

OTS periodically receives requests from savings institutions for a waiver of regulatory requirements. OTS has reserved the authority set forth in 12 C.F.R. § 500.30 to waive any provision of its regulations, to the extent permitted by statute, for good cause. OTS may waive certain regulations, but may not waive statutory requirements.

The purpose of this section is to discuss the processing procedures for responding to a waiver request, and to provide guidance on factors to consider in reaching a decision on such a request. For purposes of this section, waiver requests are defined as applications.

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.

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

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 with the appropriate Regional Office, and file three copies of the application with the AFR. 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 for information on the filing requirements.

There are no prescribed forms for submitting a regulatory waiver request. OTS anticipates that each request will have unique circumstances that must be addressed on a case-by-case basis. Therefore, the applicant's request should be in letter form that provides a detailed background of the existing circumstances at the savings institution, the need for a regulatory waiver, and the impact of a regulatory waiver on the institution. At a minimum, the applicant should address the following items:

- The need for a regulatory waiver and the reasons for why the applicant is unable to comply with existing regulatory requirements. [Note: applicants for a waiver may include parties other than a savings institution.];
- Specify the proposed length of time the waiver will be in effect;
- Certify that the regulatory waiver is permissible by statute;
- The impact of the waiver on related regulations or requirements, e.g. transactions with affiliates restrictions or conflicts of interest issues, and plans to resolve these issues;
- The impact of granting the regulatory waiver on the operations of the institution, e.g. capital, risk profile, earnings, etc., and how the impact will be prudently managed; and
- The identity of all subsidiaries and affiliates of the savings institution impacted by the regulatory waiver, including each entity's function and activity, and the anticipated impact to their operations.

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. 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.

REVIEW GUIDELINES

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 for it to be considered filed. The application will not be considered filed until received by both OTS-Washington and the appropriate Regional Office.

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 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.

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.

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 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

12 C.F.R. Section 500.30(a) authorizes OTS to waive its regulations for good cause under 12 C.F.R. Chapter V, to the extent provided by statute. The applicant must apply and receive approval from OTS when seeking a waiver of OTS regulations. Waiver requests do not require newspaper publication.

Decision Guidelines

In general, an analysis of the application should document the authority of OTS to grant a waiver, substantiate a valid need and purpose for the waiver, and assess the impact of granting a waiver on the operations of the savings institution. Waiver requests permitted by statute that subject an institution to undue risks or that pose supervisory concern, may present grounds for denial. Although decision considerations will vary depending upon the unique nature and reasons for a waiver, OTS will generally consider the following factors in its analysis:

- Is the waiver legally permissible and what is OTS's policy or precedent for granting similar waivers?
- What is the institution's overall financial condition and recent examination ratings?
- Is the institution well-managed? If the waiver and ensuing transaction(s) will result in any increased risk, does the institution have the ability to manage that risk?
- Is there a valid need and business reason for the waiver?

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- Are there other options available to the applicant absent obtaining a waiver to achieve the desired results?
 - Is the requested time period for which the waiver is requested, or the scope of the specific transaction(s) prompting the request, reasonable?
 - Will granting the waiver promote the evasion of any other regulation or statute, or trigger other regulatory restrictions?
 - Is the waiver and ensuing transaction(s) permitted by the waiver consistent with the institution's current business plan?
 - What impact will the waiver and ensuing transaction(s) have on the institution's capital levels and is capital sufficient to support any resulting growth or increased risk?
 - Are there any other safety and soundness issues or supervisory concerns that would be exacerbated should the waiver be approved?

Conditions

The subject application is not subject to standard approval conditions. OTS may condition its approval with nonstandard conditions. Any conditions imposed will be based on the individual circumstances surrounding the institution and the transaction itself. In circumstances where nonstandard conditions are involved, all nonstandard conditions must be supported with justification in the recommendation memorandum related to approval of the application. 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 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 must be arranged in chronological order, or in a similarly organized fashion.

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 advise the appropriate staff responsible for supervision and examination of the institution regarding the action taken on an application, and be provided 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 Office, including a review of the documentation maintained in the application file.

INFORMATION SOURCES**Statutes**

12 C.F.R. § 500.30

12 C.F.R. Part 516

General Statement Concerning Procedures and Forms.
Applications Processing Guidelines**Other**

Fees and Assessments Thrift Bulletin