



Financial Services Management

Bank-Merger Policy

Cite

H.R. 8337, Bank Failure Prevention

Recommended Distribution

Policy, Legal, Government Relations

Website

<https://www.congress.gov/118/bills/hr8337/BILLS-118hr8337ih.pdf>

Impact Assessment

- More bank mergers might not be approved, but more mergers would proceed with more certainty, reducing franchise value damage in the M&A process to now procedural uncertainties and delays.
- Greater certainty might induce more applications that enhance sound consolidation, strengthening remaining charters and the banking system.

Overview

New legislation approved largely on partisan lines in the House Financial Services Committee would force federal banking agencies to recraft bank-merger policy to increase procedural certainty and reduce the influence of third parties in both approval-review process and substance.

Impact

Although Republican critics of current and proposed bank-merger policy have called for a series of substantive changes, the legislation pressed by House Members focuses on one of the most immediate challenges: timing. Although the Federal Reserve has said that the median time for bank-merger transactions is under sixty days, even small transactions can take many months and larger, more complex ones often take at least a year.

This is in part because the banking agencies are required to consider the “convenience and needs” of affected communities, often doing this not only by reviewing Community Reinvestment Act records as determined by supervisors, but also testimony and letters from public-interest groups and related parties. The bill does not change the convenience-and-needs test nor does it bar the agencies from considering third-party evidence on this or other considerations (e.g., competition, consumer protection). However, determinations of whether the agencies have enough information to make a decision and the timing in which

this then must be made would need to proceed without consideration of whether third-party comments require additional time prior to a merger decision.

It is of course possible that the banking agencies could deny more deals in the absence of information they want, but procedural certainty provides both an applicant and its target with protection against long, drawn-out deliberations that can adversely affect both companies' franchise value.

The bill affects merger decisions by the FRB, FDIC, and OCC. It does not govern those also made by the Department of Justice, which has the authority to rule on any bank merger it selects for additional review. Adding the DOJ to this measure would have required joint referral to another Congressional committee, and this may be the reason the bill affects only the banking industry. However, even if this bill were to pass, DOJ could still take as much time as it chose to consider a merger and do so with a view to third-party comments affecting the industrial-policy, competition, and community-impact issues now covered in merger reviews under its new guidelines.¹ However, this is in practice likely to occur only for larger, complex, or novel transactions, with smaller and simpler deals moving far more quickly under the bill's new process.

What's Next

The House Financial Services Committee voted 24-22 to approve this bill on May 16. It will next go to the House floor where passage would be by a similarly-slim partisan margin. There is no Senate companion nor any chance for action on it in this Congress. Even were a bill to advance, President Biden would surely veto it given how contradictory it is to his executive order on competition in general and the order's approach to bank mergers.²

Analysis

The bill would require the Fed and other banking agencies within thirty days of receiving a BHC or IDI application for a merger or acquisition to notify the applicant indicating if the application is complete or, in detail, what else is needed, with this deadline subject to agency extension for an additional thirty days if an application is "unusually complex."

When a regulator receives the additional information it has requested, the application is to be considered complete unless the response is "materially deficient" and describes the flaws within thirty days. Only information provided by the applicant may be considered in judging completeness.

Regardless of any extensions, the agencies would still need to rule on an application within ninety days of its submission unless the applicant requests an extension; this could last no more than thirty days. Should an agency fail to rule in these time periods, then the application would be deemed approved.

¹ See **MERGER13**, *Financial Services Management*, December 27, 2023.

² See *Client Report* **MERGER6**, July 9, 2021.

Nothing in this process bars more rapid approvals, including those in emergency situations.