

Comments to Other Agencies

Comptroller's Licensing Manual

**Washington, DC
September 2002**

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Introduction

This booklet should be used together with other booklets of the *Comptroller's Licensing Manual*. The principal users of this booklet are Licensing staff who should refer to the "Business Combinations" and the "Change in Bank Control" booklets for discussion of matters relevant to filings requiring comments to other agencies.

The Comptroller of the Currency (OCC) responds routinely to requests for comments from:

- The Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the Federal Reserve Board (FRB) on competitive factors in business combinations (bank mergers, consolidations, and purchase/assumptions).
- The FDIC, the OTS, and the FRB on anti-money laundering efforts of national banks involved in a merger.
- The FDIC, OTS, and the FRB on proposed acquirers of state banks or thrifts under the Change in Bank Control Act.
- The FRB on Regulation K¹ applications from national banks, acquisitions of national banks by existing bank holding companies, or proposed holding company formations by national banks.

Application Process

General

On behalf of the OCC, the appropriate district office or Headquarters Licensing (HQ LIC) normally responds to supervisory, anti-money laundering, and competitive concerns on all requests from federal regulatory agencies within 30 calendar days of the date on which the notice is sent. If the OCC cannot respond to the requesting agency within that time, it informs the agency by telephone that comments will be forthcoming.

The OCC will respond within 10 days of receipt of a request for competitive factor reports if an emergency is declared by the FRB, FDIC, or OTS.

¹Regulation K addresses foreign operations of FRB member banks and applications pertaining to the establishment of foreign branches. Edge Act and Agreement corporations, investments in foreign companies and subsidiaries, and requests to engage in new activities are not specifically authorized by the regulation.

The district office will forward an application to HQ LIC for response if its review reveals that the transaction will affect competition significantly or contains unusual policy issues.

Negative Comments

The Deputy Comptroller for Licensing may make negative comments or provide comments on matters that present a significant supervisory, CRA, or compliance concern or raise a significant legal or policy issue. The Deputy Comptroller also provides comments, if negative, on competitive factors, anti-money laundering efforts and changes of control, and when recommending disapproval of an acquisition of a national bank by a bank holding company. If the OCC recommends disapproval of a holding company acquisition, the FRB must hold a hearing on the application.

The USA PATRIOT Act of 2001² (the Act) authorizes federal banking regulators to share information about suspected money laundering. Section 327 of the Act specifically requires federal banking regulators to consider the effectiveness of efforts to combat money laundering by insured depository institutions involved in a merger. The OCC anticipates that the supervisory record maintained by federal regulators contains sufficient information to satisfy the Act. Sensitive information shared with other federal banking regulators under the Act is not part of the public record.

Negative responses are general and indicate the nature of the concern, but do not include CAMELS ratings or other sensitive data. All comments are entered into the public record.

Holding Company Consideration

The OCC has a substantial and ongoing interest in filings made with the FRB to acquire, either directly or indirectly through another corporate entity, a national bank. If the group holds the stock through a separate corporate entity, that entity normally will be considered to be a bank holding company subject to FRB regulation and examination. A group proposing to own a national bank through a bank holding company must apply to the FRB for approval of a holding company application. The FRB provides the OCC with 30-days prior notice and opportunity to comment on the filing prior to the FRB's decision.

When investors acquire a national bank through a holding company with the intent of changing the character of the bank's business; for example, becoming a credit card or an Internet bank (primary electronic operation), the comment on the proposal to the FRB is the only avenue the OCC may have to ensure that its fundamental supervisory concerns are addressed.

²Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act of 2001) signed by the President October 6, 2001, and effective after December 30, 2001.

The OCC will review each FRB comment request carefully to determine if the filing contains plans to change the character or otherwise significantly alter the bank's operations. If so, the OCC believes such filings should contain a revised business plan that fully discusses the new banking operations or activities. The FRB and the OCC work closely together to obtain all necessary information about the filing, including conducting a joint field investigation.

At the OCC's request, the FRB normally will ask the holding company to commit to provide the OCC with a 30-day notice prior to implementing its Internet plan or otherwise significantly altering the existing bank's operations. This prior notice will ensure that the OCC has time to review the proposal, solicit any necessary information, and resolve issues or concerns. If a holding company commitment cannot be assured, the OCC will issue an adverse comment on the proposal to the FRB, which then requires the FRB to hold a public hearing. Accordingly, those filers are encouraged to provide commitments that are satisfactory to the FRB and OCC.

Procedures: Competitive Factors Report

Receipt of Request

Licensing Staff

1. Receives a request for comments from another federal regulatory agency.
2. Initiates and enters appropriate information into the Corporate Activities Information System (CAIS).
3. Notifies the appropriate assistant deputy comptroller/examiner-in-charge (ADC/EIC) and/or portfolio manager of transaction, if the request involves a national bank.
4. Establishes the official file to maintain all original documents.

Review and Decision

5. Reviews the transaction to determine if the OCC should provide comments on competitive factors and:
 - If yes, telephones the requesting agency and advises that the OCC intends to provide an analysis on the competitive factors.
 - If no, date stamps request, marks "no comments" on form, returns form to the requesting agency, and places a copy in the competitive factors request file. Proceeds to step 8.
6. As appropriate, reviews the file and all relevant information. Solicits comments from the ADC/EIC and/or portfolio manager and other OCC divisions, as appropriate, prepares report, and forwards the official file to the appropriate official for decision.
7. Sends the report to the requesting agency and files a copy in the competitive factors report file.

Close Out

8. Makes appropriate CAIS entries.
9. If negative comments are provided, notifies the appropriate ADC/EIC and/or portfolio manager by forwarding updated CAIS comments and, if warranted, advises of any concerns.
10. Reviews the file for completeness and forwards it to Central Records.

Procedures: Section 327 Requests

Receipt of Request

Licensing Staff

1. Receives a request for comments from another federal regulatory agency.
2. Initiates and enters appropriate information into the Corporate Activities Information System (CAIS).
3. Notifies by e-mail the appropriate assistant deputy comptroller/examiner-in-charge (ADC/EIC) and/or portfolio manager of request, if the request involves a national bank, using the OCC's sample language.
4. Establishes the official file to maintain all original documents.
5. For cases with no issues, returns the original Request for Comments letter signed, dated, and stamped, "No Material Determination." If the request was by e-mail, includes this language in the return e-mail response. Goes to Step 12.
6. If adverse comments are received, contacts Headquarters Licensing Policy and Systems (LP&S), who determines if the comments are material in nature. If so, determines:
 - If the issue may be handled as a policy strip-out and processing continues in the district with LP&S input.
 - If the file should be forwarded to HQ LIC for processing.
 - If the filing involves adverse comments of a material nature about an institution's anti-money laundering efforts, the filing is nondelegated and should be forwarded to the LP&S merger expert in HQ.

HQ LIC

7. Makes appropriate CAIS entries.
8. Reviews the file and solicits comments from other OCC divisions, as appropriate.
9. Reviews comments from other OCC divisions, makes recommendation, and forwards the official file to the appropriate official for decision.
10. Provides comments to the appropriate agency.

11. Makes appropriate CAIS entries.

Close Out

12. Makes appropriate CAIS entries.
13. If adverse comments are provided, notifies the appropriate ADC/EIC and/or portfolio manager by forwarding updated CAIS comments and, if warranted, advises of any concerns.
14. Reviews the official file for completeness and forwards it to Central Records.

Procedures: Change in Bank Control

Receipt of Request

Licensing Staff

1. Receives a request for comments on a Change in Bank Control notice from another federal regulatory agency.
2. Initiates and enters appropriate information into the Corporate Activities Information System (CAIS).
3. Establishes the official file to maintain all original documents.

Review

4. Within five days of receipt of request:
 - Reviews request to determine if the acquirer reported an association with a national bank within the last five years and advises appropriate assistant deputy comptroller/examiner-in-charge (ADC/EIC) and/or portfolio manager if a relationship existed.
 - Solicits comments from the ADC/EIC and/or portfolio manager and other district divisions and requires preliminary responses by the 15th day after receipt of request.
 - Checks Enforcement Action Report System.
5. If at any time the request presents policy, legal, or supervisory issues, contacts Headquarters Licensing (HQ LIC) to decide:
 - Whether the request should be processed by the HQ LIC, if broad issues are involved.
 - Whether specific issues should be carved out for HQ LIC action, while the request continues to be processed in the appropriate district office.
 - When the request should be forwarded to Washington.
6. Reviews comments and all other relevant materials.

Decision

7. Prepare memorandum on findings if appropriate:

- If negative comments are made about the filing, prepares a memorandum discussing the factors in support of the decision.
- If no negative comments are made about the filing, marks agency's letter as follows:

OCC – No Comments

Date

Signature of Delegated Official

8. Forwards the official file to the appropriate official for signature and sends comments or marked original letter to the requesting agency.
9. If action cannot be taken under delegated authority, forwards the file and recommendation to HQ LIC for receipt at least seven days before the expiration of the comment period.
10. Makes appropriate CAIS entries.
11. Proceeds to step 19, if, under delegated authority, the district takes action.

HQ LIC

12. Makes appropriate CAIS entries.
13. Reviews the file and solicits comments from other OCC divisions, as appropriate.
14. Reviews comments from other OCC divisions, makes recommendation, and forwards the official file to the appropriate official for decision.
15. Forwards an advisory opinion letter to the appropriate agency.
16. Makes appropriate CAIS entries.
17. Sends a copy of the advisory opinion letter to the licensing manager at the appropriate district office and places a copy of the letter in the official file.
18. Notifies appropriate ADC/EIC and/or portfolio manager and ADC if negative comments are provided by forwarding updated CAIS comments and, if warranted, advises of any concerns.

Close Out

Licensing Staff

19. Reviews the file for completeness and forwards it to Central Records.
20. Makes appropriate CAIS entries.

Procedure: Federal Reserve Filing

Request for Comments on Bank Holding Company or Regulation K Filing¹

Licensing or International Banking and Finance (IB&F) Staff

1. Receives request for comments from the Federal Reserve Board (FRB).
2. Establishes the official file to maintain all original documents.
3. Initiates and enters appropriate information into the Corporate Activities Information System (CAIS).
4. Notifies the following OCC staff of receipt of the request:
 - Appropriate assistant deputy comptroller/examiner-in-charge (ADC/EIC) and/or portfolio manager.
 - IB&F staff, if the bank holding company filing comes from a company that has foreign ownership or is engaged in international banking activities.
 - Licensing staff for a Regulation K filing or request from an agency of a foreign government, involving a company that owns a national bank or federal branch or agency.

Review

5. Reviews the request. Determines if the acquirer intends to change the character or otherwise significantly alter the bank's operation.
6. If at any time the request presents significant policy, legal, CRA, consumer compliance, or supervisory issues, contacts Headquarters Licensing (HQ LIC) to decide:
 - Whether the Washington office should process the request, if broad issues are involved.
 - Whether specific issues should be carved out for Washington action, while the request continues to be processed in the appropriate district office.
 - When the request should be forwarded to HQ LIC.

¹These procedures also apply to requests from agencies of foreign governments.

7. Solicits comments from the ADC/EIC and/or portfolio manager and other district divisions and requires preliminary responses by the 15th day after receipt of request. Indicates if the acquirer intends to change the character or otherwise significantly alter the bank's operation.
8. Prepares and forwards to the requesting Federal Reserve Bank the Request for Commitment for 30-Day Prior Notice of Change of Business Plan letter within the comment period, if the proposed change in operations could result in a change in character or otherwise significantly alter the bank's operations. Also notifies ADC of findings.
9. Prepares the Confidential Memorandum and comment letter, if applicable, and forwards them to the appropriate person for action.

For holding company application comments only:

Completes the Advisory Opinion Worksheet, if the case involves a holding company with an adverse rating or a transaction significant to the acquiring holding company. Requests risk-based capital information on the consolidated entity, if needed.

Decision

10. If no comment is made about the filing, marks the FRB's request for comment letter as follows:

OCC — No Comments

Date

Signature of Delegated Official

11. Forwards the official file to the appropriate official for signature and forwards comments or marked original letter to FRB.
12. If action cannot be taken under delegated authority, forwards the file and recommendation to HQ LIC for receipt at least seven days before the expiration of the comment period.
13. Makes appropriate CAIS entries.
14. If the district office takes action, goes to step 22.

HQ LIC

15. Makes appropriate CAIS entries.
16. Reviews the file and solicits comments from other OCC divisions, as appropriate.
17. Reviews comments from other OCC divisions, makes recommendation, and forwards the official file to the appropriate official for decision.
18. Forwards the marked original letter or comment letter to the FRB.
19. Makes appropriate CAIS entries.
20. Sends a copy of the letter to the licensing manager at the appropriate district office and places a copy of the letter in the official file.
21. If ADC/EIC and/or portfolio manager of the decision by forwarding disapproval is recommended, notifies the appropriate updated CAIS comments and, if warranted, any concerns.

Close Out

Licensing Staff

22. Reviews the file for completeness and forwards it to Central Records.
23. Makes appropriate CAIS entries.

References

Advisory Opinions — Change in Bank Control

Law 12 USC 1817(j)(11)
Regulation 12 CFR 225.43(b)(1)

Bank Holding Company Formations and Acquisitions

Law 12 USC 1842
Regulation 12 CFR 225.15

Competitive Factor Reports

Law 12 USC 1828(c)
Regulation 12 CFR 225.14

Regulation K Applications

Regulation 12 CFR 211

USA PATRIOT Act of 2001

Law 12 USC 1828(c)