



Applications: Frequently Asked Questions

July 23, 2020

None

When is a background check conducted?

As part of the Reserve Bank's review of managerial factors, background checks may be conducted. Typically, a background check is conducted for an individual who is proposed as a new principal shareholder (defined as a person who owns or controls 10 percent or more of any class of voting securities of a bank or other company, or any person who has the power to exercise a controlling influence over the management or policies of a bank or other company) and/or a new key policymaker, or when it is otherwise deemed appropriate by the Reserve Bank. This applies to a variety of banking proposals including those filed pursuant to Section 3 of the Bank Holding Company Act (BHC Act), Section 4 of the BHC Act for the acquisition or establishment of a thrift, the Change in Bank Control Act, Section 32 of the FDI Act, and Section 9 of the Federal Reserve Act for the establishment of a de novo state member bank. If it is unclear whether a background check will need to be completed, contact the Reserve Bank.

Every effort is made to complete background checks in a timely manner. However, background information is requested from law enforcement and other government authorities and fingerprints are required to perform this check. Therefore, an applicant is encouraged to submit biographical information early in the application process, or even before the application is filed, to avoid processing delays.

How is the proposed transaction's effect on banking competition assessed?

In processing most applications and notifications, the Reserve Bank must assess the impact of the proposal on banking competition. The BHC Act prohibits the Federal Reserve from approving a proposal that would result in a monopoly or would substantially lessen competition in a local banking market. Banking markets typically are comprised of counties in rural or non-metropolitan areas of the country and follow the Rand McNally Corporation's Rationally Metro Area (RMA) delineations in larger metropolitan communities. The Federal Reserve periodically modifies market delineations and applicants are encouraged to contact staff for a current list of [special market definitions](#).

To determine whether a proposal would substantially lessen competition in a particular banking market, the Federal Reserve utilizes the Justice Department's merger guidelines based on the Herfindahl-Hirschman Index (HHI). The HHI measures the

concentration level of banking resources in a particular geographic market, both before and after a proposed transaction. A market's HHI is simply the sum of the squared market shares of competitors in the market.

For example, a market with five equally-sized bank competitors would have an HHI of 2000 (20² x 5). Under the Justice Department's guidelines, a market with an HHI of under 1000 is considered unconcentrated; a market with an HHI from 1000 to 1800 is considered moderately concentrated; and a market with an HHI above 1800 is considered highly concentrated.

Generally, a transaction meeting the following criteria would not raise competitive issues: 1) the proposal does not cause an insured depository institution controlled by the acquiring bank or bank holding company to control in excess of 35 percent of market deposits in any relevant banking market; or 2) the proposal does not cause the HHI to increase by more than 200 points in any relevant banking market with a post-acquisition index of 1800 or more. Click [here](#) for a more thorough discussion of antitrust considerations.

When can I consummate the proposed transaction?

- Bank acquisition and merger applications

The Justice Department has 30 calendar days after approval in which to challenge a bank, insured thrift, or bank holding company acquisition or merger proposal, however, the Justice Department frequently reviews the proposals early and indicates that the waiting period can be reduced to 15 calendar days. The approval letter will specify the applicable number of days following the effective date of the approval after which consummation may occur. The approval letter will also provide that the transaction must be consummated no later than 90 calendar days from the approval date unless the period is extended by the Reserve Bank.

- Bank merger of affiliates

A merger of affiliate banks may be consummated immediately upon notice of approval. All transactions must be consummated no later than 90 calendar days from the approval date unless the period is extended by the Reserve Bank.

- Change in control transactions

A change in bank control transaction may be consummated immediately upon notice of approval. All notifications must be consummated within one year unless the period is extended by the Reserve Bank.

- Nonbanking acquisitions

A nonbank acquisition may be consummated immediately upon notice of approval and must be completed within 90 calendar days of approval unless the period is extended by the Reserve Bank.

- Financial Holding Company elections

A bank holding company may consider its election to become a financial holding company effective on the thirty-first calendar day following the date that a complete filing is received by the Reserve Bank, unless otherwise notified.

- Membership applications

An application for membership must be consummated within 90 days of the approval date unless the period is extended by the Reserve Bank.

- Branch applications

A branch application must be consummated within one year of the approval date unless the period is extended by the Reserve Bank.

What are the advantages of pre-publishing?

To take full advantage of the expedited processing time frames, applicants may publish up to 15 calendar days before submitting the application. In addition, the Applications Department should be contacted to initiate publication in the *Federal Register* prior to submission of the application.

What happens if a public comment is received?

Certain applications/notices require that the public be notified and provided an opportunity for comment. In such cases, notice is published in newspapers of general circulation and interest in the communities served by the bank or bank holding company involved in the application, and the *Federal Register* in some cases. Refer to the respective application or notice form for specific publication instructions.

The public may comment in writing on any factor which is considered by the Federal Reserve System in acting on an application. These factors primarily concern the applicant's financial strength, its managerial competency, the effect of the proposal on competition, the performance of the organization in meeting local credit needs, and any legal considerations

which the proposal presents. A public comment must be submitted in writing before the expiration of the applicable comment period.

For a comment raising concerns, we encourage communication between the applicant and the commenter as a means to resolve the matter. Our staff will not discuss issues raised by one party without first inviting the other party to participate in the discussion and copies of all written correspondence concerning the comment is shared with both applicant/notificant and commenter.

How is an emergency application handled?

Special procedures are in place for expedited processing of an application involving a probable failure of a bank or bank holding company. The processing period can be substantially reduced, depending on the circumstances. A bank holding company or state member bank considering such a transaction should contact the Applications Department for more information.
