

Under 12 U.S.C. Section 1823(c), the Federal Deposit Insurance Corporation (FDIC) may provide financial assistance to prevent the default of any FDIC-insured depository institution. The FDIC may use its financial assistance to facilitate mergers, consolidations, purchases of assets, assumptions of liabilities and purchases of stock of any insured depository institution by any other insured depository institution or depository holding company. These guidelines are intended to familiarize Regional Offices with FDIC resolution procedures as they may affect OTS-regulated organizations, set forth the rules regarding the eligibility of OTS-regulated organizations to participate in the FDIC bidding process and describe the special requirements for processing applications filed in connection with FDIC resolutions.

FILING REQUIREMENTS

Delegated Authority

Bidders List

When the FDIC resolves a potential failed or failing financial institution through its resolution process, the FDIC Resolutions Division will contact the appropriate OTS Regional Office with a request to clear a potential acquiror list composed of OTS-regulated organizations that have expressed interest in participating in the resolution process. The FDIC will request that OTS review the bidders list for the proposed institution being resolved, and determine any appropriate deletions from that list. Regional Directors or his/her designee has the authority to determine which institutions are qualified bidders for FDIC transactions. Generally, existing institutions and their holding companies are considered eligible to bid if they meet the following criteria:

1. The institution received a composite CAMELS rating of “1” or “2” on its last examination;
2. The institution received a composite rating of “1” or “2” and no less than a Satisfactory CRA rating at its last compliance examination;
3. No significant supervisory concerns remain outstanding;
4. The institution must be classified as “Well Capitalized” institution under the Prompt Corrective Action Regulations; and
5. In the case of a holding company, a rating of no less than satisfactory must have been received at its latest examination.

The Regional Directors may, on a case-by-case basis, grant exceptions to the established eligible bidder criteria. Those exceptions are:

1. Institutions that meet their minimum capital requirements and are rated a composite CAMELS rating of “3” may be eligible to participate in capital neutral transactions. These institutions may be allowed to purchase one or more branch offices if they can demonstrate that the transaction will improve their overall operations (such as replacing higher cost borrowings with lower cost core deposits); and

2. Institutions that meet their minimum capital requirements and are rated a composite CAMELS rating of “1” or “2” may be eligible to acquire a failing institution if the Management component rating is also a “1” or a “2” and the institution can demonstrate access to sufficient capital to achieve well-capitalized status under the prompt corrective action regulation subsequent to consummation of the transaction.

Proposed private investors who wish to engage in the resolution of potential failed or failing financial institutions through the FDIC Resolution Process must first be pre-cleared to do so by filing necessary background information with the Region and OTS-Washington. Regional Directors, with the concurrence of the Director, Examination Policy, may give clearance to private investors to attend an FDIC bid meeting if they have begun the OTS application process and their proposal is considered reasonable.

Transaction

Unless a transaction involves the organization of a de novo savings institution that will continue operations subsequent to the transaction, or if it raises an issue of law or policy, the Regional Director, or his/her designee, has the authority to approve the following:

1. The purchase of assets or an assumption of liabilities of an insured depository institution by an existing savings institution, or by a savings and loan holding company;
2. Any related aspect of the transaction under any statute or regulation requiring OTS approval; and
3. Waiver of any applicable publication, public comment or waiting period requirements.

Expedited and Standard Processing Procedures

This application type is not subject to the expedited processing procedures contained under 12 C.F.R. Section 516.

Prefiling Meeting Requirements

Prefiling meetings are not required for this type of application. However, an institution that is considering placing a bid should contact the appropriate Regional Office as early in the process as possible to discuss the effects of the acquisition on its overall operations, business plan, and the applicable application requirements.

Information and Form Requirements

The OTS application form required to be filed by an institution proposing to acquire a portion of, or substantially all of the assets and liabilities of a failed institution is OTS Form 1639, Interagency Bank Merger Application. If the institution submitting a bid is controlled by a savings and loan holding company, certain transactions, such as the acquisition of substantially all of the assets and liabilities of a failed savings institution or the organization of a nonresulting de novo savings institution, will require the submission of an abbreviated holding company application and an application for permission to

organize and merge an interim institution (OTS Form 1495) along with OTS Form 1639. Generally, the holding company need only address Items 110, 120, 130, 220, 410 (only to the extent that new directors and senior executive officers will be added as a result of the transaction) and 510 of the H-(e) application. In addition to the aforementioned forms, the applicant should also provide the following:

1. The bid amount and a description of the assets and liabilities to be acquired;
2. Proforma financial statements for the resulting entity; and
3. If the transaction represents a material increase in the assets and liabilities of the institution, a revised business plan that incorporates the effects of the proposed transaction on the institution. The business plan may be abbreviated provided a more detailed plan is submitted in the event the institution is the successful bidder and consummates the transaction.

The FDIC will either hold a bidders meeting or offer the failed or failing institution for bid through an Internet Auction site. An OTS representative should attend the bid meeting when requested by the FDIC and considered necessary by the Regional Director. The FDIC will determine a bid acceptance date, and on such date will contact OTS if the winning bidder is an OTS regulated institution to inquire as to whether approval of the transaction will be granted. The FDIC will establish a closing date for the transaction, which will generally be within one week of the bid acceptance date. Therefore, if possible, the relevant application forms should be filed with the appropriate Regional Office at least five days before the bid acceptance date. To help facilitate the approval of the transaction by OTS within the time frames dictated by the FDIC, such forms should be submitted as they are prepared, with supplemental filings made as the information necessary to prepare the supplemental filings becomes available.

Waiver of Publication and Bank Merger Act Requirements

Due to the emergency nature of these types of transactions, the Regional Director may waive the standard publication procedures and the requirements of the Bank Merger Act (BMA). Therefore, an institution is not subject to the standard 15-day waiting period applicable to BMA transactions and may consummate the transaction immediately upon receiving all required regulatory approvals.

Regulatory Criteria

The authority of OTS to act on an application to assume liabilities and purchase assets involving an FDIC-insured institution is set forth at 12 C.F.R. § 563.22. If the transaction involves the filing of a holding company application, the applicant must also must satisfy the provisions of 12 C.F.R. Part 574 (See handbook Sections 240 and 510). Specifically, OTS will consider the following criteria:

- If the financial and managerial resources and future prospects of the holding company and the institution would be detrimental to the institution or to the insurance risk of the Savings Association Insurance Fund (SAIF);
- The capital level of the resulting institution; and
- The conformity of the transaction to applicable law, regulation, and supervisory policies.

Decision Guidelines

The statutory and regulatory requirements for determining whether OTS should approve an acquisition of assets and/or liabilities are designed to ensure the viability and safe and sound operation of the resulting savings institution. In general, the analysis should conclude that capital of the resulting institution is sufficient to support the operations of the merged entity and that management has the necessary expertise and controls to implement the business plan. OTS should consider the following factors in analyzing the application to determine if the transaction satisfies the applicable statutory and regulatory criteria for approval:

- Do the institution's financial projections demonstrate compliance with OTS capital requirements? Generally, an institution must have a minimum core capital level of 5%, and must be defined as a "Well Capitalized" institution under the Prompt Corrective Action Regulations at the date of acquisition. In certain circumstances, OTS may allow up to 90 days for the institution to run-off deposits to the "core" level for purposes of meeting this standard. However, the institution must demonstrate that it has access to additional capital in the event that run-offs are less than anticipated to enable it to achieve Well Capitalized status after the 90-day period.
- Is capital adequate based on the proposed business philosophy of the resulting institution?
- How does the transaction change the institution's risk profile?
- Is the transaction consistent with the applicant's business objectives?
- Has the applicant provided financial projections for the resulting institution that are reasonable and well supported?
- Will future operations be profitable?
- Do the resulting board of directors and senior management of the institution and holding company, if applicable, have the qualifications and experience necessary to operate the institution in a safe and sound manner?
- Has the applicant provided for appropriate management and policies for any significant new activities or risks to be assumed?
- Is the resulting institution's establishment or operation of additional branches consistent with OTS's branching policy statement (12 C.F.R. § 556.5) and Section 5(r) of HOLA?
- Does the applicant indicate that QTL compliance will be maintained?
- Will the institution and/or holding company incur debt to fund the transaction that may place undue pressure on the institution to pay dividends?

Conditions

Generally, the following conditions will be imposed on any approval to acquire deposits and/or purchase assets through the FDIC resolution process.

- The Institution must receive all required regulatory approvals for the proposed transaction and submit copies of all such approvals to the Regional Director prior to consummation of the proposed transaction;
- The Institution must advise the Regional Director in writing within five (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 application, and the approval letter; and
- The Institution must advise each accountholder whose withdrawable accounts would increase above \$100,000 as a result of the transaction of the effect on their insurance coverage no later than thirty (30) days after the effective date.

OTS may impose certain nonstandard conditions on a case-by-case basis. All nonstandard conditions of approval must be supported with justification in the recommendation memorandum related to approval of the application. All nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System for the application.

RECORDKEEPING REQUIREMENTS

OTS is required to consolidate all correspondence related to the processing of the application 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 all 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 must be arranged in chronological order.

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 from the public release of information.

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.

MONITORING AND CONTROL

The Regional Office will monitor compliance with any conditions imposed in connection with an application's approval. The applicant must submit evidence of satisfaction of the conditions included in the approval order or letter 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 institution regarding the action taken on an application. In addition, the Regional Office should provide the appropriate staff with copies of the approval order or letter. If an application is approved, the first examination of the 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

INFORMATION SOURCES

Statutes

12 U.S.C. § 1464	The Home Owners' Loan Act
12 C.F.R. § 516	Application Processing Guidelines
12 C.F.R. § 543.2	Application for Permission to Organize
12 C.F.R. § 543.3	"De Novo" applications
12 C.F.R. § 552.2-1	Procedures for Organization
12 C.F.R. § 563.22	Merger, consolidation, purchase of liabilities
TB 48-17	Assessments and Fees

Forms

H-(e)	Holding Company Acquisition
Application to Establish and Merge an Interim 1639	Interagency Bank Merger Act Application