

12 C.F.R. § 546.4 provides the requirements and approval standards for the voluntary dissolution of a federal savings institution. Although this section only applies to federally chartered institutions, it is noted that state chartered institutions proposing to dissolve may be required to submit certain applications/notices under 12 C.F.R. § 563.22(b). The types of filings required for submission will be dependent on the structure of the transaction.

### **Related Applications**

When an institution is voluntarily dissolving, the transaction may require additional applications depending upon the structure of the dissolution. For example, a voluntary dissolution application that includes the sale of a branch or transfer of deposits by a savings institution to another institution may require a filing under the Bank Merger Act (BMA). If the purchasing institution is a savings institution regulated by OTS, the institution must file under the BMA and 12 C.F.R. § 563.22(a). If a bulk transfer is contemplated as part of the transaction, a transfer of assets application under 12 C.F.R. § 563.22(c) must be filed by the dissolving institution.

If the institution is controlled by a holding company, and such company is subject to a capital maintenance obligation, a divestiture of control application is required under 12 C.F.R. § 567.13. The regulation requires a holding company that is subject to a capital maintenance obligation to provide written notice of its divestiture to OTS. Under this circumstance, OTS may conduct a full- or limited-scope examination of the institution as deemed appropriate by the Regional Director.

In addition, a holding company deregistration application is required under 12 C.F.R. § 584.1(d) when a holding company controls a savings institution that plans to dissolve. OTS may release a registered savings and loan holding company from registration if it is determined that the holding company no longer has control of the savings institution.

## **FILING REQUIREMENTS**

### **Delegated Authority**

The Regional Director, or their designee, is authorized to approve certain voluntary dissolution applications provided they do not raise a significant issue of law or policy. The dissolution of a mutual savings institution is a matter that generally will raise a significant issue of law or policy. In addition, the dissolution of certain stock savings institutions, which involve a proxy solicitation and/or a non pro rata liquidating distribution to shareholders, may raise a significant issue of law or policy. The Regional Office should consult with Examination Policy in the event it receives these types of applications. See Delegation Section 040 of the handbook for a discussion of the delegation process.

### **Expedited and Standard Processing Procedures**

Voluntary dissolution applications are not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. Accordingly, this application will be processed utilizing the procedures set forth in 12 C.F.R. §§ 516.210-516.290.

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### **Prefiling Meeting Requirements**

Prefiling meetings are not required for this filing. However, applicants are encouraged to contact the Regional Office, particularly in the event the transaction involves unique or novel issues, to determine if a prefiling meeting will expedite the application review process.

### **Information and Form Requirements**

There are no specific application forms required for this transaction. The original and two copies of the following information, with the processing fee, must be submitted to the Regional office. In addition, the applicant may be required to file three copies with the Applications Filing Room in Washington, D.C. for concurrent processing if the proposed dissolution raises an issue of law or policy. The following information must be provided in the application:

- Statement of reasons for proposing the dissolution;
- A Plan of Voluntary Dissolution (the Plan), which includes a complete description of all the steps of the dissolution;
- A discussion of other alternatives to the voluntary dissolution the institution's board of directors have considered. The discussion should address the actions taken to determine if the dissolution is in the best interests of all parties, i.e. contact with potential merger partners and/or acquirors of any or all of its assets and liabilities;
- Copies of notice letters to depositors;
- Pro forma financial statements giving effect to the proposal, with a discussion of any significant assumptions used in their preparation. Such information should include a balance sheet, income statement, cash flow statement, statement of operations, and statements of changes in shareholders' equity;
- A description of the savings institution's deposits and the number of depositors;
- A description of the relevant eligibility record date, voting record date, how such record dates were determined, and the requirements for receiving any liquidating distribution;
- Certified resolutions from the board of directors;
- Executed affidavits of non-inducement from senior management, legal counsel and directorate;
- Itemized statement of the assets and liabilities of the institution sworn to by a majority of the board of directors and identification of any contingent liabilities;
- A pro forma liquidation table, showing all expenses and any proposed liquidating distributions;
- Full description of any liquidating trust, if one is to be established;
- Preliminary proxy solicitation material for the members or shareholders meeting to vote on the plan of dissolution;

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- A copy of an independent appraisal for the savings institution and a copy of the fairness opinion obtained regarding the proposed transaction; and \*
  - Financial statements for the past two fiscal years that have been audited and certified by an independent public accountant, along with any subsequent quarterly information.\*

\* These provisions may be waived on a case-by-case basis depending on the facts and circumstances of the transaction, i.e., the structure of the transaction, the financial condition of the institution, or dissolution of a closely held stock institution.

Savings and loan holding companies that wish to deregister as a result of a voluntary dissolution, must submit a letter describing their reasons to deregister pursuant to 12 C.F.R. § 584.1, and if applicable, a Form DV Certification – OTS Form 1499 as required by 12 C.F.R. § 567.13.

When a voluntary dissolution is effected with a sale of assets and/or liabilities, the applicable filing under 12 C.F.R. § 563.22(c) must be submitted.

### **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.

## **REVIEW GUIDELINES**

### **Processing Procedures and Time Frames**

As noted in the Delegated Authority Section, certain applications are not subject to delegated authority and are processed concurrently with OTS-Washington staff. As a general matter, correspondence from OTS regarding applications that are not subject to delegated authority will be transmitted from OTS-Washington, all other correspondence will be transmitted from the Regional office.

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.

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If the application involves specialty areas, such as trust activities, 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 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 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.

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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 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 is determined 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**

The voluntary dissolution of a federal savings institution requires approval of the applicant's Plan of Voluntary Dissolution (the Plan). The Plan may be approved if the dissolution is advisable, and the Plan is in the best interests of all concerned parties.

If the Plan is approved, the following must occur prior to termination of the savings institution's corporate existence:

- The Plan must be submitted to the savings institution's members/shareholders at a duly called meeting where the majority of the savings institutions members/shareholders vote for the Plan's approval;
- The savings institution must submit a certificate evidencing to the appropriate Regional Office that the institution's dissolution took place in accordance with the Plan; and

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- The savings institution must submit its original charter and bylaws, requesting that its charter be canceled.

**Decision Guidelines**

When reviewing a savings institution's plan of dissolution, OTS should evaluate the Plan to determine if it is in the best interests of all concerned. The review should conclude that all liabilities will be extinguished, and that any assets remaining after satisfaction of such liabilities will be distributed to members or shareholders in a fair and equitable manner. To reach this conclusion, the analysis should consider the following:

- Has the institution fully explored other alternatives to the voluntary dissolution, such as a merger or acquisition?
- Are there sufficient funds available to complete the deposit transfer or payout?
- Does the market value of the institution vary significantly from the book value?
- Has the institution identified all potential contingent liabilities?
- Does the Plan identify the interests of all parties in the institution, and sufficiently provide for such interests?
- If a liquidating trust will be established, does the trust provide for orderly payments to accountholders or shareholders?
- Will any liquidating distribution be paid on a pro rata basis to the accountholders or shareholders?
- Does the plan require an orderly dissolution process? Note: The process should include the establishment of an eligibility record date and the requirement that depositors maintain their account at the same level from the eligibility record date to and including the consummation date of the transaction.

**Conditions**

The following standard conditions should be included in the approval letter or order. If the Region imposes any additional conditions, they must be justified in the supporting documentation.

- The institution shall promptly submit the Plan of Dissolution to its members or shareholders for approval. After the meeting of members or shareholders of the institution to vote on the adoption of the Plan, the institution must submit copies of the certification of the results of such vote, including the number of members/shareholders voting, the total number of votes cast and the number and percentage of votes for, against or abstaining on the proposed adoption of the Plan;
- If any proxy material to obtain the consent of the members or shareholders is required, then copies of the proxy solicitation material must be filed with and cleared by OTS's Business Transactions Division prior to its use;

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- The institution 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 this Order/letter;
  - Within 5 days after the effective date, the institution must provide a legal opinion stating that all the institution's obligations, and obligations to all parties have been identified and satisfied, pursuant to the Plan; and
  - Within 5 days after the effective date of the dissolution, the institution must submit its original charter and bylaw to OTS for cancellation.

If a liquidating trust will be established as part of the dissolution, the following condition should be included:

- The institution must provide a certification from the trustee of the liquidating trust that identifies the amount of residual assets that have been transferred to such trust.

If another application is submitted as part of the dissolution application, the following condition should be included:

- On the business day prior to the date of consummation of the proposed transaction, the chief financial officer of the 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 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 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.

NOTE: Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application.

## **RECORDKEEPING REQUIREMENTS**

OTS is required to consolidate all correspondence related to the processing of the notice or 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.

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**MONITORING AND CONTROL**

The approval order or letter will include any conditions of approval. The Regional Office will monitor compliance with all conditions imposed in connection with the dissolution to ensure the applicant has submitted evidence of satisfaction of the conditions included in the approval within the stated time frames.

The appropriate staff responsible for the supervision and examination of the institution should be notified of the action taken on the application, and provided with copies of the approval order or letter. 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(d)(3)(A)                      Home Owners' Loan Act of 1933

**Regulations**

12 C.F.R. § 546.4	Voluntary Dissolution
12 C.F.R. § 563.22	Merger, consolidation, purchase or sale of assets, or assumption of liabilities
12 C.F.R. § 567.13	Obligations of acquirors of savings associations to maintain capital
12 C.F.R. § 584.1(d)	Holding Company Deregistration