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Bank Mergers and Acquisitions

On July 9, 2021, President Biden issued an executive order on competition, which, among other things, encourages the Attorney General and the federal banking regulators "to review current practices and adopt a plan, not later than 180 days after the date of this order, for the revitalization of merger oversight." Congress has been interested in mergers among large banks in recent years (see **Table 1)**, particularly how they might affect competition. This In Focus provides an overview of the bank merger process and policy issues.

Table 1. Recent IDI M&As Among Top 25 BHCs
By BHC consolidated assets, as of June 30, 2021

Institutions	Assets ($billion)	M&A Date
U.S. Bank (plans to acquire MUFG Union Bank)	$692 (pre-M&A sum)	9/2021*
PNC Financial Services (acquired BBVA USA)	$555	6/2021
Truist Bank (merger of BB&T with SunTrust Banks)	$522	12/2019
Capital One Financial (acquired ING Bank)	$423	2/2012
Citizens Financial Group (plans to acquire Investors Bancorp)	$212 (pre-M&A sum)	9/2021*
Huntington Bancshares (merged with TCF Financial)	$175	12/2020

Source: S&P Capital IQ Pro; Citizens Financial Group; MUFG Union Bank.

Notes: This list includes the largest banks resulting from mergers and acquisitions (M&As) from the past 10 years where the M&A involved large insured depository institutions (IDIs).

*Denotes an announced but uncompleted merger or acquisition. Asset totals are illustrative and may differ from post-merger total, if approved.

Bank Merger Process

Mergers and acquisitions (M&As) involving banks—or, more technically, insured depository institutions (IDIs), as there are a number of different types of banks—must comply with a number of statutory requirements. These vary based on the type of bank but are broadly similar. Bank M&As need approval by one or several of the banking regulators—the Federal Reserve (Fed), Federal Deposit Insurance Corporation (FDIC), or the Office of the Comptroller of the Currency (OCC)—depending on how the banks are legally structured. When banks with different charter types are involved, approval by more than one regulator can be required. Most of the largest U.S. banks are structured as bank holding companies (BHCs), and their M&As are approved by the Fed. (States may also have requirements, beyond the scope of this In Focus, but a state regulator can block M&As only on limited grounds.)

Regulators review M&A proposals for, among other things, their **effects on competition**. For example, bank regulators and the Department of Justice (DOJ) review proposals for effects on market power in both national and local markets. DOJ has the authority to block an M&A on antitrust grounds. It is not uncommon for banks to divest branches before an M&A is approved to allay concerns about market power. For example, on 16 occasions between 2006 and 2017, the Fed required M&A applicants to sell off branches. M&As are also subject to statutory **concentration limits** to curb market power—the merged entity may not hold more than 10% of total deposits nationally or 30% of deposits in any state. In addition, for BHCs, the merged entity cannot hold over 10% of all financial company liabilities nationally.

Regulators must also consider the "**convenience and needs of the community**." They do so by seeking public comment through public outreach hearings, for example. Notably, the entities merging must resolve any issues related to consumer compliance or compliance with the Community Reinvestment Act (CRA; 12 U.S.C. §2901 et seq.)—a law that requires regulators to evaluate how well IDIs make credit available to the communities from which they accept deposits. The M&A approval process is one of regulators' main tools to encourage CRA compliance. (For more information on CRA, see CRS Report R43661, *The Effectiveness of the Community Reinvestment Act*, by Darryl E. Getter.)

Statute lays out other factors regulators must consider, including **financial resources** (Would the merged institution have adequate capital and other resources?); **managerial resources** (Do the banks' officers, directors, and principal shareholders have competence, experience, and integrity?); **money laundering** (Are the banks effective at combatting money laundering?); and **financial stability** (Does the merger pose systemic risk to the United States banking or financial system?). There are also restrictions on how certain acquisitions can be financed.

Regulators have discretion to reject M&A applications, require changes to proposals, and grant conditional approval. They can also waive certain requirements in certain circumstances, such as for a bank in default or in danger of default. For example, during the 2008 financial crisis, Wells Fargo's acquisition of Wachovia was approved on an expedited basis under a systemic risk exception.

Issues for Congress

Are Mergers Affecting Competition?

Some policymakers are concerned about the effect that bank mergers are having on competition, which can be viewed as two distinct concerns: (1) that mergers will lead to a dearth of community banks, and (2) that mergers will lead to a handful of banks that are "too big to fail" (i.e., whose failure would cause financial instability) and have too much market share for markets to be competitive.

There is a long-term trend of consolidation in the banking industry, which has mainly occurred through M&A. This trend was driven by the gradual removal of state and federal restrictions on operating multiple branches and banks, notably across state lines. In other words, legal restrictions had kept banks artificially small. Once these restrictions were removed in the 1980s and 1990s, economies of scale made it profitable for banks to expand, and many small banks combined, with annual mergers peaking in 1997. From 2001 to 2020, the number of FDIC-insured institutions (which includes commercial banks and savings associations) fell from 9,613 to 5,002. Over that period, mergers outnumbered failures by almost 10 to one and outnumbered new banks by almost five to one. In 2020, there were 168 mergers, six new banks created, and four failures. However, with almost 5,000 institutions, most of which are small community banks, there is still a reasonable amount of competition in the market for smaller banks.

Most mergers involve small banks. According to FDIC research, 91% of mergers involved community banks, and 70% of mergers involved community banks merging with each other from 2007 to 2016. However, a handful of high-profile mergers involve large banks. Large bank mergers typically involve bank holding companies (BHCs). The largest BHC M&As can also involve non-depository institutions, which are not covered in this In Focus, although they may affect competition in non-bank financial market segments. As seen in **Table 1**, there are also a number of large mergers over the past 10 years involving IDIs, and among the top 10 BHCs, three—U.S. Bancorp, Truist, and PNC—have grown significantly through M&As. These BHCs are considerably smaller than the largest six BHCs, which have not been involved in significant M&As involving IDIs since the 2007-2009 financial crisis. (Some of the top six grew significantly through mergers during the financial crisis, highlighting their potential growth through mergers if another large bank became distressed.)

Some of the very largest banks cannot grow through mergers because they exceed the concentration limits described above. For example, it appears that JPMorgan Chase and Bank of America are constrained by the 10% national deposit cap. Instead, the largest firms have grown since the financial crisis through internal growth, which is not directly constrained by concentration limits or other bank regulation. However, Wells Fargo's overall growth is currently constrained by an enforcement action. This dynamic has mainly resulted in fewer, but larger, "mid-size" banks, but it is unclear if banking at the national level has become more or less competitive (although it may have become less competitive in some local markets where those banks operate). A merger between two mid-size banks might make those banks better able to directly compete with the very largest banks. In other words, there may be competition concerns with the largest banks, but they have not been caused by mergers in the post-crisis period.

Is the Merger Approval Process Appropriate?

The merger process has been criticized by some as too lax and by others as too slow and vulnerable to interference. Critics who believe the process to be too lax point to the fact that none of the three regulators has denied a merger application in recent years and characterize the approval process as a mere "rubber stamp." Regulators disagree and describe the application process as an iterative one, where applicants are given the opportunity to provide more information or address shortcomings in their applications before judgment is passed. For example, in 2012 the Fed created a voluntary "pre-filing" process to give targeted feedback on applications before they are formally filed. Applicants may choose to withdraw applications rather than have them formally rejected. A small percentage of applications are withdrawn rather than approved (see **Table 2**), and it is unclear how many applications are not started after initial or pre-filing consultations with the regulators.

Table 2. Merger Application Trends, 2018-2020

Annual Average	Fed	FDIC	OCC
Approved	175	114	47
Withdrawn (Fed/FDIC) or Returned (FDIC)	13	9	n/a
Avg. Days to Process Appl.	62	70	n/a
% Appl. Processed within Target	n/a	81%	94%

Source: CRS calculations based on Fed, FDIC, OCC reports.

Notes: There were no denials for any of the three agencies. FDIC reports % of substantially complete applications processed within target. OCC data are fiscal year.

Because the merger application process is iterative, it can be lengthy, and some complain that it is too slow. The regulators have internal guidelines on how long the approval process should take. The FDIC has a goal of approving a merger 60 days after a substantially complete application is received, and from 2018 to 2020 it completed 81% of applications within that time frame (see **Table 2**). Proposals that attract adverse public comments take significantly longer to be approved. For example, the Fed reported that applications receiving adverse public comments took 232 days on average to process, compared to 64 days for those not receiving adverse comments in 2020. Critics claim that community input, in some cases, allows special interests to use the threat of slowing the approval process to extract community benefit plans from the merging banks that are not officially required.

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