§ 303.62 Transactions requiring prior approval.

(a) Merger transactions. The following merger transactions require the prior written approval of the FDIC under this subpart:

(1) Any merger transaction, including any corporate reorganization, interim merger transaction, or optional conversion, in which the resulting institution is to be an insured state nonmember bank; and

(2) Any merger transaction, including any corporate reorganization or interim merger transaction, that involves an uninsured bank or institution.

(b) Related provisions. Transactions covered by this subpart also may be subject to other provisions or application requirements, including the following:

(1) Interstate merger transactions. Merger transactions between insured banks that are chartered in different states are subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u). In the case of a merger transaction that consists of the acquisition by an out of state bank of a branch without acquisition of the bank, the branch is treated for section 44 purposes as a bank whose home state is the state in which the branch is located.

(2) Deposit insurance. An application for deposit insurance will be required in connection with a merger transaction between a state-chartered interim institution and an insured depository institution if the related merger application is being acted upon by a federal banking agency other than the FDIC. If the FDIC is the federal banking agency responsible for acting on the related merger application, a separate application for deposit insurance is not necessary. Procedures for applying for deposit insurance are set forth in subpart B of this part. An application for deposit insurance will not be required in connection with a merger transaction (other than a purchase and assumption transaction) of a federally-chartered interim institution and an insured institution, even if the resulting institution is to operate under the charter of the federal interim institution.

(3) Branch closings. Branch closings in connection with a merger transaction are subject to the notice requirements of section 42 of the FDI Act (12 U.S.C. 1831r–1), including requirements for notice to customers. These requirements are addressed in the “Interagency Policy Statement Concerning Branch Closings Notices and Policies” (1 FDIC Law, Regulations, Related Acts (FDIC) 5391; see §309.4(a) and (b) of this chapter for availability.)

(4) Undercapitalized institutions. Applications for a merger transaction by applicants subject to section 38 of the FDI Act (12 U.S.C. 1831o) should also provide the information required by §303.204. Applications pursuant to sections 38 and 18(c) of the FDI Act (12
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§ 303.64 Processing.

(a) Expedited processing for eligible depository institutions—(1) General. An application filed under this subpart by an eligible depository institution as defined in §303.2(r) and which meets the additional criteria in paragraph (a)(4) of this section will be acknowledged by the FDIC in writing and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in §303.11(c)(2).

(2) Under expedited processing, the FDIC will take action on an application by the date that is the latest of:

(i) 45 days after the date of the FDIC’s receipt of a substantially complete merger application; or
(ii) 10 days after the date of the last notice publication required under §303.65 of this subpart; or
(iii) 5 days after receipt of the Attorney General’s report on the competitive factors involved in the proposed transaction; or
(iv) For an interstate merger transaction subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u), 5 days after the FDIC receives confirmation from the host state (as defined in §303.41(e)) that the applicant has both complied with the filing requirements of the host state and submitted a copy of the FDIC merger application to the host state’s bank supervisor.

(3) Notwithstanding paragraph (a)(1) of this section, if the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

(4) Criteria. The FDIC will process an application using expedited procedures if:

(i) Immediately following the merger transaction, the resulting institution will be “well-capitalized” pursuant to subpart B of part 325 of this chapter (12 CFR part 325); and
(ii)(A) All parties to the merger transaction are eligible depository institutions as defined in §303.2(r); or
(B) The acquiring party is an eligible depository institution as defined in §303.2(r) and the amount of the total assets to be transferred does not exceed an amount equal to 10 percent of the acquiring institution’s total assets as reported in its report of condition for the quarter immediately preceding the filing of the merger application.

(b) Standard processing. For those applications not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action taken by the FDIC on the application when the decision is rendered.