

January 27, 2025

To the Incoming Banking Agency Leadership:

We are lawyers and advisors with extensive experience working on applications to charter new banks filed by a range of applicants, including community bankers, financial technology companies, and many types of nonbank entities.¹ We congratulate you on your new positions at the banking agencies and share your goals to foster competition and innovation in banking. We believe that improvements to the processes for reviewing and approving applications at the Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and Board of Governors of the Federal Reserve System will help you achieve these goals. Attached is a report detailing our suggested proposals to improve those processes. We would be happy to discuss them with you at your convenience.

Sincerely,

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¹ We also have extensive experience with bank mergers and acquisitions and other strategic transactions. The attached report limits our comments to the de novo bank charter application process in the interests of focusing on this important process. We note, however, that bank merger and acquisition application processes face many of the same challenges that we see in the de novo application process. Therefore, our suggested improvements to the de novo application process will also address many challenges in the merger and acquisition context.

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Proposed Measures to Improve the Bank Charter Application Process to Facilitate New and Innovative Bank Formation

A. Executive Summary

New bank formation in the United States is at an all-time low, and Americans increasingly rely on non-bank financial technology companies (fintechs) to satisfy their financial services needs. Fintechs that do not operate through banks mostly operate outside the direct supervisory purview of the FDIC, OCC, and Federal Reserve (Agencies), and data shows the Agencies have been reluctant to grant bank charters to fintech applicants. This represents a missed opportunity for the Agencies to foster innovative financial services through the approval and supervision of new traditional and innovative banks (New Banks) and to keep this activity within the regulatory perimeter.

Compounding these problems is a complex, burdensome, multi-agency application process that deters potential applicants and is characterized by:

- Inefficiencies that place a lower priority on New Bank formation than bank supervision and legal risk management;
- Outdated regulatory application guidelines;
- Differing and inconsistent review processes among the Agencies;
- Rarely observed regulatory timeframes for application review;
- Opaque review standards;
- Disruption from serial and frivolous public protests; and
- A lack of clear guidance for pre-opening examinations.

These bureaucratic inefficiencies substantially contribute to what has become a nearly impenetrable barrier to entry into the banking market, negatively impacting the competitive landscape. New market entrants increase market participation and enhance competition, benefitting both consumer and commercial users of banking services. Although appropriate prudential considerations should serve as a barrier to entry, red tape should not. Because promoting competition is a bedrock principle of our democratic economy from which the banking market is not exempt,² it is appropriate to assess the number of New Bank charters as one measure of success for bank agency leadership.

² Indeed, as the Supreme Court has recognized, because of the importance of banking to broader economy, the existence of “concentration in banking accelerates concentration generally.” *United States v. Philadelphia National Bank*, 374 U.S. 321, 368-70 (1963).

These inefficiencies are not the result of statutorily mandated processes and therefore do not require legislative action to address. The Agencies could implement the following solutions to address these issues and encourage New Bank formation by enhancing government efficiency, ensuring fair treatment of applicants, and promoting greater objectivity and transparency in the application process, without sacrificing safety and soundness:

1. Elevate the priority of New Bank charters in each agency;
2. Update the Agencies' Business Plan guidelines, which are a key guiding document for applicants in developing business plans to support New Bank proposals;
3. Provide objective standards for demonstrating that a proposed New Bank has a reasonable chance of success;
4. Harmonize licensing application processes across the Agencies;
5. Adhere to timelines and other procedures for processing licensing applications;
6. Minimize disruption from frivolous application protests;
7. Require specific written feedback on the Agencies' analyses of an application; and
8. Clarify pre-opening examination requirements.

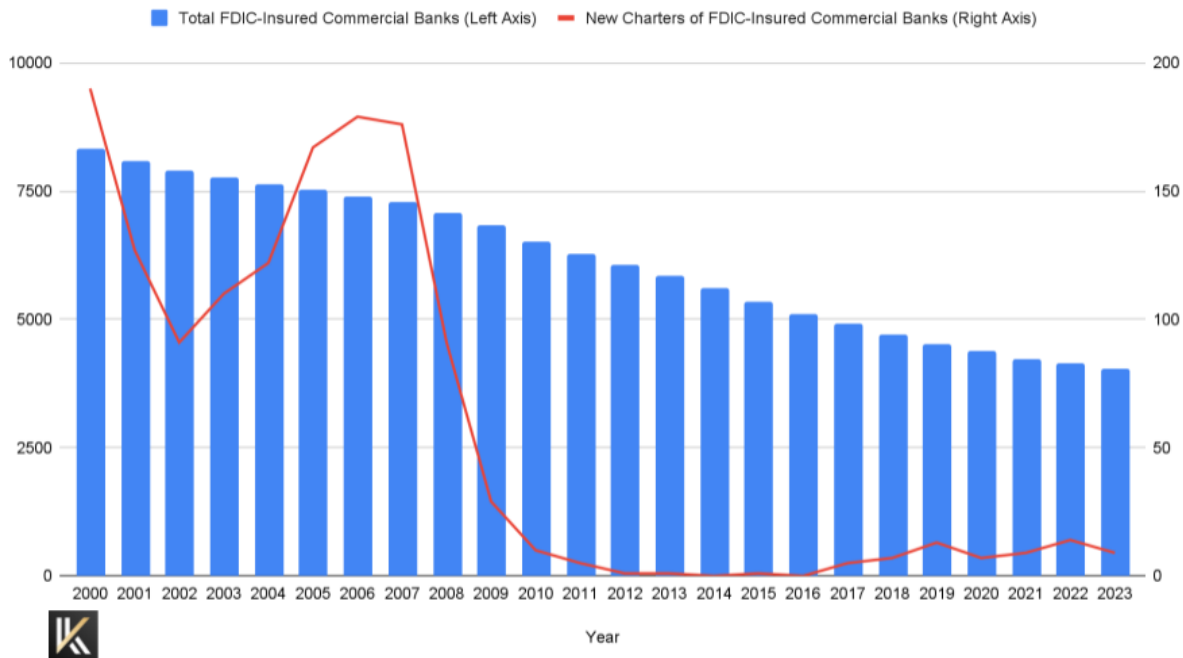
Section B explains the current regulatory framework for New Bank formations and how this framework has resulted in an all-time low of New Bank formations. Section C provides additional detail on each of the above solutions.

B. De Novo Bank Formation is Rare, Particularly for Fintechs, Due to the Complex and Burdensome Regulatory Licensing Process

1. New Bank Formation is Rare

Between 2000 and 2007, the agencies approved an average of *144 bank charter applications each year*. Between 2010 and 2023, however, the agencies approved only 71 applications in the aggregate, or an average of 5 new banks per year. During this same period, there were four years in which no applications were approved at all.

Total and New Charters of FDIC-Insured Commercial Banks



The primary reasons for the post-2010 decline were:

- A low-interest-rate environment that has depressed community bank profits;³
- Prohibitive entry costs and delays associated with an “application process [that] has lengthened, become more rigorous, and gotten more expensive”;⁴
- Burdensome regulatory requirements for New Banks, including higher capital requirements and more frequent examinations;⁵ and
- An “extreme risk aversion to bank failures.”⁶

³ See Robert M. Adams & Jacob P. Gramlich, *Where Are All the New Banks? The Role of Regulatory Burden in New Charter Creation*, Finance and Economics Discussion Series 2014-113, Board of Governors of the Federal Reserve System, December 2014, rev. July 2016, <https://www.federalreserve.gov/econresdata/feds/2014/files/2014113pap.pdf> (“[L]ow interest rates and depressed demand for banking services—both of which depress profit for banks, and particularly new banks—may also have discouraged entry.”).

⁴ Federal Reserve Bank of Richmond, R. McCord & E. Simpson Prescott, *The Financial Crisis, the Collapse of Bank Entry, and Changes in the Size of Distribution of Banks*, 100 Econ. Q., No. 1, 2014, at 43.

⁵ *Id.* at 42.

⁶ Acting Comptroller Michael Hsu, Statement Before the Committee on Financial Services United States House of Representatives (Nov. 20, 2024). The Agencies have sought to justify this aversion and limited de novo activity as a reasonable response to the financial crisis, in which de novo banks were more likely to fail than their more seasoned peers. FDIC research shows that of the 1,042 banks chartered between 2000 and 2008, 133 failed during the financial crisis. See Yan Lee and Chiwon Yom, *The Entry, Performance, and Risk Profile of De*

Collectively, these factors dampened interest in forming New Banks, including those with traditional business models that depend on local and personalized delivery of banking services to customers. Simply put, the increasing costs of bank entry were not offset by the profits available through either traditional or innovative business models.

2. Americans Increasingly Rely on Fintechs, But the Agencies Have Stopped Virtually All Fintechs from Forming or Acquiring Banks

New financial services models have gained traction as consumer preferences for convenience and technology have surpassed the desire for local, in-person services. Fintechs developed new, convenient, and often cheaper ways for consumers and businesses to save, borrow, and move money.

Americans have responded to these developments enthusiastically. As of 2022, 80% of Americans use fintechs in some way to manage their finances, with online banking and payments among the top use cases.⁷ As of 2023, publicly traded fintechs represented a market capitalization of \$550 billion.⁸

Many fintechs deliver their services to customers through partnerships with existing banks. Although many fintechs may decide that offering their services with a bank partner makes the most sense, they also should have the option of pursuing their own bank charter if their business satisfies the statutory criteria for approval. Yet fintechs have been largely unsuccessful in obtaining bank charters.

During the first Trump administration, regulators approved only one national bank and one industrial bank from fintech-focused applicants. During the Biden

Novo Banks, FDIC Ctr. for Financial Rsch., Working Paper No. 2016-03, April 2016. Viewed the other way, however, the same research shows that 86.3% of de novo banks succeeded during the crisis. Although this 12.7% de novo failure rate may justify some regulatory caution in reviewing de novo applications, the drastic pendulum swing - from hundreds of de novo approvals each year to, on average, less than ten - is disproportionate to the statistical risk.

⁷ Plaid and the Harris Poll, *The Fintech Effect: Stability, Impact, and Building for the Future*, Plaid.com, <https://assets.ctfassets.net/ss5kfr270og3/VaCGExAZmB8BOcPEZnUUk/5f707ad491b1112b33b9a23f0a014f27/the-fintech-effect-2022.pdf> (last visited Jan. 21, 2025).

⁸ McKinsey & Co., *Fintechs: A New paradigm of growth*, McKinsey.com, <https://www.mckinsey.com/industries/financial-services/our-insights/fintechs-a-new-paradigm-of-growth#/> (last visited Jan. 21, 2025).

administration, the Agencies approved no new fintech banks. It has now been nearly 1500 days since the OCC, for example, last approved a de novo fintech bank.

OCC Fintech Application Outcomes Since 2017

Proposed Bank	Application Date	Days Under Review	Action
Applicant 1	7-21-17	375	Approved
Applicant 2	8-7-18	120	Approved
Applicant 3	4-19-19	227	Withdrawn
Applicant 4	4-20-20	532	Withdrawn
Applicant 5	7-8-20	111	Approved*
Applicant 6	8-21-20	49	Withdrawn
Applicant 7	11-6-20	997	Withdrawn
Applicant 8	11-9-20	65	Approved
Applicant 9	11-23-20	319	Withdrawn
Applicant 10	12-7-20	358	Withdrawn
Applicant 11	12-7-20	59	Approved***
Applicant 12	12-8-20	135	Approved***
Applicant 13	12-16-20	146	Approved***

Applicant 14	2-3-21	71	Withdrawn
Applicant 15	4-4-23	301	Withdrawn

* Approval expired after the applicant acquired another bank.

***Approval later expired.

3. The Application Process is Complex

De novo applicants willing to proceed despite the long odds of approval face a complex and multi-agency application process. As explained by the Federal Reserve:

Starting a bank involves a long organization process that could take a year or more, and permission from at least two regulatory authorities. Extensive information about the organizer(s), the business plan, senior management team, finances, capital adequacy, risk management infrastructure, and other relevant factors must be provided to the appropriate authorities.

The approval process for an FDIC-insured bank typically consists of charter approval by the OCC or a state regulator, deposit insurance approval by the FDIC, and, potentially, approval by the FRB to form a bank holding company and/or for the bank to become a member of or obtain a master account from the Federal Reserve System:

The proposed bank must first receive approval for a federal or state charter. The [OCC] has exclusive authority to issue a federal or "national bank" charter, while any state (and the District of Columbia, Guam, Puerto Rico, and the Virgin Islands) may issue a state charter. Before granting a charter, the OCC or state must be able to determine that the applicant bank has a reasonable chance for success and will operate in a safe and sound manner.

The proposed bank must then obtain approval for deposit insurance from the FDIC. Additional approvals are required from the Federal Reserve if, at formation, a company would control the new bank and/or

a state-chartered bank would become a member of the Federal Reserve.⁹

Reviewing Agency by Charter and Application Type

	State Regulator	OCC	FDIC	FRB
De novo state member bank	✓		✓	✓
De novo state non-member bank	✓		✓	
De novo state member bank with holding company	✓		✓	✓
De novo state non-member bank with holding company	✓		✓	✓
De novo national bank		✓	✓	
De novo national bank with holding company		✓	✓	✓

The federal banking agencies estimate that preparing a de novo charter application will take an applicant 250 hours.¹⁰ In our experience, it takes significantly longer to prepare these applications by orders of magnitude. Applicants typically require the services of lawyers, advisors, financial analysts, and other professionals to prepare an application, and these teams often work for months to do so. The total cost to prepare an application often exceeds seven figures.

⁹ Board of Governors of the Federal Reserve System, *How can I start a bank?* (Aug. 2, 2013), https://www.federalreserve.gov/faqs/banking_12779.htm.

¹⁰ "Public reporting burden for this collection of information is estimated to average 250 hours per response (125 hours for the charter application and 125 hours for the insurance application)." FDIC, Interagency Charter and Federal Deposit Insurance Application (July 2021) ("Application Form"), <https://www.fdic.gov/formsdocuments/f6200-05.pdf>.

In summary, according to the Federal Reserve,

The application process can be a significant obstacle to de novo bank formation. Applications often experience significant delays between the initial charter application filing with the chartering authority and the [FDIC] application for deposit insurance. The timeframe for receiving all the required regulatory approvals to open for business often takes well in excess of a year. Of course, this uncertainty must be endured after initial capital has been raised, shareholders identified, and a management team ready to begin work. As one can imagine, these delays can present unique challenges for de novo founders including incurring more startup expenses than anticipated, having difficulty recruiting and retaining qualified management to obtain approval, and experiencing challenges raising additional start-up capital investment.¹¹

C. Proposals for Improvement to Current Agency Application Practices

1. Elevate New Bank Formation as a Priority within the Agencies

Current Practice

The Agencies' respective heads of licensing are not part of the senior-most agency management teams that report directly to their agency principals. Instead, they report to senior officials in the bank supervision or legal functions. This reporting structure:

- Means that New Bank formation is ultimately overseen by agency officials whose primary role is to minimize risks to the banking system, which may present strong barriers to New Bank approvals;
- Suggests that New Bank formation is lower in priority than other agency functions such as supervision of existing banks; and

¹¹ Governor Michelle W. Bowman, Board of Governors of the Federal Reserve System, *Remarks: Bank Mergers and Acquisitions, and De Novo Bank Formation: Implications for the Future of the Banking System* 5-6 (Apr. 2, 2024).

- Agency licensing functions must compete for resources with these higher-priority functions, which may limit the Agencies' ability to process applications in a timely manner.

The Agencies' respective innovation offices similarly now prioritize functions other than New Bank formation. During the Biden administration:

- OCC rebranded its Office of Innovation to the Office of Financial Technology, which focuses on enhancing agency expertise on innovative technologies and business models that affect incumbent OCC-supervised banks;
- FRB announced its "Novel Activities Supervision Program," which focuses on innovation in incumbent banks that the FRB supervises; and
- FDIC "eliminated the portion of [the FDITech] office's mission focused on fostering innovation within the financial sector, and will now only focus on adoption of technologies within FDIC, such as small automation solutions to enhance workflow."¹²

The Agencies currently treat licensing of New Banks as a secondary function and view innovation only through the lens of incumbent banks and agency needs.

Proposed Approach

- Promote the heads of licensing to the senior-most career-level positions at the Agencies to ensure the Agencies give equal priority to New Bank formation and do not view New Banks primarily or solely through a risk-avoidance lens.
- Charge fees for application review to:
 - Align with the practice at the OCC of charging banks for the costs of their supervision and reinforce that New Bank formation is a priority equivalent to bank supervision;
 - Align the Agencies with the standard practices at most state banking agencies, which charge fees to offset their application review costs;
 - Ensure that licensing functions are well-resourced like agency supervision functions;
 - Shorten application review times by ensuring the availability of sufficient review resources; and
 - Help foster greater agency accountability to paying applicants .

¹² U.S. Gov. Accountability Off., U.S. GAO-23-106168, *FINANCIAL TECHNOLOGY: Agencies Can Better Support Workforce Expertise and Measure the Performance of Innovation Offices* at 27 (Sept. 2023), <https://www.gao.gov/assets/gao-23-106168.pdf>.

- Broaden the role of agency innovation offices to include support for New Bank formation and include staff members on application review teams.

2. Update Interagency Business Plan Guidelines

Current Practice

A de novo bank applicant must prepare an application in the form of the Interagency Charter and Federal Deposit Insurance Application (Application Form).¹³ The Application Form includes requirements for a detailed business plan (Business Plan Guidelines) that an applicant must include in an application. An applicant's business plan is often hundreds of pages long.

The Agencies have not significantly updated the Application Form since it was initially issued.¹⁴ The Business Plan Guidelines show their age and lack clear standards; are repetitive;¹⁵ and do not solicit key information that regulators have become increasingly focused on in recent years.¹⁶

Proposed Approach

Revamp and modernize the Business Plan Guidelines to:

¹³ Section XI – Business Plan, Application Form. State banking regulators typically accept applications that adhere to the Interagency Guidelines.

¹⁴ For example, the version of the Application Form that expired in 2005 is substantively the same as the current Application Form. See Conference of State Bank Supervisors, Application Form, Archived, Expires Feb. 28, 2005, https://www.csbs.org/sites/default/files/2017-12/interagency_charter_fdi_app.pdf (last visited Jan. 21, 2025). Furthermore, since 2005, the Agencies have not changed the estimated burden to complete the Application Form, for over 20 years leaving it at 125 hours for the charter application and 125 hours for the deposit insurance application. See Agency Information Collection Activities: Submission for OMB Review; Comment Request, 70 Fed. Reg. 1717 (Jan. 10, 2005); Agency Information Collection Activities: Submission for OMB Review; Comment Request, 75 Fed. Reg. 26960 (May 13, 2010); Agency Information Collection Activities: Submission for OMB Review; Comment Request, 81 Fed. Reg. 39044 (June 15, 2016); *and* Agency Information Collection Activities: Proposed Collection Renewal; Comment Request, 87 Fed. Reg. 42723 (July 18, 2022).

¹⁵ *Compare* Business Plan Guidelines Section IV.D.1 (“Compare and contrast the institution’s product strategy with its principal competitors in the target market(s)”) *with* IV.D.3 (“Discuss potential competition in the target market(s)”).

¹⁶ For example, Business Plan Guidelines Section VI.C. requires an applicant to “[d]escribe the [bank’s] compliance management programs, addressing independence, scope, frequency, and staff qualifications,” but there is no equivalent section requiring an applicant to detail its overall risk management program.

- Include standardized tables for an applicant's completion with key metrics and necessary financial and other information;
- Eliminate repetitive questions; and
- Solicit key information missing from the current Guidelines, such as material risks, the overall risk management framework, and risk appetite for the proposed bank.

3. Provide Objective Standards for a Reasonable Chance of Success

Current Practice

In evaluating de novo applications, the Agencies are required by statute to evaluate, among other factors, the future earnings prospects of the proposed bank.¹⁷ The Agencies' guidance for de novo filings reflects this requirement in stating that applicants must demonstrate that the institution has a reasonable probability of success (or reasonable chance for success). Neither the OCC nor FDIC has provided standards or metrics that are used to determine a proposal's probability of success. In the absence of any such standards, applicants are evaluated based on an agency's subjective opinion.

For example, a business plan that projects profitability within three years is generally considered reasonable. Although agency guidance suggests that longer periods to achieve profitability might be acceptable, it is unclear whether a longer period has ever been approved.¹⁸ The Agencies also state that projections of success must be based on realistic projections. In practice, what often constitutes a realistic projection is whether a proposed business model aligns with the agency's view of what would be appealing in the market (which information is not public).

The Agencies currently expect an application to practically guarantee success, which is an unreasonably high standard.¹⁹ The unwillingness to consider any possibility for failure and the Agencies' subjective view of what the banking market wants stifles de novo bank proposals, especially those with innovative business models.

¹⁷ See 12 U.S.C. § 1816.

¹⁸ Comptroller's Licensing Manual: Charters 22 (December 2021) ("The business plan should . . . cover the greater of three years or the period until the bank is expected to achieve stable profitability.").

¹⁹ See Michael Hsu, *supra* at n. 6.

Proposed Approach

The Agencies should provide standards that more clearly explain how a de novo application should demonstrate a reasonable probability of success. The Agencies should expressly acknowledge that they will not apply a zero percent chance of failure standard in reviewing a de novo bank application. To demonstrate that the Agencies will not use subjective preferences as the basis for determining the probability of success, the standards should:

- Provide examples of what constitutes success, examples of structures or practices that would minimize risk of material loss to the Deposit Insurance Fund, and the time period over which success will be evaluated;
- Provide examples for the types of data and market information that the Agencies will accept as supporting a realistic basis for projections;
- Explain what types of forecasts or calculations would cause financial projections to be considered unrealistic; and
- Allow for the reasonable use of comparisons to both bank and nonbank competitors for projecting growth rates, customer acquisition, profit margins, and other metrics.

4. Align Charter and Deposit Insurance Application Review Processes

Current Practice

As explained above, the Agencies proceed sequentially on de novo applications. First, the chartering agency (either the state banking agency or the OCC) determines whether an application meets its approval standards. Second, the FDIC determines whether to approve deposit insurance for the bank. Third, the FRB determines whether to approve an application to form a holding company for the New Bank and/or grant Federal Reserve membership or a master account, if applicable.

The OCC and FDIC have different review processes. The OCC employs a two-step review and approval process. In the first step, the OCC determines whether the applicant has proposed a business plan for a safe and sound bank and the ability to execute that business plan. If so, the OCC conditionally approves the proposed bank, which allows the applicant to proceed with building the bank. If an applicant meets the conditions, the OCC proceeds to the second step by granting final approval, allowing the bank to open for business. A conditionally approved national bank must be capitalized within 12 months and open for business within 18 months of approval.

The FDIC's process generally has only one approval point, although the FDIC may establish additional approvals that subsequently must be obtained by the applicant.

The Federal Reserve requires an applicant to submit an application to form a bank holding company, which often is a lengthy process that involves review of substantial documentation and on-site examination of the company's readiness to become a bank holding company.²⁰

An applicant is not currently allowed to file all these applications at the same time. Instead, the applicant must proceed in a largely unwritten sequence with the Agencies at different periods of time, thereby lengthening the application process and introducing redundancies and inefficiencies into the process.

The Agencies may allow applicants to submit application materials initially in draft format, without public notice, to solicit feedback on key application topics and issues.²¹ Pursuant to the FDIC's process, the agency will provide feedback within 60 days on a draft application.²² This step allows an applicant to fine-tune the application before formally filing it with the agency.

The licensing processes recently have been wielded in such a manner as to require that an applicant devote substantial resources to building a bank upfront before the agency will even accept a filing as complete. It is not unusual, for example, for an applicant to be required to hire and pay a management team and directors, lease premises, prepare a full suite of policies and procedures, and begin software development well before the applicant knows whether the Agencies will approve the bank application.

Proposed Approach

A de novo applicant should be able to simultaneously file applications for a charter, deposit insurance, and if applicable, a holding company with the Agencies. The Agencies would have the following roles in the following the following two-step review process:

²⁰ Non-US banks must also seek FRB approval, but the agency typically will not start its review until the FDIC (and OCC if applicable) are nearing approval of the bank.

²¹ The OCC does not offer a draft review process and will not provide written feedback until an applicant submits a full application.

²² FDIC, FDIC Review Process for Draft Deposit Insurance Proposals, <https://www.fdic.gov/regulations/applications/depositinsurance/draft-proposals.pdf> (last visited Jan. 21, 2025).

Step One: Conditional Bank Approval Determination

The chartering agency would determine whether the organizers have:

- Proposed a business plan for a safe and sound bank that includes a proposed CEO who has the requisite expertise and experience; and
- The ability to execute that business plan.

If the answer to those questions is “yes,” the chartering agency should grant conditional approval, and the Agencies should proceed to the organizational phase of review.

Step Two: Bank Organization:

- The chartering agency would:
 - Provide the applicant with a detailed checklist of the information and documents that must be provided to receive final approval; and
 - Determine, based on review of the completed checklist and the results of a pre-opening exam, whether the organizers have taken the necessary steps to operationalize the bank (e.g., capitalized the bank, completed critical hiring, implemented necessary systems, leased appropriate premises, prepared all necessary policies and procedures, etc.)
- The FDIC would determine, based on the chartering agency’s pre-opening exam results, whether to issue deposit insurance; and
- The FRB would determine whether to approve formation of the holding company and membership, if applicable.

This process would:

- Leave the determination of whether a proposed bank meets the supervisory expectations of its primary regulator to that regulator;
- Streamline review; and
- End the common practice of requiring an applicant to expend substantial resources to operationalize a proposed bank (over a period of many months or years) only to ultimately advise the applicants to withdraw their applications.

5. Impose Firm Deadlines for Agency Decision-Making and Make Transparent Standards for Application Completion

Current Practice

The Agencies have published timelines for application review:

- The OCC “seeks to make a decision on a complete and accurate application [for a new national bank] within 120 days after receipt or as soon as possible thereafter.”²³
- The “FDIC strives to act on all [federal deposit insurance] applications within 120 days of receiving a substantially complete application.”²⁴
- The FRB’s application review periods vary depending on the application type. The agency “normally acts within 30 or 60 calendar days after receipt [of an application for membership] unless the Federal Reserve notifies the applicant that the processing period is being extended.”²⁵ An application to become a bank holding company “is normally acted upon within 60 days after receipt unless the Federal Reserve notifies the applicant that the period is being extended.”²⁶

Thus, if the Agencies act sequentially (and not simultaneously)²⁷ and within their published timelines, the review process could take at least 270 to 300 days, or up to 420 days if an applicant avails itself of the FDIC’s draft submission process:

²³ Comptroller’s Licensing Manual: Charters 36 (December 2021).

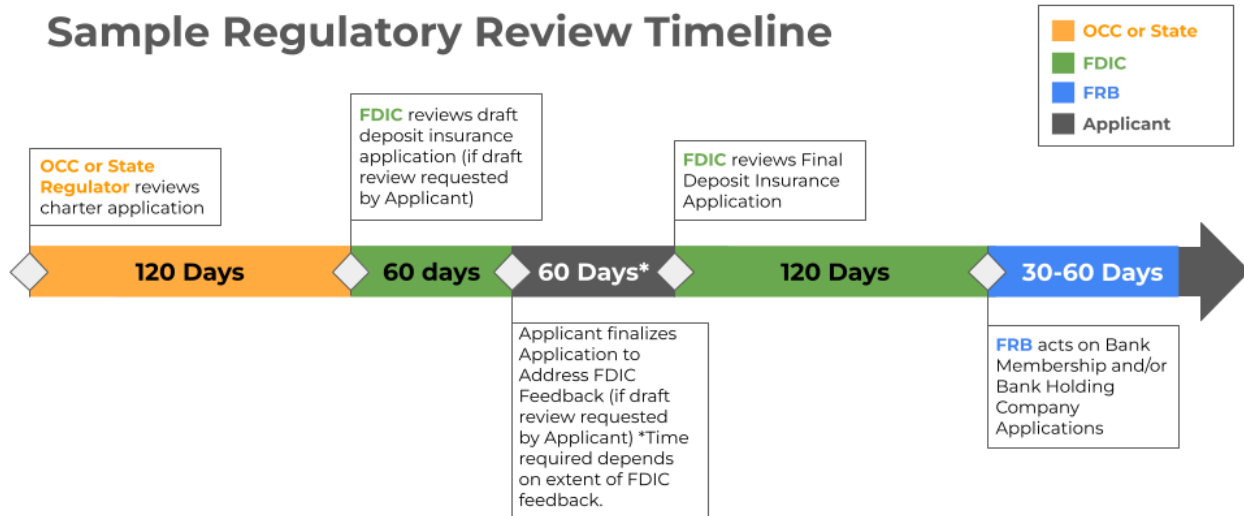
²⁴ FDIC DEPOSIT INSURANCE APPLICATIONS: Procedures Manual 11 (December 2019).

²⁵ Board of Governors of the Federal Reserve System, *Electronic Applications and Applications Filing Information: State Member Bank* (July 26, 2018), <https://www.federalreserve.gov/supervisionreg/afi/smfilings.htm>.

²⁶ Board of Governors of the Federal Reserve System, *Electronic Applications and Applications Filing Information: Bank Holding Company* (Jan. 25, 2022), <https://www.federalreserve.gov/supervisionreg/afi/bhcfilings.htm>.

²⁷In our experience, the FDIC and OCC review some but not all applications simultaneously.

Sample Regulatory Review Timeline



The approval process almost always extends beyond the Agencies' stated review timelines because:

- The agencies have significant discretion in determining whether an application is deemed "complete" or "substantially complete" and different standards for completion, and the Agencies' timelines only commence upon this determination;
- Some agency review teams work in part from application review checklists that are not available to the public; and
- These checklists are standardized and therefore include questions that may be irrelevant to the business model or charter type of the proposed bank.

As a result, applicants are:

- Often in the dark about what they must do to ensure their application is deemed "complete" or "substantially complete" to commence the review clock and timeline at a particular agency; and
- Sometimes required to respond to agency requests for follow-up on irrelevant checklist topics, adding to an already burdensome process for applicants and further extending review periods.

Proposed Approach

The Agencies should publish an interagency application review checklist and commit to a 120-day review period for all applications that include the information identified in the checklist. The checklist should identify the information required of all applicants and the information that is only required for certain business models. This approach will ensure that:

- An applicant knows precisely what information must be supplied for the Agencies to deem the application complete and ready for review;
- Such information is tailored to the business model of the proposed bank; and
- The agencies adhere to published review periods.

6. Minimize the Disruption Caused by Frivolous Protests

Current Practice

The Agencies publish notices of applications for New Bank proposals, deposit insurance, and holding company formations and request comment from the public on the applications. Members of the public may protest an application by identifying deficiencies in the application based on, for example, whether the application would meet the convenience and needs of the community to be served or the applicant's record under the Community Reinvestment Act (CRA).

Serial protestors often raise frivolous claims with an application that are adequately addressed in supervisory records and consistent with supervisory approval,²⁸ or are "ungrounded in any verifiable facts or evidence" and cite very similar material as the protestor's comments on other applications.²⁹ Regardless of the merit of these protests, they often delay application decisions. The Agencies typically require an applicant to respond to a protest and remove a protested application from delegated authority to process it and instead process the application in agency

²⁸ See, e.g., Governor Michelle W. Bowman, *Statement on Application by Vantage Bank Texas* (June 27, 2023), <https://www.federalreserve.gov/newsevents/pressreleases/bowman-statement-20230627.htm> ("I believe that the Board should improve its approach to processing applications in cases where a member of the public has made an adverse comment, particularly when the recent supervisory record addresses the concerns raised and is consistent with approval.").

²⁹ See Letter of Karen R. Smith, Director of Mergers and Acquisitions, Federal Reserve Bank of Dallas (Nov. 30, 2018) ("We note that you have cited to the same percentages in support of substantively identical comments submitted in connection with more than 20 applications filed by nine different banks since 2014 . . . Many of these applications were acted on by the Board, and in no case did the Board find merit to your claims.")

headquarters.³⁰ These steps lengthen approval timelines needlessly based solely on the frivolous protest.

Proposed Approach

The Agencies should review a protest letter to determine whether it raises claims that are:

- Supported by verifiable evidence;
- Specific to the proposed bank's business plan, rather than based on generalized complaints raised by the author in connection with other applicants; and
- In the case of an applicant with prior banking experience, supported by the supervisory record of the applicant's CRA performance.

If the protest does not satisfy these criteria, the Agencies should deem the protest frivolous and neither require the applicant to respond to the protest nor remove the application to agency headquarters for further processing.³¹

7. Require Written and Specific Intent to Deny Notices

Current Practice

The Agencies rarely deny a bank charter application outright. Rather, they delay approval without explanation for long periods or they expressly encourage an applicant to withdraw an application if the agency does not intend to approve it. This allows the applicant to avoid the embarrassment of a public denial of the application. Withdrawing an application also allows an applicant to revise and refile their submission.

In encouraging an applicant to withdraw, the Agencies typically provide generalized statements that the application fails to meet one or more of the statutory factors for evaluating applications for deposit insurance.³² Rarely, however, do the Agencies

³⁰ The FDIC, for example, delegates the authority to approve many deposit insurance applications to the its Regional Directors and Deputy Regional Directors. See FDIC, *Delegations of Authority – Filings (Subject to Authorities Reserved to the Board)* (Mar. 20, 2024), <https://www.fdic.gov/regulations/laws/matrix/delegations-filings.pdf>.

³¹ If the processing of an application is removed from delegated authority by the region to headquarters, the applicant should be given a new primary contact who is based in headquarters and can answer questions about the status of the application.

³² Pursuant to 12 U.S.C. § 1816, the FDIC considers the following factors in evaluating applications for deposit insurance:

- (1) The financial history and condition of the depository institution.
- (2) The adequacy of the depository institution's capital structure.

provide sufficient detail for the applicant to understand what is necessary to satisfy the application's deficiencies under the statute. In our experience, the Agencies expressly, or through excessive delay, implicitly encourage applicants to withdraw because their applications do not align with agency policy preferences rather than because they do not meet statutory approval standards.

Proposed Approach

The Agencies should provide, on a confidential basis, written feedback to an applicant identifying the statutory factors the applicant has not satisfied and the precise steps an applicant must take to satisfy those factors.

8. Publish Pre-Opening Exam Guidance

Current Practice

The Agencies typically conduct a pre-opening examination to determine whether the applicant has satisfied all the criteria to open for business. While some of the Agencies have issued checklists of the criteria that must be satisfied,³³ other Agencies have not provided these lists or have provided guidance that is incomplete and missing key considerations that the agency staff analyze in determining whether an applicant may open for business.

Proposed Approach

- The Agencies should issue an interagency pre-opening checklist of all documents and information that should be submitted to the Agencies to open for business.
- This checklist should be issued in proposed form initially under the Administrative Procedure Act so that decisions are bound by the form and use of factors outside the checklist to deny an application are presumed to be invalid.
- Agency staff discussions regarding final approval should be informed solely by the pre-opening checklist and results of the examination.

(3) The future earnings prospects of the depository institution.

(4) The general character and fitness of the management of the depository institution.

(5) The risk presented by such depository institution to the Deposit Insurance Fund.

(6) The convenience and needs of the community to be served by such depository institution.

(7) Whether the depository institution's corporate powers are consistent with the purposes of this chapter.

³³ OCC, *Preopening Checklist for Organizers*, <https://www.occ.gov/static/licensing/form-preopening-checklist-v2.pdf> (last visited Jan. 21, 2025).

Measures & Component Measures to Encourage New Bank Formation

Objective: Encourage New and Innovative Bank Formation						
#	Measure	Component Measure	Supporting Objectives			
			Efficiency	Fairness	Objectivity	Transparency
1	Make New Bank Formation an Equal Priority to Bank Supervision	Make heads of agency licensing functions direct reports to agency principals	✓	✓		
		Charge application review fees				
		Broaden role of agency innovation offices				
2	Update Interagency Business Plan Guidelines	Include standardized tables & key metrics	✓		✓	✓
		Eliminate repetitive questions				
		Solicit key information missing from the current Guidelines				
3	Provide Objective Standards for a New Bank's Success	Define "success" and the period over which it will be evaluated	✓	✓	✓	✓

		Identify acceptable data, market information, calculations, and competitor comparisons to support financial projections				
4	Align Agency Review Processes	Implement a simultaneous interagency two-step review and approval process	✓	✓	✓	✓
5	Adhere to Firm Application Decision Deadlines	Publish an interagency application review checklist	✓	✓	✓	✓
		Commit to 120-day review period for all applications that include all checklist information				
6	Minimize the Disruption Caused by Frivolous Protests	Identify frivolous protests	✓	✓		✓
		Do not require applicant responses to frivolous protests the agencies should deem the protest frivolous and neither require the applicant to respond to the protest				
		Do not allow frivolous protests to trigger				

		application removal from delegated regional review				
7	Require Non-public Written & Specific Notice of Intent to Deny	Identify the statutory factors the applicant has not satisfied & the precise steps an applicant must take to satisfy those factors		✓	✓	✓
8	Clarify Pre-Opening Exam Expectations	Publish pre-opening exam guidance	✓	✓	✓	✓