



April 3, 2024

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Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218
Washington, DC 20219

**RE: Business Combinations Under the Bank Merger Act
12 CFR Part 5
RIN 1557-AF24
[Docket ID OCC-2023-0017]**

Dear Sir or Madame;

America's Mutual Banks ("AMB") welcomes the opportunity to comment on the OCC's proposed rule to amend Part 5 to increase transparency of the standards that apply to the OCC's review of business combinations by national banks and federal associations. AMB is a trade group representing the interests of mutual holding companies and mutual FDIC's insured institutions. AMB members value and serve their community and exist principally to be a vital financial conduit and member of that community. Almost all mutual banks and mutual holding companies fall under the Federal Reserve Board's \$10 billion threshold in assets definition of a community bank. The average size of mutual federal associations is under \$500 million in assets.

AMB's primary mission is to inform thought leaders, legislators, and government officials of the peculiar structure of mutual banking organizations, their special community orientation, their best practices, and the need for compatibility of the application of regulatory concepts to mutual organizations. Too frequently, AMB has had to remind members of Congress and the regulatory agencies that proposals that are designed with "one-size-fits-all" in mind are a much more common problem for mutual institutions.

AMB supports providing further transparency in the application of the legal criteria prescribed by the Bank Merger Act to combinations involving federal associations and national banks. AMB members are concerned that the increasing concentration of banking assets among a few multi-national banks will degrade the ability of locale communities to have a direct influence on the banking decisions effecting the allocation of credit. Mutual institutions because of their unique organizational structure have endured and become a vital part of their communities much longer than stock banks. Nonetheless, they like their stock brethren have suffered a significant decline in numbers dropping from over 20,000 mutual savings associations in 1920 to less than 600 today.

AMB believes that the larger the institutions proposing to merge, the more likely that such merger presents complex issues under the Bank Merger Act. AMB does not oppose the additional time required for the OCC to make an adequate record in order to support its decision under the Bank Merger Act. However, it has serious doubt that the issues presented by small community mutual bank applicants

proposing merger rise to the level that requires further processing time than is currently allowed. We are unaware of any approval by the OCC of a small bank merger that after the fact was criticized under the standards of the Bank Merger Act because the record was incomplete. Indeed, if the staff requires further time to complete the record, our members' experience has been that it does not hesitate to notify an applicant that its application is incomplete. See 12 CFR Section 5.10(b)(2). To the contrary, too often application processing times take longer than they should, causing applicants to incur additional expense and deterioration in the operations of the disappearing institution as it loses customers and key employee focus. AMB is also concerned that the repeal of Section 5.33(i) expedited processing exceptions and the use of streamlined applications sends the wrong signal implying a longer and more complicated processing period. We are particularly concerned that certain groups will use the opportunity to delay and obstruct processing in order to gain inappropriate concessions from applicants. The Federal Reserve Board learned from its experience in processing mergers that some groups could exploit procedural opportunities to unduly delay applications. Representative Andy Barr (R. Ky.) has voiced his concern with Federal Reserve Board burdensome processing times by announcing that he would soon introduce a bill with processing deadlines that would prevent open ended extensions of processing times.

AMB notes the recent joint agency proposal by the OCC, FDIC and FRB soliciting comments on the application process and what requirements should be eliminated or revised under EGRPRA of 1996. 89 Fed Reg No. 25 Tuesday Feb 6, 2024. This proposal, in that it treats one size as fitting all, seems directly contradictory to the Congressional intent underlying that Act.

The absence of a qualitative assessment of the effect of the repeal is contrary to best agency practices. See the July 2018 OCC staff memorandum on the qualitative assessment of the cumulative effects of OCC regulations. It is inconsistent with various studies on the regulatory burdens on small bank operations. See GAO Study 18-213, *Report to The Chairman, Committee on Small Business, House of Representatives (February 13, 2018)*; CSBS Study, *Community Bank Compliance Costs*, Dunkelberger and Scott, Temple University (2018) (stating that compliance costs are regressive on small banks); CUNA, Hui, Myers and Seymour, *Regulatory Burden Financial Impact Study* (February 2016); CFPB Study, *Understanding the Effects of of Certain Deposit Regulations on Financial Institution Operations* (November 2013) and Peirce, Robinson and Stratman, George Mason University, Mercatus Center, *How Have Small Banks Fared Under Dodd-Frank?* (February 2014). AMB believes the OCC should carve out a size exemption for expedited processing for banks with assets under \$10 billion in recognition that the burdens of extended processing times are felt most heavily by smaller banks. We base this belief on the disproportionate burden the elimination of expedited processing will have on mutual to mutual mergers as well as other community bank combinations.

The Regulatory Flexibility Act ("RFA") 5 U.S.C. 601 et seq requires the OCC to prepare an Initial Regulatory Flexibility Analysis describing the impact of the proposed rule on "small entities", defined as banks under \$850 million in assets, or to make a certification that such rule would not have a significant impact on a substantial number of small entities under Section 605(b) of the RFA. The footnote to the preamble explains that the economic impact is determined to be "significant" if the one year impact is greater than 5% of total salaries and benefits or greater than 2.5% of non-interest expense. The preamble to the proposal states that based on a five year average the proposal would have a significant effect on 38 OCC supervised entities out of 661 OCC supervised small entities. The meaning of "substantial number" of small entities is subject to interpretation. The meaning is relative to the universe of those banks that would likely be subject to the rule in practice which is all small entities or the entire universe. Moreover, the time period for determining "substantial number" is not a snapshot in time of one year but a reasonable period during which the rule would apply. The OCC uses an average (from a period

characterized by a small number of mergers) to predict the likely annual number of mergers in a year. However, the banks not merging are constantly evaluating the cost, compatibility and feasibility of combinations. The elimination of expedited processing has a material impact on their decisions as they weigh the cost and timing of prospective transactions. To demonstrate the over simplicity of the Preamble's analysis, the composition of the universe contains different type of entities that cannot merge by law or would not merge because of their financial condition. A realistic analysis would show that the universe of 661 is much smaller. For example, mutual banks constitute approximately 51% of all federal associations. (OCC Report of State of Condition of Federal Mutuals to MSSAC, September 28, 2021) Mutuals cannot combine with stock banks and branches and agencies of foreign banks cannot merger with domestic banks. Further, the OCC categorizes different classes of banks as requiring different levels of peer oversight by size. Federal mutuals and MHCs without public shareholders represent only 24% of all mid-sized and national community banks and federal associations. Similarly, the market does not view as compatible all banks of the same size as merger partners. Mutual federals with assets under \$500 million constitute 82% of the universe of all federal mutuals. Business model, financial condition and geography are all factors which will disqualify merger partners. More importantly, unlike the OCC analysis, the SBA distinguishes savings institutions and commercial banks as different subsectors in its size analysis. The Preamble's methodology for analyzing whether a substantial number are significantly impacted is flawed as to both federal associations and national banks by combining them in the same universe with each other and foreign banks and agencies-a classification that conflicts with the SBA's.

The preamble also states the OCC does not believe that the regulation would result in a different decision outcome for the applicants or result in a burden. The statement that the OCC does not see a difference in outcome is troubling for two reasons. One, if there is no difference in outcome what is the need for the proposal on a cost benefit basis? Second, outcome is not the sole determinate. The cost of delay, both tangible and intangible, causes a burden in itself given the likely greater processing times and disruption in operations pending the approval and completion of a merger. The banking agencies and the Congress have been increasingly concerned about the competitive disadvantage that burdensome regulatory requirements place on small banks. Economies of scale allow large banks to develop and operate compliance systems that carry fixed costs which are low as a percentage of their assets. A proposal that is primarily aimed at the consolidation of large banks should not compound the burdens mutual banks labor under.

Best regards,

A handwritten signature in black ink, appearing to read 'Douglas Faucette', with a large, stylized flourish at the end.

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