agencies' different approval standards may incentivize regulatory shopping and lead to greater uncertainty. Ranking Member Foster (D-IL) noted the steady consolidation of the banking sector since the 1980s and called maintaining a healthy distribution of bank size a bipartisan concern. He also praised the agencies for their new merger proposals and stated that small businesses benefit from greater bank choice. Full Committee Ranking Member Waters criticized what she called merger rubber stamping and referenced pending discrimination lawsuits against Wells Fargo to illustrate the potential harm of further consolidation.

##### ***Testimony***

FDIC Deputy General Counsel James Anderson outlined the agency's jurisdiction over

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merger transactions and discussed the factors the agency considers when reviewing an application and the agency's proposed statement of policy. The OCC's Acting Senior Deputy Comptroller and Chief Counsel, Ted Dowd, reviewed the agency's proposed policy emphasizing the agency's desire to improve transparency around its decision-making process.

## Q&A

- **Merger Time Limit:** While nearly every Republican criticized the agencies' merger processes, Subcommittee Chair Barr along with Reps. Luetkemeyer (R-MO) and Rose (R-TN) also called for a time limit on mergers such as that proposed in Chair Barr's bill. Mr. Dowd responded that the vast majority of mergers are processed in a timely manner, also noting the agency's work with Mr. Barr's staff on the bill which he said contains ideas worthy of consideration.
- **Antitrust:** Rep. Casten questioned the FDIC's interactions with DOJ regarding anti-trust concerns when evaluating a merger; Mr. Anderson replied that the FDIC coordinates with DOJ and receives a report but the FDIC has the authority to move forward on its own. Rep. Casten pointed out the antitrust/financial-stability trade-off, which Mr. Anderson said remains an issue.
- **Emergency Acquisitions:** Rep. Casten also asked if the agencies would consider separating banks after an emergency sale of a failed bank once financial stability concerns subside; Mr. Anderson said that there are other issues to consider when discussing a potential failure.
- **Fintechs and Smaller Banks:** Reps. Loudermilk (R-GA) and Rose pointed to small-bank compliance burden and the need for fintech partnerships. Mr. Anderson stated that banks are free to partner with third parties, as long as they do so in a safe and sound manner, stating that the agency is aware of these concerns.
- **OCC Expedited Review Process:** Reps. Rose and Timmons (R-SC) asked about the OCC proposal seemingly removing the expedited review process. Mr. Dowd said that the process is being "reframed" and stated that small and simple mergers would still be approved in a timely manner.
- **"Presumptive Denial":** Subcommittee Chair Barr took issue with the second factor in the OCC proposed Principles of Review, stating that applications consistent with approval will generally have total assets less than \$50 billion, calling this guideline a "trigger for the presumptive denial of an application." Mr. Dowd disagreed with Mr. Barr's characterization of the guideline.