

This handbook section provides information regarding the filing of new charter applications for a Federal savings institution. 12 C.F.R. Parts 543 and 552 set forth the regulations, policies and procedures that govern the submission, review and decision for Permission to Organize (PTO) applications filed by the organizers of a proposed Federal de novo institution. A “de novo applicant” means any person, persons, or companies who apply to establish a de novo institution. A “de novo institution” means any Federal savings institution chartered by OTS [as defined in 12 C.F.R. 543.3(a)] the business of which has not been conducted previously under any charter or conducted in the previous three years in substantially the same form as is proposed to be conducted by the de novo institution. These guidelines apply whenever a de novo applicant files an application to charter a de novo institution.

## **FILING REQUIREMENTS**

### **Delegated Authority**

The application is not eligible for delegated processing. See Delegation Section 040 of the handbook for information on the delegation process.

### **Expedited and Standard Procedures**

This application is not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. Accordingly, the application will be processed utilizing the procedures set forth in 12 C.F.R. §§ 516.210 – 516.290.

### **Meetings**

The applicant must contact the appropriate Regional Office to schedule meetings related to its application for a de novo thrift charter. The applicant is required to meet with the Regional Office for a prefiling meeting in advance of filing the application. Additional meetings may be required by the Regional Office, which may include a preopening meeting following approval of the application.

#### *Prefiling Meeting Requirement*

The applicant must meet with the Regional Office for at least one prefiling meeting prior to filing an application. It is the applicant’s responsibility to contact the Regional Office in a reasonable time frame in advance of filing the application to schedule this meeting. The purpose of the meeting is to permit OTS and the applicant to identify any legal or policy issues before submission of the application, and enable the applicant to address these issues early in the process. Additional prefiling meetings may be warranted on a case-by-case basis. The Regional Office will work with the applicant to determine a schedule and forum for a meeting. The forum for the meeting will usually be in person at the Regional Office, although the Regional Office may consider meetings by telephone or video conferencing at its discretion on a case-by-case basis. OTS may decide not to accept a submitted application as officially filed until the prefiling meeting requirements in 12 C.F.R. Part 516 are met.

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When a meeting is required, the applicant should contact the Regional Office to determine who should attend the meeting. These individuals will be expected to discuss the salient aspects of the proposed transaction. The applicant must submit a draft business plan to the Regional Office prior to the meeting in a time frame in advance of the meeting acceptable to the Regional Office. At a minimum, the plan should:

- Describe clearly and completely the projected operations and activities;
- Provide financial projections for a three-year period;
- Discuss the associated risks of the proposed activities and operations contemplated in the plan;
- Identify all or a majority of the proposed director and key senior executive officers with documentation to support that these individuals have the required qualifications and experience to prudently oversee operations; and
- Demonstrate how the charter will serve the credit and lending needs in its target market.

### *Preopening Meeting*

In most cases, the applicant will meet with the Regional Office for a “preopening” meeting following approval of the de novo application, but prior to the savings institution opening for business. The Regional Office will contact the applicant to discuss the forum for the meeting and who should attend. In most cases, at least the organizers, board of directors, and senior executive management should attend. Regional Office staff will discuss with the applicant: satisfaction of conditions of approval; supervision and examination process; responsibility and fiduciary duty of the board of directors and management; regulatory issues germane to the successful opening of the savings institution; and, Regional OTS resources and contacts available to the institution.

### **Information and Form Requirements**

The applicant must file the application with the appropriate Regional Office and the Applications Filing Room (AFR) in OTS-Washington in accordance with 12 C.F.R. Part 516. The applicant is required to file the original and two copies of this application and the applicable application filing fee(s) with the appropriate Regional Office, and file three copies of the application with the AFR. When a transaction requires submission of additional copies, as in the case of a merger transaction subject to the Bank Merger Act, the additional copies should be sent to the appropriate Regional Office. The original filing, all copies, and all exhibits and other pertinent documents must be clearly marked and captioned as to the type of filing. One copy must contain original signatures on all executed documents. See Application Filing Requirements in Section 010 of this handbook.

The PTO application is filed under the cover of one of two variations of OTS Form 138:

- Form 138-E Application for Permission to Organize a Federal Mutual Savings Association or Savings Bank; or

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- Form 138-F Application for Permission to Organize a Federal Stock Savings Association or Savings Bank.

The applicant is required to submit all documents and information set forth in OTS Form 138. The application form addresses seven categories of information requirements:

- Overview
- Management
- Capital
- Characteristics of the Community
- Community Reinvestment Act
- Premises and Fixed Assets
- Other Information

Stock institutions must also submit:

- Sample Stock Certificates, including restrictive legends;
- For de novo institutions with holding companies, copies of the holding company charter, bylaws, a description of business operations including background, and the most recent and past five years' certified financial statements;
- Proposed voting trust agreements, if applicable; and
- Proposed offering materials if applicable.

For transactions where the de novo charter is combined with an existing operating financial institution, the following information must be submitted for the existing institution:

- The most recent State and/or Federal banking examinations;
- Audit reports and annual reports for the past three years; and
- The most recent published financial statements for the past three years.

Additional forms or filings to supplement OTS Form 138 may be necessary, e.g., forms seeking approval for subsidiaries, holding companies, trust powers, biographical and financial reports complete with supporting documentation, and business plan. These forms and/or instructions are available on the OTS Website.

### **Confidentiality**

The applicant must submit in writing, concurrently with the submission of the application, any requests to keep specific portions of the application confidential. In accordance with the Freedom of Information Act, the request should discuss the justification for the requested treatment and should specifically demonstrate the harm (e.g., to competitive position, invasion of privacy) that would result

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from the public release of information. OTS will not treat as confidential the portion of an application describing the plan to meet the Community Reinvestment Act objectives.

Information for which confidential treatment is requested should be: (i) specifically identified in the public portion of the application by reference to the confidential section; (ii) separately bound; and (iii) labeled “confidential.” The applicant should follow these same procedures when filing supplemental information to the application. OTS will determine whether information designated as confidential must be made available to the public under the Freedom of Information Act. OTS will advise the applicant before it makes information designated as confidential available to the public.

### Special Considerations

#### *Publication Requirements*

The applicant must publish notice of its intent to organize a Federal savings institution no earlier than seven days before and no later than the date of filing of the application, in accordance with the requirements of 12 C.F.R. Part 516 Subpart A. Notice must be published in a newspaper printed in the English language and having a general circulation in the community in which the home office of the new savings institution is to be located. If the Regional Office determines that the primary language of a significant number of adult residents of the community is a language other than English, the applicant may also be required to publish notice simultaneously in the appropriate language(s).

OTS may require an applicant to publish a new public notice of the application in circumstances when an applicant submits a revision to the application, or submits new or additional information, or when a major issue of law or change in circumstance arises after filing the application. OTS has the discretion in these circumstances to require republication if it determines that the public has not had adequate notice and opportunity to comment on the application due to the substantial change. OTS will notify the applicant if a new public notice of a revised application must be published.

Additional public notice requirements may apply for transactions involving mergers or branch purchase applications filed pursuant to 12 C.F.R. § 563.22, or change of control applications filed pursuant to 12 C.F.R. § 574.3. Combined public notice may be published consistent with existing OTS policy. See Publication Forms Section 020 of the Handbook for examples of publication language.

- **Comment Procedures**

Any person may submit a written comment to the Regional Office supporting or opposing a de novo application within 25 days after the filing date of the application. OTS will not consider any late filed comments unless: the commenter demonstrates good cause for why they could not submit a timely comment, or, OTS concludes that the comment addresses a significant regulatory concern and will assist in the disposition of the de novo application. OTS can extend the 25-day comment period with demonstrated good cause for why a commenter was unable to submit a timely comment. The duration of an extension request is

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subject to the discretion of OTS on a case-by-case basis, after consideration of the unique circumstances of each extension request.

The comment should recite relevant facts, including any demographic economic or financial data supporting the commenter's position. If the commenter opposes the application, the comment should also: 1) address at least one reason for denial based upon regulatory criteria for denial; 2) support the reason for denial with relevant facts and supporting data; and, 3) address how the approval of the application is harmful to the community or the commenter. While OTS will accept and consider all comments, including those that do not meet all of the content criteria, commenters are encouraged to include all relevant information and arguments.

The commenter may also request an informal meeting pursuant to 12 C.F.R. §§ 516.120 and 516.170 with their comment, along with a description of the issues and facts to be discussed and justification for why written submissions are insufficient to adequately address those facts or issues.

If the commenter has filed a written request for a meeting and the request contains the required information set forth in 12 C.F.R. 516.120(b), OTS will arrange a meeting. If an informal meeting is requested, the commenter must simultaneously send a copy of the written request to the applicant. OTS will generally provide an applicant an appropriate opportunity and period of time to respond to submitted comments.

OTS will facilitate the informal meeting between the applicant, the commenter(s) and any other interested person(s). OTS has discretion to determine the format of the meeting, including telephone conference or face-to-face meetings. OTS will inform the applicant and commenters requesting an informal meeting of its decision on a request for a meeting, or of its decision to hold an informal meeting on its own initiative. OTS may also invite any other interested persons to attend. OTS will inform the participants of the date, time, location and format for the meeting in reasonable time in advance. OTS anticipates that informal meetings will be sufficient to facilitate the resolution of issues in most cases.

If an informal meeting fails to facilitate the resolution of issues to the satisfaction of any participant in an informal meeting, OTS may proceed to conduct a formal meeting before a presiding officer upon the filing of a request. Any participant requesting a formal meeting pursuant to 12 C.F.R. §§ 516.170 and .180, should submit a request to OTS within three days after the informal meeting, and provide copies of its request to the other participants of the informal meeting. The request must describe the nature of the issues or facts to be presented and must demonstrate that material issues or facts have not been adequately addressed by the informal meeting, and that a formal meeting is necessary to develop a record sufficient to support a determination on those facts or issues. OTS will not arrange an informal meeting where a request is clearly frivolous or clearly lacking a factual basis. OTS may elect to hold a formal meeting on its own initiative if deemed necessary to assist in the disposition of the application or issues raised by the application.

OTS will issue a Notice of Formal Meeting if it decides to hold a formal meeting, and send the notice to the applicant, to any person requesting a formal meeting, and to any interested

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person, in its discretion, it desires to invite. Any person receiving the Notice of Formal Meeting must notify OTS within ten days of receipt of the notice of their intent to participate in the meeting. All participants in the formal meeting must provide the names of their presenters and copies of proposed exhibits to OTS, to the applicant, and to any other person designated by OTS, no later than five days before the date of the formal meeting. All presenters of documentary material must furnish copies of the material to OTS and to each other participant. OTS will arrange for a transcript of the meeting, with each participant bearing the cost of any copies of the transcript it requests for its use.

OTS anticipates that most formal meetings will follow an informal meeting. Accordingly, OTS will not grant a request for a formal meeting unless an informal meeting has occurred. However, OTS has the authority to conduct a formal meeting without holding an informal meeting if the meeting is beneficial to the review process and will facilitate a resolution of the issues raised by application.

If OTS has arranged an informal or formal meeting, the processing time frames for the application are suspended until OTS determines that a sufficient record has been developed to address the issues raised in the comments.

### *Interim Institutions*

An interim Federal savings institution, as defined in 12 C.F.R. § 541.18, is an institution chartered under Section 5 of the Home Owners' Loan Act of 1933, as amended (HOLA), to facilitate the acquisition of 100 percent of the voting shares of an existing Federal stock institution or other insured institution by a newly formed company or an existing savings and loan stock holding company, or to facilitate any other transaction OTS may approve. A transaction involving an interim institution requires the submission of OTS Form 1495 with the PTO application.

The approval of an interim application is conditioned upon OTS approval of an application to merge the interim institution into an existing insured savings institution or upon OTS approval of a related transaction. In evaluating the application, OTS considers the following factors:

- The purpose for which the savings institution will be organized;
- The form of any proposed transaction involving the organizing savings institution;
- The effect of the transaction on existing institutions involved in the transactions; and,
- The factors specified in 12 C.F.R. § 543.2(g)(1) to the extent relevant.

### *Background Checks*

OTS policy requires background investigations of all organizers, proposed senior executive officers, directors, and any individuals or groups acting in concert who own or control, directly or indirectly, ten percent or more of the de novo institution's stock. These individuals are considered management officials of the savings institution for the purpose of OTS's evaluation of the character and qualifications of the savings institution's management. At a minimum, individuals must submit an

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Interagency Biographical and Financial form, FBI Fingerprint Card, and a Regulatory Bulletin (RB) 20 Certification Form. RB-20 authorizes OTS to request supplemental information from applicants if the information is useful in completing a thorough background investigation. Applicants can request a waiver from filing portions of this information by providing justification stating why this information is unduly burdensome or unnecessary. Waiver requests will only be granted in limited circumstances and consistent with current OTS policy. The Regional Office must conduct a background investigation in compliance with RB-20. Individuals must be fingerprinted by an independent third party unrelated to the individual or companies affiliated with the individual on fingerprint cards bearing the OTS identification number. Results of all background checks should be addressed in the Regional Office's digest.

### *Eligibility Examinations*

PTO applications may involve transactions where the proposed de novo institution is combined with an existing operating company, or where assets are either acquired by, or contributed to, the proposed de novo institution. For example, if a transaction contemplates the contribution of a mortgage banking company, an examination would normally be conducted to review the company's policies and procedures, internal controls, and management oversight. If a transaction involves the contribution of credit card receivables, loans, or other assets to the de novo institution, an examination would normally be conducted to assess the quality and valuation of such assets. In other circumstances, OTS may have concerns regarding the qualifications of an acquirer to control a financial institution, related to existing operations affiliated with the de novo applicant, if issues involving the treatment of consumers, regulatory compliance, or other matters were identified during the background review of an acquirer. These types of circumstances may require OTS to perform an eligibility examination or to perform a review of parent or affiliated organizations. The examination procedures should be limited to those needed to assess the particular risks posed by the proposed transaction, or necessary to assess significant or novel issues relevant to the application decision.

The Regional Office should determine the need for an eligibility examination as early in the application process as possible. The eligibility examination may include on- or off-site activities. Prior to commencing the on-site work, OTS will forward a Preliminary Examination Response Kit (PERK) requesting more detailed information that should be made available to the examiners upon their arrival. OTS does not normally charge a fee for its eligibility examination. However, OTS may impose an hourly fee if the examination encounters significant problems that require additional review beyond the scope of a standard eligibility examination.

### *Organization of a De Novo by a Holding Company*

The applicant may organize a de novo institution under a holding company structure that will require the filing of the appropriate holding company acquisition application (typically, an H-(e)1) in addition to the PTO application.

Bank holding companies that create de novo savings institutions are not required to submit a holding company application to OTS due to the passage of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPR). EGRPR amended Section 10(e)(1)(B) of the HOLA to exempt bank holding companies and companies controlled by bank holding companies from having to seek

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OTS's approval to acquire a savings institution. The Federal Reserve has the regulatory authority over a bank holding company's acquisition of a de novo savings institution.

### *Federal Home Loan Bank Membership*

The Gramm-Leach-Bliley Act (Section 603) amended Section 5(f) of HOLA to give a Federal savings institution the option of becoming a member of the FHLB.

### *National Historic Preservation Act*

If the applicant proposes to establish its home or branch office in any historical district, site, building, structure, object or archaeological site, included in, or eligible for inclusion in, the National Register of Historic Places pursuant to the National Historic Preservation Act (NHPA), 16 U.S.C. 470, the application is subject to the requirements set forth in Section 106 of the NHPA.

Section 106 of the NHPA requires Federal agencies to consider the effects of their actions on historic properties and provide the Advisory Council on Historic Preservation (Advisory Council) an opportunity to comment with regard to such actions. To successfully complete a Section 106 review, OTS must:

- Determine if Section 106 of NHPA applies to a given project and, if so, initiate the review;
- Gather information to decide which properties in the project area are listed on or eligible for the National Register of Historic Places;
- Determine how historic properties might be affected;
- Explore alternatives to avoid or reduce harm to historic properties; and
- Reach agreement with the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) (where tribal lands or historic properties of significance to such tribes are involved) on measures to deal with any adverse effects or obtain advisory comments from the Advisory Council, which are sent to the head of the agency.

The SHPO coordinates state participation in the implementation of the NHPA, is a key individual in the Section 106 process, and should be involved in each step.

In order to facilitate the Section 106 review, the savings institution must indicate in the application if the proposed main office and/or any branch site affects any district, site, building, or structure listed in, or eligible for listing in, the National Register of Historic Places, specify how such determination was made (e.g., National Register, SHPO/THPO or other), and provide documentation of consultation with SHPO/THPO.

The involvement of Section 106 of NHPA in an application is considered an issue of law or policy. As a result, the analysis of the application must address the requirements set forth in Section 106 of the NHPA.

## **REVIEW GUIDELINES**

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**Processing Procedures and Time Frames**

As indicated, this application is not subject to delegated authority and will be processed concurrently with OTS-Washington staff. As a general matter, correspondence from OTS regarding applications will be transmitted from OTS-Washington.

Within five business days of receipt of the application and the application fee, the Regional Office must notify the applicant of the application's receipt. The appropriate application fee must accompany each application in order for it to be considered filed. The application will not be considered filed until received by both OTS-Washington and the Regional Office.

Within five business days of receipt of the application, the Regional Office will begin its background investigations on individuals who were required to submit such information in connection with the application. Upon receipt of the application, the Regional Office must forward all FBI Fingerprint Cards to OTS-Washington for processing. The background investigations should include, at a minimum, a search of the applicants in the Westlaw and CIIS databases. When appropriate, OTS must contact other regulatory agencies to seek additional comments on the applicants, or to request examination reports from another agency. For applications involving insurance companies, the Regional Office should contact the Insurance Risk Management Specialist in OTS-Washington to conduct a review of the insurer. All issues that are disclosed in the background check must be addressed directly with the individual. Results of all background checks should be addressed in the Regional Office's digest.

If the application involves specialty areas, such as trust activities or CRA issues, OTS-Washington must provide a copy of the application to the corresponding OTS-Washington specialist.

Within 30 calendar days of receipt of a properly submitted application, OTS shall take one of the following actions.

- Deem the application complete;
- Request, in writing, any additional information necessary to deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

Failure by OTS to act within 30 calendar days of receipt of the application for processing shall result in the filed application being deemed complete, commencing the period for review.

OTS must timely review all requests for a waiver of an application requirement that certain information be supplied. Unless OTS requests, in writing, additional information about the waiver request, or denies the waiver request, the waiver request shall be deemed granted.

If additional information is requested, a response must be submitted within 30 calendar days of the letter requesting such information. The applicant may, in writing, request a brief extension of the 30-calendar day period for responding to a request for additional information, prior to the expiration

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of the 30-calendar day time period. OTS, at its option, may grant the applicant a limited extension of time in writing. Failure to respond to a written request for additional information within 30 calendar days of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial or disapproval of the application.

After the timely filing of additional information in response to any initial or subsequent request by OTS for additional information, OTS has 15 calendar days to review the additional information for completeness or appropriateness and take one of the following actions:

- Request, in writing, any additional information necessary to deem the application complete;
- Deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

The 15-day review period commences when the OTS receives a response that purports to respond to all questions in the information request. OTS may extend the 15-day review period for an additional 15 calendar days, if OTS requires the additional time to review the response. OTS will notify the applicant that it has extended the period before the end of the initial 15-day period.

Failure by OTS to act within 15 calendar days of receipt of the additional information shall result in the filed application being deemed complete, commencing the period for review.

For transactions involving combinations with existing operating institutions or a contribution of assets (companies, loans, receivables, etc.) to the de novo charter, OTS may elect to conduct an eligibility examination during the review process. OTS will not deem an application complete until it concludes the examination. In addition, OTS may request additional information as a result of the eligibility examination, and the applicant must submit a response in accordance with the time frames set forth in this section.

Once the application has been deemed complete, there is a 60-calendar day review period during which time OTS will take into consideration all factors present in the application and render a decision thereon. If, upon expiration of the 60-day review period, assuming no extension has been granted, OTS has failed to act, the application is deemed approved automatically, and the applicant may thereafter consummate the transaction. If multiple applications are submitted in connection with one transaction, the applicable review period for all applications is the review period for the application with the longest review period, subject to statutory review periods.

During the review period, OTS may request additional information if the information is necessary to resolve or clarify the issues presented in the application. OTS may also notify the applicant that the application is incomplete and require that the applicant submit additional information to complete the application. The review period can be extended an additional 30 calendar days if OTS determines that additional time will be required to analyze the proposed transaction. In such cases, OTS must notify an applicant prior to the expiration of the period for review. In situations in which an application presents a significant issue of law or policy, OTS may extend the applicable period for

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review of such application beyond the time period for review. In these cases, written notice must be provided to an applicant no later than the expiration of the time period.

Under 12 C.F.R. § 516.290, if OTS has not acted on a pending application within two calendar years after the filing date, OTS may deem the application withdrawn unless it determines that the applicant is actively pursuing a final determination on the application. Applications that are subject to this withdrawal provision are those that have failed to timely take action such as filing required additional information, or OTS has suspended processing of an application based on circumstances that are, in whole or in part, within the applicant's control and have failed to take reasonable steps to resolve these circumstances.

For purposes of calculating processing time frames, OTS does not include the day of the act or event, in determining the date the time period commences. In determining the conclusion of a time period, when the last day of the time period is a Saturday, Sunday, or a Federal holiday, the last day will become the next day that is not a Saturday, Sunday, or Federal holiday.

### Regulatory Criteria

Section 5(e) of the HOLA sets forth the basic criteria that OTS must consider when acting on an application for permission to organize a Federal savings institution. Section 5(e) states that OTS may grant a Federal charter only if, in OTS's judgment:

- The organizers are persons of good character and responsibility;
- A need exists for the savings institution in the community to be served;
- There is a reasonable probability of the savings institution's usefulness and success; and
- The savings institution can be established without undue injury to other local thrift and home-financing institutions.

12 C.F.R. § 552.2-1(b)(1)(v) (12 C.F.R. § 543.2(g)(1)(v) for mutual savings institutions) requires OTS to consider whether the savings institution will perform a role of providing credit for housing consistent with safe and sound operations of a Federal savings institution.

12 C.F.R. § 543.3 sets forth certain policy considerations regarding de novo applications for permission to organize including:

- Minimum Initial Capitalization

A de novo institution must have at least two million dollars in initial capital stock or initial pledged savings or cash. The minimal initial capitalization is the amount of proceeds net of all incurred and anticipated expenses involved in the organization of the savings institution, as well as securities expenses for stock institutions. On a case-by-case basis, OTS may approve a de novo application that has less than two million dollars in initial capital or may require the applicant to have more than two million dollars in initial capital. Charter applications proposing relatively novel or higher-risk operations, such as substantial Internet-based operations, will require additional capital consistent with current OTS policy.

- Business Plan

The applicant must submit a business plan materially consistent with OTS requirements, describing the major areas of operations for the first three years of operation of the de novo institution. See Business Plan Guidance Section 625 of the Handbook for information on business plan requirements. The business plan should address the following areas of operation:

- \* Lending, leasing and investment activity, including plans to meet the Qualified Thrift Lender requirements;
- \* Deposit, savings and borrowing activity;
- \* Interest-rate risk management;
- \* Internal controls and procedures;
- \* A discussion of the requirements set forth in the Community Reinvestment Act and plans for meeting the credit needs of the community, including low- and moderate-income neighborhoods; and
- \* Comprehensive financial projections for the first three years of operation.

The business plan must provide for the continuation or succession of competent management subject to the approval of the Regional Office and must further provide that any material change in, or deviation from, the business plan must receive the prior approval of the Regional Office. The business plan must also demonstrate the de novo institution's ability to maintain required minimum regulatory capital pursuant to 12 C.F.R. Parts 565 and 567 for the duration of the plan.

- Composition of the Board of Directors

A majority of the de novo institution's board of directors must be representative of the state in which the savings institution is to be located. The board must be diversified and composed of individuals with varied business and professional experience. In addition, no more than one-third of the board of directors may be in closely related businesses, except in the case of a de novo institution that is wholly owned by a holding company with substantial economic substance. The background of each director must reflect a history of responsibility, personal integrity, and competence sufficient to direct the savings institution in a safe and sound manner.

Pursuant to 12 C.F.R. § 563e.29, OTS must consider the savings institution's plans for meeting its objectives under the Community Reinvestment Act. OTS will review the proposed plan for satisfying the CRA and may deny or condition approval based upon this review.

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### Decision Guidelines

The statutory and regulatory requirements are designed to ensure the viability and safe and sound operation of the de novo charter. In general, the analysis should conclude that management and ownership satisfies OTS integrity standards, that management has the expertise to implement the business plan, that the savings institution is viable and will maintain sufficient capital in relationship to its risk profile, that the community will be served and will support the proposed charter, and that the proposed transaction is in compliance with applicable rules and regulations. The following factors should be considered in analyzing the application to determine if the transaction satisfies the applicable statutory and regulatory criteria for approval:

- Did the applicant submit the following forms and information:
  - \* Appropriate and properly executed application OTS Form 138 for Permission to Organize to be filed with either: 1) OTS Form 138-E for Permission to Organize a Federal Mutual Savings Association or Savings Bank; or, 2) OTS Form 138-F for Permission to Organize a Federal Stock Savings Association or Savings Bank?
  - \* OTS Form 1623 (Interagency Biographical and Financial Report); properly executed RB-20 Certification; and FBI Fingerprint Cards, for each organizer, director, senior executive officer, and controlling shareholder?
  - \* Copies of proposed employment contracts and evidence of regulatory compliance?
  - \* Description and copies of any proposed stock option plans?
  - \* Discussion of specific policies and actions the institution will institute to ensure compliance with Sections 23A, 23B, 22(g) and (h) of the Federal Reserve Act, and with 12 C.F.R. §§ 563.41 and .42?
  - \* Oaths of Directors?
  - \* Proposed Charter and Bylaws?
  - \* Copies of all proposed contracts with affiliates, all contracts not in the ordinary course of business or in excess of 15 percent of the proposed operating budget?
  - \* Map of the primary market area? The map should be outlined with a heavy line to indicate the proposed market area(s); the proposed office location and branch offices must be clearly identified; and home office locations and branch facilities of competing savings institutions and commercial banks should be clearly identified. The map must contain a distance scale.
  - \* Description of the proposed market area and economic environment that discusses population trends, income, industry and housing patterns?
  - \* Copies of any economic survey or market feasibility study used to assess the existing and projected demographic profile of the target market area?
  - \* Analysis of anticipated market changes to the proposed market area and factors influencing the expected changes?
  - \* Three-year business plan?

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- \* CRA plan?
  - \* Notices and/or application forms for related filings, e.g. subsidiaries, trust powers, etc.?
  - \* Listing of all subscribers to capital stock that are organizers, directors, senior executive officers, ten percent shareholders, and other insiders?
  - \* Information to demonstrate that the application meets relevant approval standards?
- Do the organizers appear to be responsible, financially stable, competent, and of good character and integrity?
  - Did the RB-20 certification or background check (FBI, LEXIS/NEXIS and/or Westlaw, and CIIS, or other) of the organizers, proposed management, and controlling shareholders, indicate that they have been the subject of any enforcement, criminal or questionable actions?
  - Was any adverse information found in the background reviews not disclosed by any individual in their RB-20 Certification or on OTS Form 1623?
  - Do the Interagency Biographical and Financial Reports (OTS Form 1623) disclose any questionable information? (Any prior employment with a financial institution must be checked).
  - In applications involving a proposed existing parent company(ies), did the background review or RB-20 Certification disclose any questionable information on the company(ies) or any affiliate(ies) of the company(ies)?
  - Was any adverse information found in the background reviews not disclosed by the company(ies) in its RB-20 Certification Form?
  - For transactions with affiliates, will the transactions and contracts comply with Sections 23A and 23B of the Federal Reserve Act, and with 12 C.F.R. §§ 563.41 and .42?
  - Will the de novo institution's board of directors have sufficient independence from its parent holding company (ies) and affiliates to ensure that the savings institution will continue to operate without undue influence from these affiliates?
  - Do the board of directors and senior management have the qualifications and experience necessary to operate the proposed charter in a safe and sound manner?
  - Will the savings institution have sufficient full-time management to ensure safe and sound operations?
  - Does the proposed salary and bonus structure appear reasonable?
  - Do proposed employment agreements comply with the requirements of 12 C.F.R. § 563.39 and RB 27-a?
  - Will the board of directors meet the composition requirements of 12 C.F.R. §§ 543.3(d) and 563.33(a)?
  - Has the applicant identified the proposed board and management committees, their functions, and are these committees adequate?
  - Will sufficient fidelity coverage on officers and employees be maintained?

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- Will the applicant comply with the Management Interlocks Act?
  - Does the business plan satisfy OTS requirements?
  - Are the underlying assumptions of the business plan reasonable?
  - Do the lending activities present unusually high elements of risk, such as a significant volume of activity or concentrations of activity in subprime lending, speculative lending, or credit card activity?
  - Do the proposed savings and lending services appear reasonable?
  - Will the proposed balance sheet and business strategy comply with the lending and investment limitations of Section 5(c) of HOLA and 12 C.F.R. Part 560?
  - In those instances where the office quarters will be purchased or leased from an affiliated person, as defined in 12 C.F.R. § 561.5, did the applicant follow the procedures as set forth in 12 C.F.R. § 563.41?
  - Does the investment in fixed assets by the savings institution meet current OTS policy for limitations of initial capital invested in fixed assets?
  - Have organizational expenses been estimated and disclosed and their funding been discussed?
  - Will organizational costs be expensed in accordance with GAAP and has the expense been recognized in the business plan projections?
  - Does the business plan demonstrate compliance with OTS capital requirements over the three-year projections?
  - Do the dividend projections in the business plan reconcile with the proposed dividend policy?
  - Does the savings institution have capital reserves to offset potential adverse changes in market conditions or for operational performance by the savings institution below business plan projections?
  - Is capital adequate based upon the proposed business philosophy or for proposed charters with specialized operations or higher risk profiles (e.g. Internet based banking)?
  - Do the business plan projections indicate that QTL compliance will be maintained?
  - Are the business plan assumptions reasonable and consistent with local community needs?
  - Does the application or business plan raise concerns that may preclude the de novo charter from a favorable decision on its insurance of accounts application?
  - Does the description of the local community adequately demonstrate the community's credit needs?
  - Does the description of the proposed market area include historical and projected demographic data and trends (e.g. population, unemployment, income, housing, deposit account activity, etc.)?
  - Does the proposed market area discussion evaluate each assessment area's financial needs, including consumer, business, non-profit, and government sectors?

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- Can the de novo institution be established without undue injury to competing savings institutions and other home financing institutions?
  - Does the savings institution have a reasonable plan to meet its obligations under the CRA?
  - Will the proposed charter meet the identified convenience and needs in the target market, including the low- and moderate-income needs?
  - Will the de novo institution provide credit for housing consistent with safe and sound banking principles?
  - Will the employees of the de novo institution participate in a stock option plan, and does the plan meet current OTS policy limitations?
  - Will all stock subscriptions be sold at a price that is reasonable and equitable to all parties? Officers, directors, and organizers should not receive the payment of commissions or other compensation for the subscription to or sale of permanent stock.
  - Will all stock of a particular class be sold at the same price in the initial offering?
  - Will Internet banking activities be conducted in compliance with OTS and Interagency policy?
  - Will the de novo institution have a transactional web site subject to OTS review pursuant to 12 C.F.R. § 555.310?
  - Will the proposed charter be a Subchapter S Corporation?
  - Do the charter and bylaws comply with regulatory requirements?

### Conditions

#### *Standard Conditions*

Listed below are the standard conditions of approval for this application type. If OTS imposes any additional or materially different conditions, they must be justified in the supporting documentation.

- The applicant must receive all required regulatory and shareholder approvals for the proposed transaction and submit copies of all such approvals to the Regional Director prior to consummation of the proposed transaction;
- The applicant must consummate the proposed transaction within one hundred and twenty (120) calendar days from the date of the Approval Order;
- On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the proposed holding company(ies) (Applicants) and the de novo institution must certify in writing to the Regional Director that no material adverse events or material adverse changes have occurred with respect to the financial condition or operation of the Applicants and the de novo institution as disclosed in the applications. If additional information having an adverse bearing on any feature of the applications are brought to the attention of the Applicants, the de novo institution, or OTS since the date of the financial statements submitted with the applications, the transaction must not be consummated unless

- the information is presented to the Regional Director, and the Regional Director provides written non-objection to consummation of the transaction;
- The applicant must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed transaction: (a) of the effective date of the proposed transaction; and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the applications, and the Approval Order; and
  - The applicant must operate within the parameters of its business plan. The Applicants and the de novo institution must submit any proposed major deviations or material changes from the plan (including changes resulting from decisions made by the Applicants), (OPTIONAL LANGUAGE: and in particular, those pertaining to cross-marketing of products of the Savings Institution and its affiliates, a change in the role of the independent agents, and any changes in the proposed delivery system of the de novo institution's products,) for the prior, written non-objection of the Regional Director. The request for change must be submitted a minimum of 60 calendar days before the proposed change is implemented with a copy provided to the FDIC Regional Office.

### *Nonstandard Conditions*

It is not unusual for the approval order for a PTO application to contain nonstandard conditions of approval. Additional conditions may be warranted in circumstances where the proposed operations are integrated with services or activities involving affiliates, where securities affiliates exist, in structures involving non-shell holding companies, where anti-tying issues are present, or due to unique characteristics or the risk profile of the proposed charter. All nonstandard conditions of approval must be supported with justification in the recommendation memorandum related to approval of the application. Any nonstandard conditions incorporated into the approval order must be summarized in the National Applications Tracking System record for the application. Listed below are examples of frequently seen nonstandard conditions:

- The de novo institution must submit annual independent audit reports to the Regional Director for its first three fiscal years. These reports must be in compliance with the audit rules set forth at 12 C.F.R. § 562.4;
- Any contracts or agreements pertaining to transactions with affiliates, not yet submitted to the OTS for review, must be provided to the Regional Director at least 30 calendar days prior to execution for a written non-objection prior to implementation;
- (Applied on a case-by-case basis, customarily used for holding company structures in which there is expected to be significant reliance on affiliates for certain services.): At least 40 percent of the de novo institution's board of directors must be individuals who are not officers or employees of the applicants or affiliates thereof or have otherwise been determined by the Regional Director to lack sufficient independence, and at least one member of the de novo institution's board of directors must be an individual who is not an officer, director or employee of the applicants or any affiliate and who is not an officer or employee of the de novo institution or have otherwise been determined by the Regional Director to lack sufficient independence;

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- (For trust only applicants): At least 50 percent of the audit and investment committees established by the de novo institution must be directors who are not officers or employees of the de novo institution, the applicants or any affiliates. If compliance with this condition involves the selection of additional directors, each director must receive the prior written approval of the Regional Director;
  - Within the first year of its operation, or a longer period if determined, the proposed appointment of any permanent executive officers or directors of the de novo institution is subject to the prior review and non-objection of the Regional Director;
  - The applicants, its affiliates and the de novo institution must comply with the anti-tying restrictions of 12 U.S.C. §§ 1464(q) and 1467a(n) and must develop written procedures to effect such compliance. The procedures must be submitted for the review and non-objection of the Regional Director prior to the opening of the de novo institution for business (alternative language if not cross marketing at the onset of business: at least 30 calendar days prior to the commencement of the cross-marketing activity);
  - A majority of the de novo institution's board of directors must not be individuals who are officers, directors or employees of any affiliate of the de novo institution that engages in securities brokerage, securities dealing, investment company, or investment advisor activities (Securities Affiliate(s)); and
  - The de novo institution is prohibited from sharing common officers with any Securities Affiliate unless prior written approval is obtained from the Regional Director, which shall be based on criteria such as regulatory compliance, experience, character, integrity and the ability to perform both duties.

## **RECORDKEEPING REQUIREMENTS**

All correspondence related to the processing of the notice or application should be consolidated into a file copy to be sent to a central file. Both the Regional Office and OTS-Washington will maintain a separate file copy for nondelegated filings. The file copy must include a copy of the original filing including any exhibits, all amendments, all internal and external correspondence between interested parties, all documentation associated with the review and analysis of the filing, and all decision, recommendation memorandum, and compliance material. The file copy must be organized and separated into public and confidential material, and clearly identified as such. The public and confidential sections should be arranged in chronological order, or in a similarly organized fashion.

## **MONITORING AND CONTROL**

The Regional Office will monitor compliance with all conditions imposed in connection with an application's approval. The applicant must submit evidence of satisfaction of the conditions included in the approval order to the Regional Office within the stated time frames.

The Regional Office should notify the appropriate staff responsible for the supervision and examination of the savings institution regarding the action taken on an application, and provide staff with copies of the approval order. If an application is approved, the first examination of the savings

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institution following the approval should include a review of compliance with all conditions of approval and any changes in operations as a result of the transaction.

A review of the application file should be made after all compliance material is received to ensure that the file is complete. Any deficiencies should be corrected before the file is sent to storage.

OTS-Washington may conduct a post audit review of the application in the Regional Office, including a review of the documentation maintained in the application file.

## **INFORMATION SOURCES**

### **Statutes**

12 U.S.C. § 1464	HOLA Section 5(b); Deposits and Related Powers
12 U.S.C. § 1464	HOLA Section 5(c); Loans and Investments
12 U.S.C. § 1464	HOLA Section 5(e); Character and Responsibility
12 U.S.C. § 1464	HOLA Section 5(q); Tying Arrangements
12 U.S.C. § 1467a	HOLA Section 10(m); Qualified Thrift Lender Test
12 U.S.C. § 1467a	HOLA Section 10(n); Tying Arrangements
12 U.S.C. § 1468	HOLA Section 11; Transactions with Affiliates
12 U.S.C. §§ 2901, <u>et seq.</u>	Community Reinvestment Act
12 U.S.C. §§ 3201, <u>et seq.</u>	Depository Institution Management Interlocks Act

### **Regulations**

12 C.F.R. Part 516	Applications Processing Guidelines
12 C.F.R. § 541.18	Interim Federal Institution
12 C.F.R. § 543.2	Application for Permission to Organize
12 C.F.R. § 543.3	"De Novo" Applications for a Federal Association Charter
12 C.F.R. § 543.5	Issuance of a Charter
12 C.F.R. § 543.6	Completion of Organization
12 C.F.R. § 545.92	Branch Offices
12 C.F.R. § 552.2-1	Procedures for Organization of Federal Stock Association
12 C.F.R. § 552.2-2	Procedures for Organization of Interim Federal Stock Association
12 C.F.R. § 552.3	Charters for Federal Stock Associations
12 C.F.R. § 552.5 – 552.6-3	Bylaws for Federal Stock Associations
12 C.F.R. Part 560	Lending and Investment Limitations
12 C.F.R. § 561.4	Affiliate Definition
12 C.F.R. § 561.5	Affiliated Person (Definition)
12 C.F.R. § 561.14	Controlling Person (Definition)
12 C.F.R. § 561.35	Officer (Definition)
12 C.F.R. § 563.33	Directors, Officers and Employees
12 C.F.R. § 563.39	Employment Contracts
12 C.F.R. § 563.41	Loans and other transactions with affiliates and subsidiaries
12 C.F.R. § 563.42	Additional standards applicable to transactions with affiliates and subsidiaries

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12 C.F.R. § 563.43	Restrictions on Loans and Other Investments Involving Affiliated Persons
12 C.F.R. Part 563e	Community Reinvestment Act
12 C.F.R. Part 563f	Management Interlocks Act
12 C.F.R. Part 563g	Securities Offerings
12 C.F.R. Part 565	Prompt Corrective Action
12 C.F.R. Part 567	Capital

**Other**

Regulatory Bulletin 20	Background Investigations
Regulatory Bulletin 27-a	Executive Compensation and Employment Contracts
Regulatory Bulletin 32-5	Qualified Thrift Lender Test
Fees and Assessments Thrift Bulletin 23A and 23B of the Federal Reserve Act	Transactions with Affiliates
Directors' Responsibilities Guide	

**Application Forms**

OTS Form 138	Permission to Organize
OTS Form 138-E	Permission to Organize a Federal Mutual Savings Institution
OTS Form 138-F	Permission to Organize a Federal Stock Savings Institution
OTS Form 1495	Interim Institutions
OTS Form 1623	Interagency Biographical and Financial Report