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APPLICATION PROCESSING HANDBOOK

INTRODUCTION

This handbook has been developed to provide guidance to regulatory staff in the processing of applications or notices (filings) submitted to the agency. In addition, the handbook will serve as a valuable resource for institutions and other parties that may submit filings to the agency. The handbook may be accessed through the OTS website at www.ots.treas.gov.

In order to provide a complete description of the application process for a particular filing, each section contains a full discussion of information filing requirements, statutory and regulatory criteria in which the filing will be evaluated, factors the agency will consider when analyzing the filing under such criteria, conditions that may be imposed in an approval of the filing, and processing procedures and time frames. As a result, the handbook contains some duplicative material. The inclusion of such material in each section provides easy reference for the reader as to the requirements relating to a specific filing, particularly for those who access the handbook through the website.

The handbook will be updated periodically to reflect changes in statutes, regulations, policy, and agency practice.

This section discusses the standardized filing procedures for most applications requiring action by the Office of Thrift Supervision (OTS). The review and processing of a majority of applications has been delegated to the Regional Offices. However, certain types of applications contain unique or novel issues, or present issues of law or policy, and must be concurrently processed with OTS-Washington. Please refer to Delegation Section 040 of the handbook for a listing of applications that will be processed concurrently by the Regional and Washington offices.

This section does not apply to applications or requests related to transactions pursuant to Sections 13 (c) or (k) of the Federal Deposit Insurance Act, 12 U.S.C. 1823(c), (k), or requests submitted in connection with cease and desist orders, temporary cease and desist orders, removal and/or prohibition orders, temporary suspension orders, supervisory agreements or directives, consent merger agreements, or documents negotiated in settlement of litigation (including requests for termination or modification of, or for approval pursuant to, such orders, agreements, or documents), or similar litigation or enforcement matters. Requests for reconsideration, modification, or appeal of final agency actions are also not covered by this section.

How to file Applications and Notices

Delegated Applications

The original and the number of copies indicated on the application form or notice should be filed with the appropriate Regional office. If the form does not indicate the number of copies to be filed, or OTS does not have a prescribed form for the application, the original and two copies must be filed. All copies should be clearly captioned as to the type of filing, and should contain all exhibits and other pertinent documents. The appropriate filing fee must accompany each submission in order for it to be accepted. An application is not considered filed until OTS receives the appropriate number of copies and fee. Any filing received after the close of business established by a Regional office will be considered received on the next business day.

The following are common types of applications that require submission of more than three copies:

- Merger or branch purchase applications filed pursuant to 12 C.F.R. § 563.22, or notices filed pursuant to 12 C.F.R. § 574.3(b) involving a merger (including a merger involving an interim institution), or applications filed on Form H-(e)3 require four additional copies of the application. The copies will be distributed to other agencies for review and comment.
- Any acquiror filing a notice pursuant to 12 C.F.R. § 574.3(b) must file three additional copies of the notice, which will be distributed to other agencies for review and comment. If the acquisition involves a state-chartered institution, the acquiror must also file one additional copy of the notice with OTS, which will be provided to the state supervisor.
- In the case of an application filed on Form H-(e)2, the applicant must file one additional copy of the application with OTS for the Department of Justice.

You may contact the Applications Manager at the appropriate Regional office to obtain application forms, notice forms, and instructions. OTS's Regional Offices and the states or territories they cover are as follows:

Northeast Regional Office

Harborside Financial Center Plaza Five
Suite 1600
Jersey City, NJ 07311
(201) 413-1000

Region: Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont and West Virginia.

Southeast Regional Office

1475 Peachtree Street, N.E.
Atlanta, GA 30309
(404) 888-0771

Mail: P.O. Box 105217
Atlanta, GA 30348-5217

Region: Alabama, District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, North Carolina, South Carolina, Puerto Rico, the Virgin Islands, and Virginia.

Midwest Regional Office

225 E. John Carpenter Freeway, Suite 500
Irving, TX 75062-2326
(972) 277-9500

Mail: P.O. Box 619027
Dallas/Ft. Worth, TX 75261-9027

Region: Arkansas, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, Oklahoma, Tennessee, Texas, and Wisconsin.

West Regional Office

Pacific Plaza
2001 Junipero Serra Blvd.
Suite 650
Daly City, CA 94014-1976
(650) 746-7000

Mail: P.O. Box 7165
San Francisco, CA 94120-7165

Region: Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Montana, New Mexico, Nevada, North Dakota, Northern Mariana Islands, Oregon, South Dakota, Utah, Washington, and Wyoming.

Nondelegated Applications

As previously stated, Section 040 of the handbook should be consulted for those applications that will be concurrently processed with the Washington office. For these applications, or if applicable regulations or forms so direct, an applicant must file the required number of copies with OTS's Applications Filing Room (AFR) in Washington at 1700 G Street, N.W., Washington, D.C. 20552 in addition to filing with the appropriate Regional office. Any filings received after the close of business established by a Regional or Washington office will be considered received on the next business day.

If the application form does not indicate the number of copies to be filed, or OTS does not have a prescribed form for the application, three copies must be filed with the AFR. All copies should be clearly captioned as to the type of filing, and should contain all exhibits and other pertinent documents. The application will be considered filed when both the Washington and Regional offices receive the appropriate number of copies, and the fee has been submitted to the appropriate Regional office. In the event a fee waiver is requested, the application will not be considered filed until such time as a decision is made with respect to the request. All fee waiver requests will be acted on by the Washington office.

Securities Filings

Securities Filings, filed pursuant to 12 C.F.R. Parts 563g and 563d.1, should be submitted directly to OTS's Securities Filings Desk at 1700 G Street, N.W., Washington, D.C. 20552.

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.

Savings institutions are required by regulation to provide the public with advance notice of certain activities as they pertain to specific application types. The form of publication to be used will depend on the type of application filing that has been submitted to OTS. Specific guidance on public notice requirements for individual application types may be found in the handbook section for that application. The following are examples of publication forms that should be used by applicants to meet public notice requirements.

- Exhibit 1 **Notice of Filing of Application or Notice for Acquisition of a Savings Institution.** For filings required pursuant to 12 C.F.R. § 574.3. Pursuant to 12 C.F.R. § 574.6(d)(1), notice must be published no earlier than, and no later than, three calendar days from the filing date of the application.
- Exhibit 2 **Establishment of a Branch Office, or Change of Location of an Office, or Redesignation of Home Office Location.** For filings required pursuant to 12 C.F.R. §§ 545.92 or 545.95. Pursuant to 12 C.F.R. § 516.60, notice must be published no earlier than seven days before and no later than the filing date of the application.
- Exhibit 3 **Notice of Assumption of Deposit Application.** For assumption of deposit liabilities, primarily involving the purchase of branch offices by a Savings Institution. For filings required pursuant to 12 C.F.R. § 563.22(a). Pursuant to 12 C.F.R. § 516.60, notice must be published no earlier than seven days before and no later than the filing date of the application.
- Exhibit 4 **Notice of Merger Application.** For the purchase of all or substantially all of a financial institution by a Savings Institution. For filings required pursuant to 12 C.F.R. § 563.22(a). Pursuant to 12 C.F.R. § 516.60, notice must be published no earlier than seven days before and no later than the filing date of the application.
- Exhibit 5 **Notice of Filing of Application For Permission to Organize a Federal Savings Institution.** For filings required pursuant to 12 C.F.R. § 543.2 or 552.2-1. Pursuant to 12 C.F.R. § 516.60, notice must be published no earlier than seven days before and no later than the filing date of the application.
- Exhibit 6 **Combined Notice of Filing of Application For Acquisition Of A Savings Institution And For Permission To Organize A Federal Savings Institution.** For filings required pursuant to 12 C.F.R. §§ 574.3 and 552.2-1. Pursuant to 12 C.F.R. § 516.60, notice must be published no earlier than seven days before and no later than the filing date of the application.
- Exhibit 7 **Combined Notice of Filing Of Application For Acquisition Of A Savings Institution And Notice Of Merger.** For filings required pursuant to 12 C.F.R. §§ 574.3 and 563.22. Pursuant to 12 C.F.R. § 516.60, notice must be published no earlier than seven days before and no later than the filing date of the application.

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- Exhibit 8 **Combined Notice Of Filing Of Application For Acquisition Of A Savings Institution And Application For Permission To Convert To A Federal Savings Institution In A Merger Transaction.** For filings required pursuant to 12 C.F.R. §§ 574.3, 552.2-1, and 563.22. Pursuant to 12 C.F.R. § 516.60, notice must be published no earlier than seven days before and no later than the filing date of the application.
- Exhibit 9 **Combined Notice Of Filing Of Application For Acquisition Of A Savings Institution And Application For Permission To Convert To A Federal Savings Institution.** For filings required pursuant to 12 C.F.R. §§ 574.3 and 552.2-1. Pursuant to 12 C.F.R. § 516.60, notice must be published no earlier than seven days before and no later than the filing date of the application.
- Exhibit 10 **Notice Of Filing Of Application For Permission To Convert To A Federal Savings Institution.** For filings required pursuant to 12 C.F.R. §§ 543.2 or 552.2-1. Pursuant to 12 C.F.R. § 516.60, notice must be published no earlier than seven days before and no later than the filing date of the application.

EXHIBIT 1**NOTICE OF FILING OF APPLICATION OR NOTICE FOR ACQUISITION OF A SAVINGS INSTITUTION**

This is to inform the public that under 12 C.F.R. § 574.3 of the Regulations of the Office of Thrift Supervision (OTS) for Acquisitions of Savings Institutions, *[Acquiror(s) or Holding Company(ies) name, City and State]* will file on or about *[date]* an application with the OTS, to acquire control of *[Exact Corporate Name of Target Institution, City, State]*.

Anyone may submit written comments in connection with the application, and in so doing, may submit such information as he or she deems relevant. Three copies of all submissions must be sent to the Regional Director, The Office of Thrift Supervision, *[Street Address, City, State, and Zip Code of applicable Regional Office]* within 20 calendar days of the filing of the application. Up to an additional 20 calendar days may be obtained, upon a showing of good cause, if a written request is received by OTS within the initial 20-day period.

You may inspect the nonconfidential portions of the application and the nonconfidential portions of all comments filed with OTS by contacting the OTS Regional Office listed above. If you have any questions concerning these procedures, contact the OTS Regional Office at *[Telephone Number]*.

EXHIBIT 2**NOTICE [(TO ESTABLISH A BRANCH OFFICE) OR (TO CHANGE THE LOCATION OF AN OFFICE) OR (FOR REDESIGNATION OF HOME OFFICE)]**

This is to inform the public that under 12 C.F.R. Section [545.92 or 545.95] of the Regulations of the Office of Thrift Supervision (OTS), [*Thrift Corporate Title, Street Address, City, Town, State and Zip Code*] [*has filed/intends to file*] an [*application/notice*] with the OTS for permission to [*(establish a branch office at (proposed location)) or (change the location of a branch office from (present address) to (proposed address)) or (redesignate its home office from (present address) to (proposed address))*].

Anyone may submit written comments in connection with this application within 25 days of the filing of the application. The comment must be sent simultaneously to the Regional Director, Office of Thrift Supervision, [*Street Address, City, State, and Zip Code of applicable Regional Office*], and to the attention of [*Name or Title of contact person*] of [*Thrift Corporate Title*] to its address stated above [*or other appropriate address to ensure delivery of the comment*]. Written comments in opposition to the application should address the regulatory basis for denial of such application, and be supported by the information specified in 12 C.F.R. Section 516.120(a). You may request an informal meeting on such application by filing a written request with the OTS that describes the nature of the issues or facts to be discussed and the reasons why written submissions are insufficient to adequately address these facts or issues within the 25 day period.

You may look at the non-confidential portions of the application and all comments filed with the OTS Regional Office. This information is available for public inspection at the appropriate OTS Regional Office during regular business hours. If you have any questions concerning these procedures, contact the OTS Regional Office at [*Telephone Number*].

EXHIBIT 3**NOTICE OF ASSUMPTION OF DEPOSITS APPLICATION**

Notice is hereby given that application has been made to The Office of Thrift Supervision (OTS), for approval of the assumption of liabilities of the *[address of branch(es)]* branch office[s] of *[Exact Corporate Name of Selling Institution, City, State]* by *[Exact Corporate Name of Purchasing Institution, Street Address, City, State and Zip Code]*.

It is contemplated that *[Name of Purchaser]* will continue to operate the acquired branch office[s] at *[its or their]* current location[s]. *[Note: If all or certain offices will be closed or consolidated, substitute the following “(Name of Purchaser) will (discontinue operations of the acquired branch office(s) at (its or their) current location(s)) or (continue to operate the acquired branch offices at their current locations with the exception of (identify the location of each office to be closed including Street Address, City, State)).*

This notice is published pursuant to 12 U.S.C. Section 1828(c) of the Federal Deposit Insurance Act and 12 C.F.R. Section 563.22 of the regulations of OTS. This notice will appear at approximately one-week intervals over a 30-day period beginning *[date]* and ending *[date]*.

Anyone may submit written comments in connection with this application within 30 days of the filing of the application. The comment must be sent simultaneously to the Regional Director, Office of Thrift Supervision, *[Street Address, City, State, and Zip Code of applicable Regional Office]*, and to the attention of *[Name or Title of contact person]* of *[Name of the Purchasing Institution]* to its address stated above *[or other appropriate address to ensure delivery of the comment letter]*. Written comments in opposition to the application should address the regulatory basis for denial of such application, and be supported by the information specified in 12 C.F.R. Section 516.120(a). You may request an informal meeting on such application by including a written request for a meeting with your comment that describes the nature of the issues or facts to be discussed and the reasons why written submissions are insufficient to adequately address the facts or issues.

You may look at the non-confidential portions of the application and all comments filed with the OTS Regional Office. This information is available for public inspection at the appropriate OTS Regional Office during regular business hours. If you have any questions concerning these procedures, contact the OTS Regional Office at *[Telephone Number]*.

EXHIBIT 4**NOTICE OF MERGER APPLICATION**

Notice is hereby given that application has been made to The Office of Thrift Supervision (OTS), for approval of the merger of *[Exact Corporate Name of Selling Institution, City, State]* by *[Exact Corporate Name of Purchasing Institution, Street Address, City, State and Zip Code]*.

It is contemplated that all offices of the above-named depository institutions will continue to operate with the exception of *[identify location of each office to be closed including Street Address, City, State]*. *[Note: If no offices will be closed or consolidated, insert instead: “(Name of Purchaser) will continue to operate the offices at their current locations.”]*

This notice is published pursuant to 12 U.S.C. Section 1828(c) of the Federal Deposit Insurance Act and 12 C.F.R. Section 563.22 of the regulations of OTS. This notice will appear at approximately one-week intervals over a 30-day period beginning *[date]* and ending *[date]*.

Anyone may submit written comments in connection with this application within 30 days of the filing of the application. The comment must be sent simultaneously to the Regional Director, Office of Thrift Supervision, *[Street Address, City, State, and Zip Code of applicable Regional Office]*, and to the attention of *[Name or Title of contact person]* of *[Name of the Purchasing Institution]* to its address stated above *[or other appropriate address to ensure delivery of the comment letter]*. Written comments in opposition to the application should address the regulatory basis for denial of such application, and be supported by the information specified in 12 C.F.R. Section 516.120(a). You may request an informal meeting on such application by including a written request for a meeting with your comment that describes the nature of the issues or facts to be discussed and the reasons why written submissions are insufficient to adequately address the facts or issues.

You may look at the non-confidential portions of the application and all comments filed with the OTS Regional Office. This information is available for public inspection at the appropriate OTS Regional Office during regular business hours. If you have any questions concerning these procedures, contact the OTS Regional Office at *[Telephone Number]*.

EXHIBIT 5**NOTICE OF FILING OF APPLICATION FOR PERMISSION TO ORGANIZE A
FEDERAL SAVINGS INSTITUTION**

This is to inform the public that under 12 C.F.R. Section *[543.2 or 552.2-1]* of the Rules and Regulations of the Office of Thrift Supervision (OTS), *[Name of organizing group & location including Street Address, City, State and Zip Code]* has filed an application with the OTS, for permission to organize a Federal savings institution to be known as *[corporate title of savings institution]* and located at, or in the immediate vicinity of, *[proposed location including Street Address, City, State]*.

Anyone may submit written comments in connection with this application within 25 days of the filing of the application. The comment must be sent simultaneously to the Regional Director, Office of Thrift Supervision, *[Street Address, City, State, and Zip Code of applicable Regional Office]*, and to the attention of *[Name of the organizing group (or other contact if the organizing group is not the preferred contact)]* to its address stated above *[or alternate address if appropriate]*. Written comments in opposition to the application should address the regulatory basis for denial of such application, and be supported by the information specified in 12 C.F.R. Section 516.120(a). You may request an informal meeting on such application by including a written request for a meeting with your comment that describes the nature of the issues or facts to be discussed and the reasons why written submissions are insufficient to adequately address the facts or issues.

You may look at the non-confidential portions of the application and all comments filed with the OTS Regional Office. This information is available for public inspection at the appropriate OTS Regional Office during regular business hours. If you have any questions concerning these procedures, contact the OTS Regional Office at *[Telephone Number]*.

EXHIBIT 6**NOTICE OF FILING OF APPLICATION FOR ACQUISITION OF A SAVINGS INSTITUTION AND FOR PERMISSION TO ORGANIZE A FEDERAL SAVINGS INSTITUTION**

This is to inform the public that under 12 C.F.R. Section 574.3 and 552.2-1 of the Rules and Regulations of the Office of Thrift Supervision (OTS), *[Acquiror(s) or Holding Company(ies) name, Street Address, City, State, and Zip Code (complete mailing address is needed for only one entity for the purpose of receiving comment letters, whereas additional entities need only City and State)]* will file on or about *[date]* an application with the OTS, for permission to organize and acquire control of a Federal *[Savings Bank or Savings Association]* to be known as *[thrift corporate title]* and located at, or in the immediate vicinity of, *[proposed location...Street Address, City, State]*.

Anyone may submit written comments in connection with this application within 25 days of the filing of the application. Up to an additional 15 calendar days to submit comments may be obtained upon a showing of good cause, if a written request is received by the OTS within the initial 25-day period. The comment must be sent simultaneously to the Regional Director, Office of Thrift Supervision, *[Street Address, City, State, and Zip Code of applicable Regional Office]* and to the attention of *[Name or Title of contact person]* of *[Name of Acquiror or the Holding Company or substitute contact if another entity is selected to receive the comment]* to its address stated above *[or other appropriate address to ensure delivery of the comment]*. Written comments in opposition to the application should address the regulatory basis for denial of such application, and be supported by the information specified in 12 C.F.R. Section 516.120(a). You may request an informal meeting on such application by filing a written request with the OTS that describes the nature of the issues or facts to be discussed and the reasons why written submissions are insufficient to adequately address these facts or issues.

You may look at the non-confidential portions of the application and all comments filed with the OTS Regional Office. This information is available for public inspection at the appropriate OTS Regional Office during regular business hours. If you have any questions concerning these procedures, contact the OTS Regional Office at *[Telephone Number]*.

EXHIBIT 7**NOTICE OF FILING OF APPLICATION FOR ACQUISITION OF A SAVINGS INSTITUTION AND NOTICE OF MERGER**

This is to inform the public that under 12 C.F.R. Sections 574.3 and 563.22 of the Rules and Regulations of the Office of Thrift Supervision (OTS), *[Holding Company(ies) name, Street Address, City, State, and Zip Code (complete mailing address is needed for only one entity for the purpose of receiving comment letters, whereas additional entities need only City and State)]* will file on or about *[date]* an application with the OTS, to acquire control of *[Exact Corporate Name of Selling Institution, City, State]*, through *(briefly describe the transaction, e.g. merger, consolidation, purchase and assumption, etc., with/into/of/to, include the Exact Corporate Titles of financial institutions involved)*.

It is contemplated that all offices of the above-named depository institutions will continue to operate with the exception of *[identify location of each office to be closed including Street Address, City, State]*. *[Note: If no offices will be closed or consolidated, insert instead: “(Name of Holding Company) will continue to operate the offices at their current locations.”]*

This notice is published pursuant to 12 U.S.C. Section 1828(c) of the Federal Deposit Insurance Act and 12 C.F.R. Sections 563.22 and 574.6 of the regulations of OTS. This notice will appear at approximately one-week intervals over a 30-day period beginning *[date]* and ending *[date]*.

Anyone may submit written comments in connection with this application within 30 days of the filing of the application. Up to an additional 10 calendar days to submit comments may be obtained upon a showing of good cause, if a written request is received by the OTS within the initial 30 day period. The comment must be sent simultaneously to the Regional Director, Office of Thrift Supervision, *[Street Address, City, State, and Zip Code of applicable Regional Office]*, and to the attention of *[Name or Title of contact person]* of *[Name of the Holding Company or substitute contact if another entity is selected to receive the comment]* to its address stated above *[or other appropriate address to ensure delivery of the comment letter]*. Written comments in opposition to the application should address the regulatory basis for denial of such application, and be supported by the information specified in 12 C.F.R. Section 516.120(a). You may request an informal meeting on such application by including a written request for a meeting with your comment that describes the nature of the issues or facts to be discussed and the reasons why written submissions are insufficient to adequately address the facts or issues.

You may look at the non-confidential portions of the application and all comments filed with the OTS Regional Office. This information is available for public inspection at the appropriate OTS Regional Office during regular business hours. If you have any questions concerning these procedures, contact the OTS Regional Office at *[Telephone Number]*.

EXHIBIT 8**NOTICE OF FILING OF APPLICATION FOR ACQUISITION OF A SAVINGS INSTITUTION AND APPLICATION FOR PERMISSION TO CONVERT TO A FEDERAL SAVINGS INSTITUTION IN A MERGER TRANSACTION**

This is to inform the public that under 12 C.F.R. Sections 574.3, 552.2-1, and 563.22 of the Rules and Regulations of the Office of Thrift Supervision (OTS), *[Acquiror(s) or Holding Company(ies) name, Street Address, City, State, and Zip Code (complete mailing address is needed for only one entity for the purpose of receiving comment letters, whereas additional entities need only City and State)]* will file on or about *[date]* an application with the OTS, to acquire control of *[Exact Corporate Name of Proposed Savings Institution, City, State]*, through its conversion to a Federal savings institution by *(briefly describe the transaction, e.g. merger, consolidation, purchase and assumption, etc., with/into/of/to, include the Exact Corporate Titles of financial institutions involved)*.

This notice is published pursuant to 12 U.S.C. Section 1828(c) of the Federal Deposit Insurance Act and 12 C.F.R. Sections 552.2-1, 563.22, and 574.6 of the regulations of OTS. This notice will appear at approximately one-week intervals over a 30-day period beginning *[date]* and ending *[date]*.

Anyone may submit written comments in connection with this application within 30 days of the filing of the application. Up to an additional 10 calendar days to submit comments may be obtained upon a showing of good cause, if a written request is received by the OTS within the initial 30 day period. The comment must be sent simultaneously to the Regional Director, Office of Thrift Supervision, *[Street Address, City, State, and Zip Code of applicable Regional Office]* and to the attention of *[Name or Title of contact person]* of *[Name of Acquiror or the Holding Company or substitute contact if another entity is selected to receive the comment]* to its address stated above *[or other appropriate address to ensure delivery of the comment]*. Written comments in opposition to the application should address the regulatory basis for denial of such application, and be supported by the information specified in 12 C.F.R. Section 516.120(a). You may request an informal meeting on such application by filing a written request with the OTS that describes the nature of the issues or facts to be discussed and the reasons why written submissions are insufficient to adequately address these facts or issues.

You may look at the non-confidential portions of the application and all comments filed with the OTS Regional Office. This information is available for public inspection at the appropriate OTS Regional Office during regular business hours. If you have any questions concerning these procedures, contact the OTS Regional Office at *[Telephone Number]*.

EXHIBIT 9**NOTICE OF FILING OF APPLICATION FOR ACQUISITION OF A SAVINGS INSTITUTION AND APPLICATION FOR PERMISSION TO CONVERT TO A FEDERAL SAVINGS INSTITUTION**

This is to inform the public that under 12 C.F.R. Sections 574.3, and 552.2-1 of the Rules and Regulations of the Office of Thrift Supervision (OTS), *[Acquiror(s) or Holding Company(ies) name, Street Address, City, State, and Zip Code (complete mailing address is needed for only one entity for the purpose of receiving comment letters, whereas additional entities need only City and State)]* will file on or about *[date]* an application with the OTS, to acquire control of *[Exact Corporate Name of Proposed Savings Institution, City, State]*. As part of the transaction, *[Exact Corporate Title of the converting institution]* will file an application to convert from a *[specify the existing charter type of the converting institution]* to a Federal Savings Institution to be called *[Exact Corporate Name of Proposed Savings Institution]*.

Anyone may submit written comments in connection with this application within 25 days of the filing of the application. Up to an additional 15 calendar days to submit comments may be obtained upon a showing of good cause, if a written request is received by the OTS within the initial 25-day period. The comment must be sent simultaneously to the Regional Director, Office of Thrift Supervision, *[Street Address, City, State, and Zip Code of applicable Regional Office]*, and to the attention of *[Name or Title of contact person]* of *[Name of Acquiror or the Holding Company or substitute contact if another entity is selected to receive the comment]* to its address stated above *[or other appropriate address to ensure delivery of the comment]*. Written comments in opposition to the application should address the regulatory basis for denial of such application, and be supported by the information specified in 12 C.F.R. Section 516.120(a). You may request an informal meeting on such application by filing a written request with the OTS that describes the nature of the issues or facts to be discussed and the reasons why written submissions are insufficient to adequately address these facts or issues.

You may look at the non-confidential portions of the application and all comments filed with the OTS Regional Office. This information is available for public inspection at the appropriate OTS Regional Office during regular business hours. If you have any questions concerning these procedures, contact the OTS Regional Office at *[Telephone Number]*.

EXHIBIT 10**NOTICE OF FILING OF APPLICATION FOR PERMISSION TO CONVERT TO A
FEDERAL SAVINGS INSTITUTION**

This is to inform the public that under 12 C.F.R. Section *[543.2 or 552.2-1]* of the Rules and Regulations of the Office of Thrift Supervision (OTS), *[Exact Corporate Title of the converting institution, Street Address, City, State and Zip Code]* will file on or about *[date]* an application with the OTS, to convert from a *[specify the existing charter type of the converting institution]* to a Federal Savings Institution to be called *[Exact Corporate Name of Proposed Savings Institution]*.

Anyone may submit written comments in connection with this application within 25 days of the filing of the application. The comment must be sent simultaneously to the Regional Director, Office of Thrift Supervision, *[Street Address, City, State, and Zip Code of applicable Regional Office]*, and to the attention of *[Name or Title of contact person]* of *[Name of Converting Institution or substitute contact if another entity is selected to receive the comment]* to its address stated above *[or other appropriate address to ensure delivery of the comment]*. Written comments in opposition to the application should address the regulatory basis for denial of such application, and be supported by the information specified in 12 C.F.R. Section 516.120(a). You may request an informal meeting on such application by filing a written request with the OTS that describes the nature of the issues or facts to be discussed and the reasons why written submissions are insufficient to adequately address these facts or issues.

You may look at the non-confidential portions of the application and all comments filed with the OTS Regional Office. This information is available for public inspection at the appropriate OTS Regional Office during regular business hours. If you have any questions concerning these procedures, contact the OTS Regional Office at *[Telephone Number]*.

Exhibit 1
Initial BMA Letter – Department of Justice

U.S. Department of Justice
Antitrust Division
City Center Building, Suite 4000
1401 H Street, N.W.
Washington, D.C. 20530

Re: [Description of Transaction]

Dear Sir or Madam:

Pursuant to the provisions of the Bank Merger Act, 12 U.S.C. § 1828(c), we hereby request a report on the competitive factors involved in the above-captioned transaction. A copy of the application is enclosed.

The date of receipt of this letter by your office will be made a part of our records with respect to this transaction. Therefore, we would appreciate your signing or date stamping the enclosed copy of this letter and returning it to us.

If you require any further information, please contact me at _____. We will forward to your office a copy of any amendment to the application that affects antitrust considerations. Thank you for your attention to this matter.

Sincerely,

Applications Analyst

Enclosures

Exhibit 2
Initial BMA Letter – Department of Justice
Competitively Neutral Transactions

U.S. Department of Justice
Antitrust Division
City Center Building, Suite 4000
1401 H Street, N.W.
Washington, D.C. 20530

Re: [Description of Transaction]

Dear Sir or Madam:

Pursuant to the provisions of the Bank Merger Act, 12 U.S.C. § 1828(c), we hereby request your review of the above-captioned transaction. We request your confirmation that the proposed transaction is subject to the Department's December 6, 1989, agreement on the prospective competitiveness factors report process. A copy of the application is enclosed.

Your receipt date plus 31 days will determine the earliest transaction consummation date. For the purposes envisioned under 12 U.S.C. § 18(c)(6) of the Federal Deposit Insurance Act, we will grant an interim approval of the application to be effective on your date of receipt. As a result, your confirmation should clearly indicate your date of receipt of our request and be returned to the OTS regional office at the above address.

In the event that during the 30 days following your receipt of this letter the Department advises OTS that the transaction will have a significantly adverse effect on competition, OTS' interim approval will be immediately revoked or suspended. In such cases, you will be promptly notified of any subsequent approval and will have 30 days after that approval date to initiate any action to prevent consummation of the proposed transaction.

If you require any further information, please contact me at _____. We will forward to your office a copy of any amendment to the application that affects antitrust considerations. Thank you for your attention in this matter.

Sincerely,

Applications Analyst

Enclosures

Exhibit 3
Final BMA Letter – Department of Justice

U.S. Department of Justice
Antitrust Division
City Center Building, Suite 4000
1401 H Street, N.W.
Washington, D.C. 20530

Re: [Description of Transaction]

Dear Sir or Madam:

We are writing to advise you that the Office of Thrift Supervision approved the above referenced transaction under the Bank Merger Act, 12 U.S.C. § 1828(c). A copy of the approval is enclosed.

The date of receipt of this letter by your office will be made a part of our records with respect to this transaction. Therefore, we would appreciate your signing or date stamping the enclosed copy of this letter and returning it to us.

Sincerely,

Applications Analyst

Enclosures

Exhibit 4
BMA Letter – Federal Reserve

[Contact Person]
Federal Reserve Bank of _____
[Address]

Re: [Description of Transaction]

Dear _____:

Pursuant to the provisions of the Bank Merger Act, 12 U.S.C. § 1828(c), we hereby request a report on the competitive factors involved in the above-captioned proposed transaction. A copy of the application is enclosed.

The date of receipt of this letter by your office will be made a part of our records with respect to this transaction. Therefore, we would appreciate your signing or date stamping the enclosed copy of this letter and returning it to us.

If you require any further information, please contact me at _____. We will forward to your office a copy of any amendment to the application that affects antitrust considerations. Thank you for your attention to this matter.

Sincerely,

Applications Analyst

Enclosures

Exhibit 5
BMA Letter – Comptroller of the Currency

[Contact Person]
Comptroller of the Currency
Bank Organization and Structure
250 E Street, S.W.
Washington, D.C. 20219

Re: [Description of Transaction]

Dear _____:

Pursuant to the provisions of the Bank Merger Act, 12 U.S.C. § 1828(c), we hereby request a report on the competitive factors involved in the above-captioned proposed transaction. A copy of the application is enclosed.

The date of receipt of this letter by your office will be made a part of our records with respect to this transaction. Therefore, we would appreciate your signing or date stamping the enclosed copy of this letter and returning it to us.

If you require any further information, please contact me at _____. We will forward to your office a copy of any amendment to the application that affects antitrust considerations. Thank you for your attention to this matter.

Sincerely,

Applications Analyst

Enclosures

Exhibit 6
BMA Letter – Federal Deposit Insurance Corporation

[Contact Person]
Special Situations and Applications Section
Room 512C
550 Seventeenth Street
Washington, D.C. 20249

Re: [Description of Transaction]

Dear _____:

Pursuant to the provisions of the Bank Merger Act, 12 U.S.C. § 1828(c), we hereby request a report on the competitive factors involved in the above-captioned proposed transaction. A copy of the application is enclosed.

The date of receipt of this letter by your office will be made a part of our records with respect to this transaction. Therefore, we would appreciate your signing or date stamping the enclosed copy of this letter and returning it to us.

If you require any further information, please contact me at _____. We will forward to your office a copy of any amendment to the application that affects antitrust considerations. Thank you for your attention to this matter.

Sincerely,

Applications Analyst

Enclosures

OTS considers the following applications to contain an issue of law or policy that require concurrent processing by the OTS Regional Office and OTS-Washington. Therefore, if an applicant files any of the application types listed below, the applicant should submit the appropriate number of copies of the filing to the applicable OTS Regional Office and the Applications Filing Room (AFR), Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552. Applications and/or notices not listed below may be processed solely by the Regional Office and do not need to be filed with the AFR. If OTS later deems any such filings to present such issues of law or policy, the Regional Office will notify the applicant that the submission must be concurrently processed by the OTS Washington Office and will direct the applicant to file the appropriate number of copies with the AFR.

The following applications must be filed in both the Region and with the AFR:

- A. Applications filed under the acquisition of control regulations, 12 C.F.R. Part 574, the Bank Merger Act, 12 U.S.C. § 1828(c), or the transfer of assets regulations, 12 C.F.R. § 563.22(c), as follows:
 - 1. Applications involving foreign acquirors that have not previously received OTS approval under Part 574;
 - 2. Applications by diversified companies, insurance companies, investment companies, pension funds, investment advisors, securities firms, and credit unions;
 - 3. Applications that involve hostile or contested acquisitions, opposition proxy solicitations or other potential acquisitions where there is a competing acquiror for a savings association;
 - 4. Applications for qualified stock issuances;
 - 5. Applications for approval of material waivers of the required provisions for standard rebuttal of control or action in concert filings;
 - 6. Applications raising significant competitive factor issues, including, but not limited to transactions in which the Department of Justice, Federal Trade Commission, or the Federal Reserve Board object to any aspect of the proposed transaction, or which otherwise result in significant post-transaction market concentrations;
- B. Applications for permission to organize a savings association;
- C. Applications by savings associations that have been approved to operate as limited purpose institutions to expand their activities beyond those previously approved;
- D. Applications for mutual holding company reorganizations and minority stock issuances filed under Part 575;
- E. Applications for mutual to stock conversions filed under Part 563b;
- F. Applications filed by a savings association under Part 559 for a subordinate organization to engage in an activity that is not preapproved under Part 559.4;
- G. Applications involving any foreign activity of a savings association or a subordinate organization of a savings association;

-
- H. Applications requesting approval of waivers of statutes; regulations; OTS policy as set forth in bulletins; memorandums or handbooks; or significant application requirements;
 - I. Application for the modification or revocation of any condition of approval imposed on an application that was not approved on a delegated basis;
 - J. Applications for charter and bylaw amendments with nonroutine anti-takeover provisions, or nonstandard indemnification provisions;
 - K. Applications by or involving persons subject to a pending notice of charges or formal investigation;
 - L. Applications for Management Interlock exceptions under Part 563f;
 - M. Applications involving approval of non-cash contributions or leveraged buyouts; and
 - N. Unique or novel branch applications.

This handbook section provides information regarding the appeals process for Office of Thrift Supervision (OTS) decisions on applications, notices, and filings (collectively defined as applications). OTS recognizes that its decisions have a significant effect on its regulated savings institutions and that certain OTS application decisions may be challenged. Because it is the OTS's objective to ensure its decisions are fair, equitable and consistent, OTS has developed a process for the review, appeal and reconsideration of disputed OTS decisions. Further, the OTS Ombudsman is also available for use by an institution in dealing with OTS on any dispute or appeal relating to an OTS decision on an application.

A request to reconsider a decision made on an application may be made when, in the applicant's judgment, OTS's decision on an application, or its decision to impose non-standard conditions of approval, is inconsistent with existing OTS regulations, policies, procedures or the facts presented in the application. In all cases, before filing a request to reconsider a decision made on an application, applicants are encouraged to discuss with the decision-making office (e.g., Regional Office or OTS-Washington) any concerns regarding OTS's decision on an application.

FILING REQUIREMENTS

Filings and submissions made pursuant to the appeals process are not subject to the application processing procedures in 12 CFR Part 516.

Processing Procedures and Time Frames

A formal request for reconsideration of an OTS application decision, or for reconsideration of an OTS decision to impose a nonstandard condition of approval, should be filed with OTS within 30 calendar days of the OTS decision on the application. Applicants requesting reconsideration should submit an original and two copies of the request to the OTS-Washington Applications Filing Room, and submit one copy to the appropriate Regional Office. See Application Filing Requirements in Section 010 of this handbook for OTS addresses and more information.

No fees are charged for a request for reconsideration. OTS will make every effort to take action upon a request for reconsideration within 60 calendar days of the receipt of a request, or if additional information is requested, within 60 calendar days of receipt of any additional information.

Information and Form Requirements

The request should contain the following information:

- Identification of application on which review is sought;
- A copy of the original OTS decision letter or order, and any subsequent modifications;
- A statement of whether the applicant is submitting a request for reconsideration of an OTS application decision, or for the imposition of nonstandard conditions of approval;
- A concise statement of the reasons why the applicant disagrees with an OTS application decision or imposition of nonstandard conditions of approval;

- A description of any applicable statutes, regulations, policies or procedures on which the applicant relies;
- Confirmation as to whether the applicant has, in the interim, complied with the terms of the application decision and any nonstandard condition of approval;
- Copies of any supporting documents; and
- The name, address and telephone number of an individual designated to provide additional information.

Special Considerations

The procedures described in this section do not supersede any statutory provisions for judicial or administrative review of agency decisions concerning applications. An applicant's election to use these procedures will not affect the running of any statutorily-prescribed period for seeking judicial review. In addition, when a statute requires OTS to make a decision on an application within a specific period of time, OTS will deem the original decision, and not the decision rendered in response to a request for reconsideration, to determine compliance with such a requirement.

OTS prohibits any employee, including members of its examination and supervisory staff, from acts of retaliation against an applicant that files for the reconsideration of an application.

Ombudsman

Section 309(d) of the Community Development and Regulatory Improvement Act of 1994 (CDRIA), requires that each Federal banking agency appoint an Ombudsman. Section 309 provides that the Ombudsman is to:

- Act as a liaison between the agency and any affected person with respect to any problem such party may have in dealing with the agency resulting from the regulatory activities of the agency; and
- Assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

Section 309(b)(2) of the CDRIA provides that each Federal banking agency shall ensure that appropriate safeguards exist for protecting any party who appeals a “material supervisory determination” from retaliation by agency examiners.

OTS believes that the proper role of the Ombudsman is to act as a facilitator and mediator for the resolution of complaints. The Ombudsman will ensure that complaints about OTS regulatory actions are addressed in a fair and timely manner.

The Ombudsman's major function is to provide assistance as a liaison with the thrift industry and the public on issues, concerns or problems that they may have in dealing with OTS. The OTS Ombudsman reports directly to the Director.

When a problem is brought to the attention of the Ombudsman, the Ombudsman will explain the appeals process. Where the applicant has a complaint with regard to the process, the Ombudsman will meet with the appropriate OTS official, or arrange a meeting between the complainant and the appropriate OTS official and attempt to resolve the problem. If the Ombudsman believes a problem or complaint has not been satisfactorily addressed, the Ombudsman may raise the matter with a higher level official and/or the Director for resolution.

Section 309(d)(2)(B) of the CDRIA requires that the Ombudsman ensure that safeguards exist to encourage complainants to come forward and preserve confidentiality. In OTS's view, its existing avenues for appeal or complaints, the Ombudsman's authority to compel meetings with appropriate OTS officials at all levels in Washington, D.C. and the Regions, as well as the authority of the Ombudsman to review complaints of retaliation, should encourage complainants to come forward.

All information and materials utilized in the Ombudsman's review of a complaint shall be used only for purposes of the review and not disclosed outside of the Ombudsman's office, except to appropriate reviewing officials or with appropriate authorization. The Ombudsman will honor requests to keep confidential the identity of a complaining party. It must be recognized, however, that the resolution of certain complaints (such as complaints of retaliation against an individual institution) may not be possible should the identity of the complainant remain confidential. In such cases, the Ombudsman will discuss the circumstances limiting confidentiality with the complaining party involved. OTS believes these provisions should assist in preserving the confidentiality of complainants and the Ombudsman function.

The Ombudsman is authorized to receive complaints of retaliation against a party because of utilizing the Ombudsman or any existing avenue of appeal or complaint forum. Upon receiving a complaint of retaliation, the Ombudsman will investigate the supervisory basis for the alleged retaliatory conduct. Upon completion of the review, the Ombudsman will report any findings of retaliation to the Director of OTS with a recommendation for remedial action to protect the complainant. A finding of retaliation will be referred to the Chief Counsel, for possible disciplinary action against the OTS employee who retaliated.

A party may contact the Ombudsman at any time regarding a problem resulting from the regulatory activities of OTS by calling (202) 906-5685 or writing to: Ombudsman, Office of Thrift Supervision, 1700 G Street, NW, Washington, D.C. 20552.

INFORMATION SOURCES

Thrift Bulletin 68 dated July 15, 1996

The National Application Tracking System (NATS) is a computerized on-line database that acts as a central file for all applications and notices processed by OTS-Washington and Regional staff. NATS is designed to satisfy four major objectives:

- Provide an historical database for applications and notices processed by OTS-Washington and Regional staff;
- Provide the status of applications pending in either the Washington or Regional offices;
- Provide various reports to monitor and track applications, which facilitates processing and ensures compliance with established regulatory timeframes; and
- Provide the ability to interface with other OTS monitoring systems, which allows for agency-wide research and development projects.

By providing a wide range of reporting capabilities, NATS enables OTS to more effectively and efficiently manage processing activities and monitor applications. In addition, the public may access NATS through OTS' website to obtain information regarding pending and completed applications. Therefore, it is critical that NATS entries be made in a timely manner to maintain the system's effectiveness. Application information must be entered into the system within five days of the event or activity. Of particular importance is the entry of the effective date of certain transactions (i.e., mergers, acquisitions, de novos, charter conversions), which may affect whether the institution will be subject to OTS assessments.

This handbook section provides information for the thrift institution applicant on filings for establishing, relocating or closing a branch office.

12 C.F.R. § 545.92(a) defines a branch office of a Federal savings institution as “any office other than its home office, agency office, administrative office, data processing office, or an electronic means or facility under part 555 of this chapter.”

12 C.F.R. § 545.91 states that “all operations of a Federal savings institution shall be subject to direction from the home office;” this office should be the same office indicated in Section 2 of the institution’s charter.

A Federal savings institution must receive OTS approval or nonobjection prior to establishing or relocating a branch office. A state-chartered thrift institution is not required to file an application or notice (notice is an application for the purposes of this section) with OTS in connection with the establishment or relocation of a branch office. In addition, the installation of an automated teller machine (ATM) does not require the filing of an application or notice with OTS.

An institution may change the permanent location of a home or branch office, without notifying OTS, to a site within the market area of the current office site. The proposed relocation of the office must satisfy one of the following distance relocation requirements:

- The area within a 1,000-foot radius of the site if it is located within a central city of a Metropolitan Statistical Area (MSA) designated by the U.S. Department of Commerce;
- The area within a one-mile radius of the site if it is located within an MSA designated by the U.S. Department of Commerce but not within a central city; or
- The area within a two-mile radius of the site if it is not located within an MSA.

FILING REQUIREMENTS

Delegated Authority

Generally, applications filed under this section may be processed by the Regional Office under delegated authority. Applications that are not delegated to the Regional Office are those that raise a significant issue of law or policy or request approval of waivers of statutes, regulations, OTS policy, or significant application requirements. See Delegation Section 040 of the handbook for information on the delegation process.

Expedited and Standard Processing Procedures

OTS processes applications using two procedures, expedited treatment and standard treatment.

Expedited Processing

The institution is eligible for expedited treatment if it satisfies all of the following criteria:

-
1. Has a composite CAMELS rating of “1” or “2;”
 2. Has a CRA rating of “Satisfactory” or better;
 3. Has a Compliance rating of “1” or “2;”
 4. Meets or exceeds the minimum capital requirements set forth in 12 C.F.R. Part 567; and
 5. Has not been notified that it is in troubled condition.

If the institution qualifies for expedited processing, a notice is filed with the appropriate Regional Office. OTS considers a filing to be appropriately filed when sufficient information to evaluate the proposal is received from the applicant in its notice and all appropriate filing fees have been received. Please refer to the “Processing Procedures and Time frames” discussion of this section for more information on processing procedures and applicable time frames for notices.

Notices submitted by institutions eligible for expedited treatment are deemed “applications” for purposes of statutory and regulatory requirements referring to applications.

Standard Processing

If the applicant does not qualify for expedited processing, it must file an application subject to standard application processing time frames. Specifically, the institution is subject to standard processing if any of the following conditions exist regarding the institution:

1. Has a composite CAMELS rating of “3,” “4” or “5;”
2. Has a less than “Satisfactory” CRA rating;
3. Has a Compliance rating of “3,” “4” or “5;”
4. Has inadequate capital or fails at least one of its capital requirements;
5. Has been notified that it is in troubled condition;
6. The applicant is not a savings institution; or
7. The applicant has not received a composite CAMELS rating, a CRA rating, or a compliance rating from any federal banking regulator.

Please refer to the “Processing Procedures and Time Frames” discussion of this section for more information on applicable time frames for applications.

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

If delegated, all applications/notices should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant is required to file the original and two conformed copies of each application/notice. All copies are to be clearly marked as to the type of filing, and should contain all exhibits and other pertinent documents. One copy must contain original signatures on all executed documents. For applications that are not delegated to the Regional Office, an additional three copies of the application should be filed with the Applications Filing Room in OTS-Washington.

An institution eligible for expedited treatment is required to submit all information set forth in OTS Form 1558 “Notice to Establish a Branch Office or for Change of Location of an Office.”

Institutions not eligible for expedited processing are required to submit all documents and information set forth in OTS Form 1450 “Application for Permission to Establish a Branch Office Change of Location of an office or Redesignation of Home and Branch Office.”

Institution that apply for a change of office location or redesignation of office must post notice of the application/notice for 25 days from the date of the first newspaper publication in a prominent location in the office to be closed or redesignated.

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.

Special Considerations*Interstate Branching*

12 C.F.R. § 556.5(b) sets forth limitations on a Federal savings institution’s ability to branch. No branching will be permitted that will result in the following:

- Establishment or operation of a branch outside of the state of the institution's home office if such branching would violate section 5(r) of the HOLA. Section 5(r) generally permits a

Federal savings institution to branch outside of its home state if the institution meets the domestic building and loan test of section 7701(a)(19) of the Internal Revenue Code or the asset composition test of that section, or qualifies as a qualified thrift under section 10(m) of the HOLA, and if, with respect to each state outside of its home state where the institution has established branches, the branches, taken on a state-by-state basis, also satisfy one of the two tests.

Section 5(r)(1) of the HOLA does not apply if: (1) the branch results from an emergency acquisition authorized under section 13(k) of the Federal Deposit Insurance Act ("FDIA"); (2) the branch was authorized for the institution prior to October 15, 1982; (3) a state-chartered institution organized under the laws of the Federal institution's home office state would be permitted, under relevant state law, to operate in the other state; or (4) the branch was operating lawfully, under state law, prior to the institution's conversion to a Federal charter. The law also gives OTS Director, or his designee, the discretion to allow the institution, for good cause, up to two years to comply with the law.

- Branching that would result in the formation of a multiple savings and loan holding company that would control savings institutions in more than one state in violation of section 10(e)(3) of the HOLA. Formation of multi-state multiple savings and loan holding companies are prohibited unless one of three exemptions, as set forth in section 10(e)(3)(A) through (e)(3)(C) of the HOLA, are met.

These exemptions include: (a) a savings and loan holding company or any of its savings institution subsidiaries may acquire an institution or operate branches in additional states pursuant to the supervisory acquisition provisions of section 13(k) of the FDIA; (b) a savings and loan holding company that, as of March 5, 1987, controlled an institution subsidiary that operated an office in the additional state or states may acquire another institution or branch in that state; and (c) if the statutes of the state in which the institution to be acquired specifically authorizes acquisition of state-chartered institutions by state-chartered institutions or their holding companies by the state where the acquiring institution or holding company is located, interstate holding company operations may acquire an institution or branch.

- Establishment and operation of new branch offices by an institution in violation of section 13(k)(4) of the FDIA. Section 13(k)(4) generally permits savings institutions eligible for assistance under section 13(c) of the FDIA that are acquired by banks or bank holding companies, pursuant to section 13(k) of the FDIA, to retain and continue to operate branches existing at the time of the acquisition.

Publication Requirements

The applicant must publish notice of the branch or change of office location application or notice 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 savings institution is located and in a newspaper having a general circulation in the community to be served by the branch office. In addition, for branch relocation and redesignation

applications, the required newspaper notice must be published in the community where the office is to be closed or the home office is to be redesignated as a branch. 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 permission to organize applications filed pursuant to 12 C.F.R. § 543.2, merger applications filed pursuant to 12 C.F.R. § 563.22, or holding company 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 the 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 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 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, 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 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.

Branch Closings

Section 42 of the Federal Deposit Insurance Act (FDIA) contains the procedures for closings. No later than 90 days prior to closing, the institution must:

- Provide a notice to OTS identifying the branch to be closed, describing the reasons for closing the branch, the date of closing, and statistical or other information to support the reasons for closing;
- Provide notice of the proposed branch closing to its customers. The notice must be included in at least one of any regular account statements mailed to customers of the branch proposed to be closed, or in a separate mailing no later than 90 days prior to the proposed closing date;
- Post a notice in a conspicuous manner on the premises of the branch to be closed at least 30 days prior to the proposed closing date; and
- Adopt policies for closing branch offices.

Section 42 of the FDIA does not expressly grant the regulatory agencies with approval or denial authority for branch office closings. OTS has determined that failure to comply with the FDIA's requirements can be best addressed at the time of the institution's compliance examination. If the institution fails to fulfill its requirements under the FDIA, documentation will be placed in its CRA file and be used in judging the institution's success in meeting and serving the credit needs of its communities.

Additional guidance on prior notice that institutions must give before closing branches may be found in OTS Transmittal TR-220, *Joint Interagency Policy Statement on Branch Closing Notification Requirements*.

Branch Names

The banking regulatory agencies issued an Interagency Statement on Branch Names that was transmitted under CEO Memorandum #86, dated June 11, 1998. The statement sets forth guidance that institutions should follow if they operate branches under different trade names to insure that depositors will not inadvertently exceed the Federal Deposit Insurance Corporation insurance limits by depositing more than \$100,000 in differently named facilities of the same institution. Institutions choosing to use trade names for branches should develop measures that include, but are not limited to:

- Disclosing, clearly and conspicuously, in signs, advertising, and similar materials that the facility is a branch, division, or other unit of the insured institution;
- Using the legal name of the institution for legal documents, certificates of deposit, signature cards, loan agreements, account statements, checks, drafts, and other similar documents;
- Educating the staff of the institution regarding the possibility of customer confusion with respect to deposit insurance; and

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- Obtaining from depositors opening new accounts at the branch a signed statement acknowledging that they are aware that the branch and other facilities are in fact parts of the same insured institution and that deposits held at each facility are not separately insured.

National Historic Preservation Act

If the institution 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 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/THPO 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 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, and the analysis must address the requirements set forth in Section 106 of the NHPA.

National Environmental Policy Act

Similarly, with respect to the application, the institution should provide a statement on the impact of the proposal on the human environment, including information on changes in air and/or water quality, noise levels, energy consumption, congestion of population, solid waste disposal, or environmental

integrity of private land within the meaning of the National Environmental Policy Act, 42 U.S.C. § 3421, et. seq.

Inter-affiliate Banking Arrangements

OTS, in a legal opinion dated December 30, 1994, opined that Federal savings institutions no longer have to file a branch application to enter into inter-affiliate banking arrangements. Therefore, affiliated Federal savings institutions may now offer basic banking services to each other's customers without the need to obtain regulatory approval, even when the services are provided across state lines. In entering into an inter-affiliate arrangement, however, savings institutions must address various safety and soundness and supervisory issues as discussed in the December 30, 1994, opinion.

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 nondelegated will be transmitted from OTS-Washington. Correspondence on delegated applications will generally come from the Regional Office.

Within five business days of receipt of the application and the appropriate 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. For nondelegated applications, the application will not be considered filed until received by both OTS-Washington and the Regional Office.

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 review requests for a waiver of an application requirement that certain information be supplied, in a timely manner. 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 any additional information in response to an 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 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 to 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 before 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 shall be provided to an applicant no later than the expiration of the time period.

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.

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 OTS 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 Notices

The applicant may establish the office, or change the location of an existing office, upon the expiration of 30 calendar days after the filing date of its notice, unless OTS takes one of the following actions before expiration of that time period:

- Request, in writing, any additional information necessary to supplement the notification;
- Notifies the applicant that the notice is subject to standard treatment as it raises a supervisory concern, raises a significant issue of law or policy, or required significant additional information;
- Suspends the time frames pursuant to 12 C.F.R. § 516.190; or
- Disapproves of the notice.

Failure by OTS to act within 30 calendar days of receipt of the notice for processing shall result in the filed notice being accepted. If supplemental information is requested, the applicant will have 30 days to provide such information. The 30-day time frame will begin anew upon receipt of such information.

Regulatory Criteria

In order to receive approval or nonobjection to establish a branch or change the location of an existing office, the institution must meet the requirements of 12 C.F.R. §§ 545.92 and 556.5. OTS must find that:

- The institution's overall policies, condition and operation are satisfactory and, as a whole, afford no basis for supervisory objection.
- The institution's record in meeting the credit needs of its entire community is satisfactory and no CRA-based comments remain outstanding or unresolved.

Decision Guidelines

The regulatory requirements are designed to ensure the viability and safe and sound operation of the institution. In general, the analysis should conclude that the policies, condition, and operation of the

institution are satisfactory and afford no basis for supervisory objection. OTS should consider the following factors in analyzing the application to determine if the branch activity satisfies the applicable regulatory criteria for approval:

- Will the institution meet the minimum regulatory capital requirements of 12 C.F.R. § 567.2, except as otherwise permitted under section 38(e)(4) of the FDIA, and be adequately capitalized under the Prompt Corrective Action guidelines (12 C.F.R. Part 565)?
- Will the new branch office have an adverse effect on the operations of the institution (fixed asset investment, projected savings growth, earnings)?
- Will the investment in the proposed branch increase the institution's level of real estate for its offices and/or related facilities above the limitations set forth in 12 C.F.R. § 560.37?
- How does the proposed branch fit into the overall business plan?
- In the case of a branch or home office relocation, what is the rationale behind the decision and, in particular, are there any cost benefits as a result of the relocation?
- Does management have the expertise to cope with any unforeseen problems, and the ability to adapt to change, and depth to adequately staff the proposed branch without depleting staff or services at the home or other branch offices?
- Have all matters of supervisory concern been resolved?
- Has the institution been examined recently for CRA compliance? If so, is the institution's CRA performance considered acceptable? Will the institution continue to comply with the CRA after the proposed branching?
- Has the institution submitted a notice of publication?

Conditions

For branch applications/notices, the following conditions will appear in an approval/nonobjection letter from OTS:

- The proposed branch must open within 12 months of approval unless otherwise allowed by OTS; and
- Following the opening of the branch office(s), the institution must notify the Regional Office as to the date of opening and the exact location of the office(s).

OTS may include nonstandard conditions in its approval of the branch or change of office location application or notice. If such nonstandard conditions are utilized, the Regional Office's digest must include appropriate justification for imposing such condition.

Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application. This requirement helps OTS to provide the public a complete listing of all applications approved with nonstandard conditions of approval.

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.

MONITORING AND CONTROL

The approval order or letter will generally include conditions of approval. 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 or letter to the Regional Office within the stated time frames.

OTS should notify the appropriate staff responsible for the supervision and examination of the institution regarding the action taken on an application. In addition, OTS 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 Office, including a review of the documentation maintained in the application file.

INFORMATION SOURCES

Statutes

12 U.S.C. § 1464	Home Owners' Loan Act of 1933, Section 5(r) Branching
12 U.S.C. § 1831r-1	(Sections 42 of the FDIA) Notice of Branch Closure
12 U.S.C. § 1467a(m)	Qualified Thrift Lender Test

Regulations

12 C.F.R. Part 516	Applications Processing Guidelines and Procedures
12 C.F.R. § 545.92	Branch Offices
12 C.F.R. § 545.95	Change of Office Location and Redesignation of Offices
12 C.F.R. § 556.5	Branching by Federal savings institutions
12 C.F.R. § 560.37	Real Estate for Office and Related Facilities

Other

Paragraph 36,231	Authority of Insured Institutions to Operate on Military Installations Institutions
Paragraph 36,232	Branching by Federal Savings Associations; OTS Explanation of New Regulations
Paragraph 36,234	Branch Names: Interagency Policy Statement
Paragraph 21,290	Branch Closing Notices and Policies: Joint Policy Statement Chief Executive Memorandum #86, dated June 11, 1998: Interagency Statement on Branch Names

OTS Opinions

Paragraph 30,003	Interaffiliate Banking Arrangements
Paragraph 30,101	Status of Automated Teller Machines
Paragraph 30,809	Authority of Savings Associations to Establish and Operate Mobile Banking Facilities and ATMs

Filings

OTS Form 1450	Application for Permission to Establish a Branch Office, Change of Location of an Office or Redesignation of Home and Branch Office
OTS Form 1558	Notice to Establish a Branch Office or for Change of Location of an Office

This handbook section provides information regarding the requirements and procedures to be used in reviewing applications and notifications filed by institutions to convert to national or state banks.

12 C.F.R. §§ 563.22(b)(1)(ii) and 563.22(b)(2) set forth OTS regulatory requirements with respect to the direct or indirect conversion by an institution to a bank charter. Details of the regulatory criteria for these filings and the factors that OTS should consider prior to taking action on a conversion filing are discussed below.

FILING REQUIREMENTS

Delegated Authority

Generally, applications and notifications for these transactions may be processed by the Regional Office under delegated authority. However, certain situations may cause a filing to be nondelegated including transactions raising significant issues of law or policy. See Delegation Section (Section 040) of the handbook for further information.

Expedited and Standard Processing Procedures

OTS processes applications using two procedures, expedited treatment and standard treatment. Institutions eligible for expedited treatment may file a notification under 12 C.F.R. § 563.22(b)(1)(ii). Institutions not eligible for expedited treatment must file an application under 12 C.F.R. § 563.22(b)(2).

Expedited Processing

The institution is eligible for expedited treatment if it satisfies all of the following criteria:

1. Has a composite CAMELS rating of “1” or “2;”
2. Has a CRA rating of “Satisfactory” or better;
3. Has a Compliance rating of “1” or “2;”
4. Meets or exceeds the minimum capital requirements set forth in 12 C.F.R. Part 567; and
5. Has not been notified that it is in troubled condition.

If the institution qualifies for expedited processing, a 30-day notification is filed with the appropriate Regional Office. OTS considers a filing to be appropriately filed when the application filing fee and sufficient information to evaluate the proposal was received from the applicant in its notification.

Standard Processing

If the applicant does not qualify for expedited processing, it must file an application subject to standard application processing time frames. Specifically, the institution is subject to standard processing if any of the following conditions exist regarding the institution:

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1. Has a composite CAMELS rating of “3,” “4” or “5;”
 2. Has a less than “Satisfactory” CRA rating;
 3. Has a Compliance rating of “3,” “4” or “5;”
 4. Has inadequate capital or fails at least one of its capital requirements;
 5. Has been notified that it is in troubled condition;
 6. The applicant is not a savings institution; or
 7. The applicant has not received a composite CAMELS rating, a CRA rating, or a compliance rating from any federal banking regulator.

Please refer to the Processing Procedures and Time Frames discussion of this section for more information on applicable time frames for applications.

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

All institutions (both Federal and state) must file either an application or a notification with OTS before converting to a state or national bank.

If delegated, all applications and notifications should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant should file the original and two copies of the application or notification and application fee with 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. For applications that are not delegated to the Regional Office, an additional three copies of the application should be filed with the Applications Filing Room in OTS-Washington.

Expedited Filing

An institution eligible for expedited treatment should file OTS Form 1585 – Notification of Intention to Convert to or Combine with a Bank.

In addition, the filing should include:

- A copy of the filing made with the federal or state regulatory agency that must approve the conversion;
- Information to demonstrate compliance with applicable stockholder or accountholder approval requirements; and

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- A statement that the resulting institution will assume the liquidation account of the institution, if applicable.

Standard Filing

An institution subject to standard processing procedures should file OTS Form 1589 – Transfer Application.

In addition, the filing should include:

1. A copy of the filing made with the federal or state regulatory agency that must approve the conversion;
2. Sufficient detail and information addressing the criteria set forth in 12 C.F.R. § 563.22(d);
3. Information to demonstrate compliance with applicable stockholder or accountholder approval requirements; and
4. A statement that the resulting institution will assume the liquidation account of the institution, if applicable.

Confidentiality

The applicant must submit in writing, concurrently with the submission of the notification or application, any requests to keep specific portions of the filing 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 filing 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 filing. 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 institution 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 filings that are nondelegated will be transmitted from OTS-Washington. Correspondence on delegated filings will generally come from the Regional Office.

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

Applications under Standard Treatment

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 review requests for a waiver of an application requirement that certain information be supplied, in a timely manner. 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 an 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 the 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 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 application being deemed complete, commencing the period for review.

Once the application has been deemed complete, there is a 60-calendar day review period at 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.

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 notification shall 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 OTS 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.

Notifications under Expedited Treatment

OTS must be notified of a proposed conversion by an institution to a bank charter at least 30 days prior to the effective date of the transaction, but not later than the date on which an application relating to the proposed transaction is filed with the primary regulator of the resulting institution.

Within five business days of receipt of the notification and fee, OTS must notify the applicant of the notification's receipt. The appropriate fee must accompany each notification in order for the filing to be considered filed.

The applicant may engage in the proposed charter conversion upon the expiration of 30 calendar days after the filing date of its notification, unless OTS, before expiration of that time period, requests in writing any additional information necessary to supplement the notification. If supplemental information is requested, the applicant will have 30 days to provide such information. The 30-day time frame will begin anew upon receipt of such information.

12 C.F.R. § 563.22(h)(1) provides that OTS may, upon request or on its own initiative, shorten the 30-day prior notification requirement for these filings.

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

For a notification filed under this section, OTS will consider the notification to be properly filed if:

- The institution has demonstrated compliance with stockholder or accountholder approval requirements.
- The institution has confirmed that any liquidation account will be assumed by the resulting financial institution.

For an application filed under this section, OTS will take into account the following factors set forth in 12 C.F.R. § 563.22(d)(1):

- The capital level of the institution;
- The financial and managerial resources of the institution;
- The future prospects of the institution;
- The convenience and needs of the communities to be served;
- The conformity of the transaction to applicable law, regulation, and supervisory policies; and
- Factors relating to the fairness of and disclosure concerning the transaction.

Decision Guidelines

The primary federal regulator is responsible for administering the provisions of the Bank Merger Act, if applicable, and ensuring the transaction meets all applicable statutory and regulatory requirements, i.e., competitive, legal, or financial. OTS considers this type of transaction as a business decision of the savings institution. However, in the event that supervisory concerns are present with respect to the operations of the savings institution, OTS should contact the primary regulator for the resulting institution to discuss such concerns and current or potential enforcement actions. In addition, if OTS is aware of issues that may affect the converting institution's financial, managerial, future prospects, ability to serve the community, and proper disclosure, OTS should also consult the primary regulator. In evaluating the application or notification, OTS should take into consideration the following:

- Are there any current, pending or potential supervisory concerns or enforcement actions involving the savings institution? If so, has the regulatory agency for the converting institution been notified of the concerns or enforcement actions?

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- Has the applicant demonstrated compliance with applicable stockholder or accountholder approval requirements?
 - Has the applicant confirmed that any liquidation account will be assumed by the converted institution?

Conditions

In acknowledging a notification filed under this section, OTS will advise the institution that:

- The institution must advise the Regional Director in writing within 5 calendar days after the conversion of the effective date of the conversion.
- The institution must surrender its charter to OTS-Washington as soon as practicable after the conversion.

For applications filed under this section, OTS will impose the two requirements listed above as standard conditions. In addition, OTS may condition the approval of an application 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 notification 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.

MONITORING AND CONTROL

The Regional Office will monitor compliance with any conditions imposed in connection with the approval of an application under this section. 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 Office, including a review of the documentation maintained in the application file.

INFORMATION SOURCES

Statutes

Section 5(d)(2) and (3) FDIA (12 USC § 1815)

Regulations

12 C.F.R. Part 516
12 C.F.R. § 552.2-7
12 C.F.R. § 563.22

OTS Bulletins

Thrift Bulletin 48-17

OTS Forms

Form 1585
Form 1589

This handbook section provides information regarding the requirements and procedures to be used in reviewing filings by an institution to combine with a national or state bank in which the thrift institution does not survive.

12 C.F.R. § 563.22(b)(1)(i) sets forth Office of Thrift Supervision (OTS) regulatory requirements with respect to such combination filings. Details of the regulatory criteria and the factors that OTS should consider prior to taking action on a combination filing are discussed below.

FILING REQUIREMENTS

Delegated Authority

Notifications for these transactions may be processed by the Regional Office under delegated authority. See Delegation Section (Section 040) of the handbook for further information.

Processing Procedures

All filings made under this section are subject to a 30-day notification. A notification should be filed with the appropriate Regional Office. OTS considers a filing to be appropriately filed when sufficient information to evaluate the proposal was received from the applicant in its notification. Please refer to the Processing Procedures and Time Frames discussion of this section for more information on processing procedures and applicable time frames for notification.

Notifications submitted by institutions are deemed “applications” for purposes of statutory and regulatory requirements referring to applications.

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

All notifications should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant should file the original and two copies of the notification with the application filing fee with 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 signature on all executed documents.

All institutions proposing to combine with a national or state bank under this section should file OTS Form 1585 – Notification of Intention to Convert to or Combine with a Bank.

In addition, the filing should include:

-
- A copy of the filing made with the federal or state regulatory agency that must approve the combination.
 - A statement that the resulting institution will assume the liquidation account of the applicant institution, if applicable.
 - Information to demonstrate compliance with applicable stockholder or accountholder approval requirements.

Confidentiality

The applicant must submit in writing, concurrently with the submission of the notification, any requests to keep specific portions of the notification 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

OTS must be notified of a proposed combination under this section at least 30 days prior to the effective date of the transaction, but not later than the date on which an application relating to the proposed transaction is filed with the primary regulator of the resulting institution.

Within five business days of receipt of the notification and fee, OTS must notify the applicant of the notification's receipt. The appropriate fee must accompany each notification in order for the filing to be considered filed.

The applicant may consummate the transaction upon the expiration of 30 calendar days after the filing date of its notification, unless OTS requests in writing any additional information necessary to supplement the notification.

12 C.F.R. § 563.22(h)(1) provides that OTS may, upon request or on its own initiative, shorten the 30-day prior notification requirement for these filings.

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

For a notification filed under this section, the OTS will consider the notification to be properly filed if:

- The institution has demonstrated compliance with stockholder or accountholder approval requirements.
- The institution has confirmed that any liquidation account will be assumed by the resulting financial institution.

Decision Guidelines

The primary federal regulator is responsible for administering the provisions of the Bank Merger Act, and ensuring the transaction meets all applicable statutory and regulatory requirements, i.e., competitive, legal, or financial. OTS considers this type of transaction as a business decision of the savings institution. However, in the event that supervisory concerns are present with respect to the operations of the savings institution, OTS should contact the primary regulator for the resulting institution to discuss such concerns and any current or potential enforcement actions. In evaluating the notification, OTS should take into consideration the following:

- Are there any pending or potential supervisory concerns or enforcement actions involving the savings institution? If so, has the regulatory agency for the resulting institution been notified of the concerns or enforcement actions?
- Has the applicant demonstrated compliance with applicable stockholder or accountholder approval requirements?
- Has the applicant confirmed that any liquidation account will be assumed by the resulting financial institution?

Conditions

Generally, OTS, in acknowledging the notification, will advise the institution that:

- The institution must advise the Regional Director in writing within 5 calendar days after the combination of the effective date of the combination.
- The institution must surrender its charter to OTS-Washington as soon as practicable after the combination.

RECORDKEEPING REQUIREMENTS

OTS is required to consolidate all correspondence related to the processing of the notification or application into a file copy to be sent to a central file. The file copy must include a copy of the

original filing including all exhibits, all amendments, all internal and external correspondence between interested parties, and all documentation associated with the review and analysis of the filing. 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.

MONITORING AND CONTROL

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 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

Section 5(d)(2) and (3) FDIA (12 USC § 1815)
Section 18(c) FDIA (12 USC § 1828(c))

Regulations

12 C.F.R. Part 516
12 C.F.R. § 552.13
12 C.F.R. § 563.22

OTS Bulletins

Thrift Bulletin 48-17

OTS Forms

Form 1585

Section: Mergers with FDIC-Insured Depository Institutions and non-FDIC Insured Entities In which a Savings Institution Survives

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This handbook section provides information regarding the filing of applications involving the mergers of savings institutions with FDIC-insured depository institutions (including other savings institutions and banks). A savings institution is the surviving entity in these types of transactions. 12 C.F.R. § 563.22(a)(1) sets forth OTS regulatory requirements with respect to these types of transactions.

Transactions in which a thrift institution merges with an FDIC-insured depository institution must also be reviewed by OTS under the Bank Merger Act (Section 18(c) of the Federal Deposit Insurance Act). As discussed in more detail below, there are additional filing and publication requirements for these types of transactions.

In addition, this handbook section provides information about the filing of applications involving the combinations of savings institutions with depository institutions not insured by FDIC, including noninsured OCC-chartered trust companies, state chartered trust companies, and credit unions. A savings institution is the surviving entity in these types of transactions. 12 C.F.R. § 563.22(c) sets forth OTS regulatory requirements with respect to these types of transactions.

FILING REQUIREMENTS

Delegated Authority

Generally, applications filed under this section may be processed by the Regional Office under delegated authority. However, certain situations may cause a filing to be nondelegated, including: (i) transactions raising significant issues of law or policy; (ii) transactions that are hostile or contested; (iii) transactions that raise significant competitive factors issues; and (iv) transactions involving CRA protests. See Delegations Section of the handbook (Section 040) for further information.

Expedited and Standard Processing Procedures

Applications filed under 12 C.F.R. § 563.22(a)(1) are not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. These applications will be processed utilizing the procedures set forth in 12 C.F.R. §§ 516.210-516.290. For combinations filed under 563.22(a)(1), there is a 30-day automatic approval process set forth in 12 C.F.R. § 563.22(f) which applies in certain situations. Details of this provision are discussed below in the Processing Procedures and Time Frames section.

Applications filed under Section 563.22(c) to acquire non-FDIC insured depository institutions are technically subject to either expedited or standard treatment as set forth in 12 C.F.R. Part 516. However, for most of these types of filings, OTS requires an application as opposed to a notice filing and the standard processing procedures apply. The Regional Office will advise the applicant whether a filing will be processed according to expedited or standard processing procedures.

As discussed in more detail below, OTS does make a distinction between expedited and standard filers for the purposes of determining certain time frames in the processing of combination applications.

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An institution is deemed an expedited filer if it:

1. Has a composite CAMELS rating of “1” or “2;”
2. Has a CRA rating of “Satisfactory” or better;
3. Has a Compliance rating of “1” or “2;”
4. Meets or exceeds the minimum capital requirements set forth in 12 C.F.R. Part 567; and
5. Has not been notified that it is in troubled condition.

An institution is deemed a standard filer if it:

1. Has a composite CAMELS rating of “3,” “4” or “5;”
2. Has a less than “Satisfactory” CRA rating;
3. Has a Compliance rating of “3,” “4” or “5;”
4. Has inadequate capital or fails at least one of its capital requirements;
5. Has been notified that it is in troubled condition;
6. The applicant is not a savings institution; or
7. The applicant has not received a composite CAMELS rating, a CRA rating, or a compliance rating from any federal banking regulator.

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

An institution planning to combine with another insured institution or a noninsured depository institution must file an application with OTS. If the transaction involves two savings institutions, both institutions must receive OTS approval; however, OTS will permit a joint filing by the two institutions.

If delegated, the application should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant should file the original and two copies of the application and the application filing fee with the 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. For applications that are not delegated to the Regional Office, an additional three copies of the application should be filed with the Applications Filing Room in OTS-Washington.

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Applicants subject to the Bank Merger Act (BMA) are required to file four additional copies of the application with the Regional Director. These copies should be distributed by the Regional Office to the Department of Justice, Office of the Comptroller of the Currency, Federal Reserve Board, and Federal Deposit Insurance Corporation.

If the applicant proposes to combine with an FDIC-insured institution and will be the surviving institution of the merger, the applicant should file an application on Form 1639 – Interagency Bank Merger Act Application. As indicated above, if the applicant proposes to merge with another savings institution, the other savings institution must also file with OTS. Two OTS-regulated entities may make a joint filing and submit the appropriate information for each institution.

If the applicant proposes to combine with a non-FDIC insured depository institution and will be the surviving institution of the merger, the applicant should file either an application on Form 1589 – Transfer Application or a notice on Form 1584 – Notice Filing Pursuant to 12 C.F.R. § 563.22(c). (As indicated earlier, OTS will generally require the filing of an application on Form 1589.)

The application should include the following information if it has not otherwise been provided in connection with the application form:

- Sufficient information for OTS to understand the financial condition of the applicant after the merger. If the resulting institution will undergo major changes in its operations as a result of the combination, OTS may require the submission of a complete business plan for the resulting institution. The applicant should contact the appropriate Regional Office to determine if a business plan will be required;
- Sufficient information for OTS to address the criteria set forth in 12 C.F.R. § 563.22(d)(1) and (2);
- Any employment agreements being entered into or amended in connection with the transaction;
- If the applicant is combining with a non-savings institution or a non-FDIC-insured institution, the application should:
 - * Address if the target institution has assets or conducts activities that are not permissible for a federal savings institution under Section 5(c) of HOLA. If the applicant proposes to retain any nonconforming assets pursuant to Section 5(c)(5) of HOLA, a waiver should be requested in the application. The Regional Office has the ability to grant up to two years for the resulting institution to conform its assets to the requirements of HOLA; and
 - * Include detailed calculations that verify that the resulting institution will continue to meet the Qualified Thrift Lender (QTL) test subsequent to the combination. If the resulting institution requests a waiver of the QTL requirements, the application becomes nondelegated.

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- The application should indicate if actions are required by any other regulatory agencies. If so, the applicant should specify the agencies, filings, and actions; and
- If the transaction will involve the closing of one or more branch offices, the information required by OTS should be provided. (See Branch Closing section below.)

If the applicant is paying cash to shareholders of the other entity or its holding company, the payment may constitute a capital distribution under 12 C.F.R. § 563.141(c). If so, the application should state that it is also serving as the capital distribution filing.

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.

Special Considerations

Publication Requirements

Unless OTS finds that it must act immediately to prevent the default of one of the insured depository institutions involved, the applicant must publish notice of its intent to combine with an FDIC-insured 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. In addition to the initial publication, the applicant must publish on a weekly basis for a 30-day period. 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 resulting 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). A sample publication notice may be found in the Publication Forms section of the handbook (Section 020).

Comment Procedures

Any person may submit a written comment to the Regional Office supporting or opposing a combination within the publication period. OTS will not consider any late filed comments unless the

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commenter demonstrates good cause for why he/she 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 combination application. OTS can extend the comment period with demonstrated good cause for why a commenter was unable to submit a timely comment. The duration of an extension request is 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 his/her 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 conferences 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 516.180, 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.

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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 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.

Eligibility Examinations

OTS may conduct an eligibility examination of non-OTS-regulated depository institutions proposing to merge with OTS-regulated institutions. For depository institutions that have recently been examined by a federal or state banking or trust regulator and received satisfactory ratings (CAMELS 1 or 2, Compliance 1 or 2, CRA Outstanding or Satisfactory, Trust 1 or 2), OTS may not require an eligibility examination, unless the application raises a material issue not addressed by the report of examination. Also, when the most recent safety and soundness examination is older than six months, OTS will consider the need for an eligibility examination due to the age of the existing examination report. Absent these concerns, OTS will generally rely on the most recent report of examination as part of its review of the application.

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 an eligibility examination. However, OTS may impose an hourly fee if the examiners encounter significant problems that require additional review beyond the scope of a standard eligibility examination.

Branch Closings

The closing of one or more branch offices may be involved in connection with a combination transaction. Section 42 of the Federal Deposit Insurance Act and OTS Transmittal 220, dated June 30, 1999, provide information on branch closing notices and procedures.

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The institution that is closing a branch must:

- A. No later than 90 days prior to closing:
 - Provide a notice to OTS describing the reasons for the closing and providing statistical or other information supporting the reasons. The notice should also include copies of the institution's branch closing policy statement.
 - Provide a notice of the branch closing to the branch's customers either in a regular account statement or in a separate mailing.

- B. No later than 30 days prior to closing:
 - Post a notice in a conspicuous manner on the premises of the branch proposed to be closed.

Trust Operations

If the target institution is a federal institution that has been approved to exercise trust powers, the acquiror may continue to exercise trust powers. Also, if the acquiror is a state chartered savings institution, it does not need to file a trust application. However, if the applicant is merging with or acquiring a trust operation and has not previously been approved to exercise the appropriate type of trust powers or has not been approved to exercise trust powers in the state in which they will now be exercised, a trust powers application must be filed. See Section 620 of the handbook for guidance on the processing of trust powers applications.

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 nondelegated will be transmitted from OTS-Washington. Correspondence on delegated applications will generally come 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. For nondelegated applications, the application will not be considered filed until received by both OTS-Washington and the Regional Office.

For nondelegated applications that involve specialty areas, such as CRA, trust, or insurance issues, a copy of the application must be provided to the corresponding OTS-Washington specialist.

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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 review requests for a waiver of an application requirement that certain information be supplied, in a timely manner. 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 an 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 the 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 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 application being deemed complete, commencing the period for review.

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Applications filed to combine with an FDIC-insured institution under 563.22(a)(1) are deemed to be automatically approved 30 calendar days after OTS sends written notice that the application is complete, unless:

- The acquiring institution does not meet the criteria for expedited treatment under § 516.5;
- The Regional Office recommends to OTS-Washington the imposition of nonstandard conditions prior to approving the application;
- OTS suspends the applicable time frames under § 516.190;
- OTS raises objections to the transaction;
- The resulting savings institution would be one of the largest depository institutions competing in the relevant geographic market (see 12 C.F.R. §§ 563.22(f)(5)-(f)(7) for further details);
- The Herfindahl-Hirschman Index (HHI) in the relevant geographic area was more than 1800 before the transaction and the increase in the HHI used by the transaction would be 50 or more;
- In a transaction involving potential competition, OTS determines that the acquiring institution is one of three or fewer potential entrants into the relevant geographic area;
- The acquiring institution has assets of \$1 billion or more and proposes to acquire assets of \$1 billion or more;
- The resulting institution has a composite CRA rating of less than satisfactory, or is otherwise seriously deficient with respect to OTS nondiscrimination regulations and the deficiencies have not been resolved to the satisfaction of OTS;
- The transaction involves any supervisory or assistance agreement with OTS or FDIC;
- The transaction is part of a conversion under 12 C.F.R. Part 563b;
- The transaction raises a significant issue of law or policy; OR
- The transaction is opposed by any constituent institution or contested by a competing acquiror.

Applications that do not qualify for the 30-day automatic approval are subject to the 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.

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

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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 OTS 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.

Notices under Expedited Treatment

If OTS determines that a combination filing under 563.22(c) may be processed under expedited treatment, OTS must be notified of the transaction at least 30 days prior to the effective date.

Within five business days of receipt of the notice and fee, OTS must notify the applicant of the notice's receipt. The appropriate fee must accompany each notice in order for the filing to be considered filed.

The applicant may engage in the proposed activities upon the expiration of 30 calendar days after the filing date of its notice, unless OTS takes one of the following actions before expiration of that time period:

- Requests, in writing, any additional information necessary to supplement the notification;
- Notifies the applicant that the notice is subject to standard treatment as it raises a supervisory concern, raises a significant issue of law or policy, or requires significant additional information;
- Suspends the time frames pursuant to 12 C.F.R. § 516.190; or
- Disapproves of the notice.

Failure by OTS to act within 30 calendar days of receipt of the notice for processing shall result in the filed notice being accepted. If supplemental information is requested, the applicant will have 30 days to provide such information. The 30-day time frame will begin anew upon receipt of such information.

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.

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Bank Merger Act

The Bank Merger Act (BMA) states that OTS may not approve: (i) any proposed merger transaction that would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States; or (ii) any merger transaction the effect of which, in any section of the country, may be to substantially lessen competition, tend to create a monopoly or, in any other manner, restrain trade, unless OTS finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. Additionally, the BMA requires that OTS take into consideration the financial and managerial resources, future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

Unless it has been determined that immediate action is necessary and competitive factors reports have therefore been dispensed with, the reviewer must send a copy of the application (provided by the applicant as detailed above) to and request reports on the competitive factors involved from the Attorney General (Department of Justice); the Comptroller of the Currency; the appropriate Federal Reserve Bank; and the Federal Deposit Insurance Corporation. Generally, the reports should be furnished by the agencies within 30 calendar days of request. However, in certain emergency situations this time frame may be lessened to ten days (see § 563.22(e)(2)).

For certain transactions that are inherently competitively neutral, the Department of Justice has agreed to allow OTS to use a streamlined processing procedure. Such transactions include: (i) mergers between savings associations if at least 50 percent of the voting stock of the involved institutions is owned by the same company, person, or group of persons and/or companies acting in concert, or if one of the savings associations controls the other; (ii) the purchase of assets and assumption of liabilities of branch offices, if a single savings and loan holding company owns more than 50 percent of the outstanding voting stock of each of the savings associations involved in the transaction; and (iii) mergers between an interim savings association and an existing savings association to facilitate the formation of a unitary savings and loan holding company.

For competitively neutral transactions the initial letter sent with the application copy to the Department of Justice will indicate that the transaction is deemed to have received “interim approval” and request confirmation that the application is subject to the special processing procedure. Provided OTS’s final approval of the application is granted after passage of 30 days from the filing date, the transaction may be consummated immediately upon approval as opposed to waiting 15 days after approval as required under ordinary BMA transactions.

Immediately upon approval of an application, OTS must provide a letter to the Attorney General/DOJ informing it of the approval and including a copy of the approval letter/order.

Sample BMA letters for each of the above scenarios are included in the Bank Merger Act Transmittal Forms Section of the handbook (Section 030).

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Regulatory Criteria

The authority of OTS to act on a combination application involving an FDIC-insured institution is set forth in 12 USC § 1828(c)(2) and 12 C.F.R. § 563.22. Additionally, OTS must consider combination applications under the Community Reinvestment Act of 1977, 12 USC §§ 2901-2905, as set forth in 12 C.F.R. Part 563e.

For all applications filed under 12 C.F.R. Section 563.22(a) and (c), OTS will consider the following criteria.

- The capital level of the resulting savings institution;
- Managerial resources of the constituent institutions;
- The financial resources and future prospects of the constituent institutions;
- The convenience and needs of the communities to be served;
- The conformity of the transaction to applicable law, regulation, and supervisory policies; and
- Factors relating to the fairness of and disclosure concerning the transaction.

With regard to the effect of the CRA on combination applications, the resulting institution's record in meeting the credit needs of its community, consistent with safe and sound operations, is a consideration in approval of the application.

Decision Guidelines

The statutory and regulatory requirements for determining whether OTS should approve a merger application 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 of the resulting institution. OTS should conclude that the community will be served and that the transaction will comply with applicable rules and regulations. In addition, the transaction should be fair to all parties concerned (savings account holders, borrowers, creditors, and stockholders of each savings association). OTS should consider the following factors 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?
 - * OTS Form 1639, OTS Form 1584, or OTS Form 1589;
 - * Copies of proposed employment contracts and evidence of regulatory compliance;
 - * Pro forma financial information, including capital calculations, showing the impact of the combination on the resulting institution and for the first year following the combination;
 - * If required by OTS, a three-year business plan for the resulting institution;

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- * Additional copies of the application to be forwarded to the Department of Justice and other banking regulators for review under the Bank Merger Act;
 - * If there will be any changes in market area to be served, an amended CRA plan for the resulting institution;
 - * If applicable, a branch closing notice; and
 - * Information to demonstrate that the application meets relevant approval standards.
-
- If the merging institution is not an OTS-regulated entity, has the Regional Office contacted the appropriate regulator to discuss the supervisory and examination background of the institution? Has the Regional Office obtained and reviewed examination reports from the primary federal or state regulator?
 - If there is not a recent examination of the institution to be acquired and merged or if there are significant risks to be acquired or unresolved regulatory concerns, has the Regional Office conducted an eligibility examination of the institution?
 - Has the applicant made the appropriate branch closing notification to customers, if applicable?
 - Has the applicant complied with the HOLA, and all other laws, rules, and regulations and policies of the OTS concerning combinations?
 - Does the application include a narrative summary of the plan or merger, including a full description of the basic terms and conditions of the plan?
 - Does the transaction appear to be the result of arms' length bargaining?
 - Does the application include evidence of approval of members or stockholders, as applicable?
 - Do the resulting board of directors and senior management have the qualifications and experience necessary to operate the institution in a safe and sound manner?
 - Is compensation, including deferred compensation, to be paid to officers, directors, and controlling persons of the disappearing institution by the resulting institution reasonable?
 - Are any proposed increases in compensation to officers and directors of the disappearing institution reasonable? Note that an increase in excess of the greater of 15 percent or \$10,000 gives rise to a presumption of unreasonableness and sale of control. Sufficient information should be submitted to rebut this presumption (for example, increased responsibilities and duties of management).
 - Will an advisory board be elected? If so, members should not be elected for a term greater than 1 year.
 - Does the application describe and justify the duties and responsibilities and any compensation to be paid to the advisory board?
 - Are advisory board fees reasonable? Note that advisory board fees in excess of 115 percent of directors' fees paid by the disappearing savings institution prior to the transaction will give rise to a presumption of unreasonableness and sale of control. Sufficient information should

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- be provided to rebut this presumption (for example, increased responsibilities and duties of the directors).
- Do proposed employment agreements comply with the requirements of 12 C.F.R. § 563.39 and RB 27-a?
 - Will the balance sheet and business strategy of the merged institution comply with the lending and investment limitations of Section 5(c) of HOLA and 12 C.F.R. Part 560?
 - Has the applicant provided financial projections for the combined institution that are reasonable and well supported?
 - Is the transaction consistent with the applicant's business objectives?
 - Has the applicant provided for appropriate management and policies for any significant new activities or risks to be assumed?
 - How does the transaction change the institution's risk profile?
 - Will future operations be profitable?
 - Does the application provide information concerning the accounting and tax treatment of the transaction?
 - 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?
 - Are the fees to be paid for any professional services in connection with the transaction fair?
 - Do the financial projections demonstrate compliance with OTS capital requirements?
 - Is capital adequate based on the proposed business philosophy of the resulting institution?
 - If a capital distribution is proposed in connection with a combination, can the distribution be paid under 12 C.F.R. § 563.141(c)?
 - Does the applicant indicate that QTL compliance will be maintained?
 - Does the resulting institution have a satisfactory history of compliance with the CRA and a reasonable plan to meet its obligations under the CRA in the future?
 - If the transaction will result in any lessening of competition in any section of the country, are the anticompetitive effects clearly outweighed by the probable effect of the transaction in meeting the convenience and needs of the communities to be served?
 - Has OTS received responses from the Department of Justice and the banking regulators regarding the competitive factors involved in the transaction?
 - Will the resulting savings institution meet the identified convenience and needs in the target market, including the low- and moderate-income needs?
 - Will the resulting institution continue to provide credit for housing consistent with safe and sound banking principles?

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Conditions

Generally, the following conditions will be imposed on any approval for a savings institution to combine with an FDIC-insured or a non-FDIC insured depository institution.

- The Savings Bank 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 proposed transaction must be consummated no earlier than 15 calendar days (*if subject to BMA*) and no later than 120 calendar days from the date of the approval letter;
- On the business day prior to the date of consummation of the proposed transaction, the chief financial officer of the Savings Bank 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 Savings Bank as disclosed in the application;
- The Savings Bank 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 Savings Bank shall 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 in connection with a merger transaction. 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. Listed below are examples of frequently imposed nonstandard conditions:

- The institution must comply with the asset investment limitations contained in Section 5(c)(2)(D) of HOLA within 2 years.
- The institution must obtain the written approval of the Regional Director prior to execution or implementation of any employment agreements to be entered into in connection with the transaction.

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

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organized and separated into public and confidential material, and clearly identified as such. The public and confidential sections must be arranged in chronological order.

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 Office, including a review of the documentation maintained in the application file.

INFORMATION SOURCES

Statutes

- Section 3(l) FDIA (12 USC § 1813(l))
- Section 3(p) FDIC (12 USC § 1813(p))
- Section 5(c) HOLA (12 USC § 1464(5)(c))
- Sections 5(d)(2) and (3) FDIA (12 USC § 1815)
- Section 5(r) HOLA (12 USC § 1464(r))
- Section 10(m) HOLA (12 USC § 1467a)
- Section 18(c) FDIA (12 USC § 1828(c))
- Section 42 FDIA (12 USC § 1831r-1)
- 12 USC §§ 2901-2905

Regulations

- 12 C.F.R. Part 516
- 12 C.F.R. Part 546
- 12 C.F.R. § 552.13
- 12 C.F.R. § 556.5
- 12 C.F.R. § 563.22
- 12 C.F.R. § 563.39
- 12 C.F.R. § 563.141(c)

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12 C.F.R. § 330.4 (FDIC's Deposit Insurance Coverage regulations)
12 C.F.R. Part 563e

OTS Bulletins/Memoranda/Orders

Transmittal 220, June 30, 1999
Regulatory Bulletin 27a, March 5, 1993
Legal Alert Memo 10, December 8, 1989
Legal Alert Memo 17, October 26, 1990
Order No. 95-177, September 26, 1995
Thrift Bulletin 48-17

Other

FDIC Deposit Summary - Can be accessed from the FDIC's web page. Specific address:
www.fdic.gov/news/publications/public/index.html#statistical

U.S. Department of Justice Merger Guidelines, June 14, 1982

OTS Forms

Form 1584
Form 1589
Form 1639

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This handbook section provides information regarding the filing of applications involving: (i) a savings institution's purchase of less than all or substantially all of the assets of another FDIC insured depository institution; (ii) a savings institution's assumption of the liability to pay any deposit made in any other FDIC-insured depository institution; and (iii) the sale of assets and the assumption of liabilities by a savings institution in bulk and not in the ordinary course of business. These transactions include branch purchases/sales between thrifts, branch purchases/sales between a bank and a savings institution, and purchases of trust accounts from an FDIC-insured entity. 12 C.F.R. §§ 563.22(a)(2) and (c) set forth OTS regulatory requirements with respect to these types of transactions.

Transactions under § 563.22(a)(2) in which a savings institution assumes deposit liabilities from another FDIC-insured depository institution must also be reviewed by OTS under the Bank Merger Act (Section 18(c) of the Federal Deposit Insurance Act). As discussed in more detail below, there are additional filing and publication requirements for these types of transactions.

In addition, this handbook section provides information about the filing of applications involving the purchase of assets and/or assumption of liabilities by savings institutions from non-FDIC insured depository institutions. 12 C.F.R. § 563.22(c) sets forth OTS regulatory requirements with respect to these types of transactions.

Transactions involving whole entity combinations or the purchase of substantially all of the assets of an FDIC-insured depository institution are not covered by this handbook section. (See Section 230 of the handbook for information concerning those types of transactions).

FILING REQUIREMENTS

Delegated Authority

Generally, applications filed under this section may be processed by the Regional Office under delegated authority. However, certain situations may cause a filing to be nondelegated, including: (i) transactions raising significant issues of law or policy; (ii) transactions that are hostile or contested; (iii) transactions that raise significant competitive factors issues; and (iv) transactions involving CRA protests. See Delegations Section of the handbook (Section 040) for further information.

Expedited and Standard Processing Procedures

Applications filed under 12 C.F.R. § 563.22(a)(2) to assume liability to pay deposits in any insured depository institution are not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. These applications will be processed utilizing the procedures set forth in 12 C.F.R. §§ 516.210-516.290. For transactions filed under 563.22(a)(2), there is a 30-day automatic approval process set forth in 12 C.F.R. § 563.22(f) which applies in certain situations. Details of this provision are discussed below in the Processing Procedures and Time Frames section.

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Applications filed under § 563.22(c) by a savings institution which involve the sale of assets and/or the transfer of liabilities to a depository institution, or the bulk purchase or sale of assets or liabilities not made in the ordinary course of business from both insured and noninsured depository institutions may be processed under expedited or standard treatment as set forth in 12 C.F.R. Part 516.

An institution is deemed an expedited filer if it:

1. Has a composite CAMELS rating of “1” or “2;”
2. Has a CRA rating of “Satisfactory” or better;
3. Has a Compliance rating of “1” or “2;”
4. Meets or exceeds the minimum capital requirements set forth in 12 C.F.R. Part 567; and
5. Has not been notified that it is in troubled condition.

An institution is deemed a standard filer if it:

1. Has a composite CAMELS rating of “3,” “4” or “5;”
2. Has a less than “Satisfactory” CRA rating;
3. Has a Compliance rating of “3,” “4” or “5;”
4. Has inadequate capital or fails at least one of its capital requirements;
5. Has been notified that it is in troubled condition;
6. The applicant is not a savings institution; or
7. The applicant has not received a composite CAMELS rating, a CRA rating, or a compliance rating from any federal banking regulator.

Prefiling Meeting Requirements

Prefiling meetings are not required for these filings. 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

An institution proposing to assume deposit liabilities from another insured depository institution under 12 C.F.R. § 563.22(a)(2) must file an application with OTS. If the transaction involves two savings institutions, both institutions must receive OTS approval; however, OTS will permit a joint filing by the two institutions.

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In addition, an institution proposing to sell assets and transfer liabilities to another insured depository institution, or to engage in a transaction involving the bulk purchase or sale of assets or liabilities not made in the ordinary course of business to either an insured or a noninsured depository institution must make the appropriate filing with OTS.

If delegated, the application should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant should file the original and two copies of the application and the application filing fee with the 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. For applications that are not delegated to the Regional Office, an additional three copies of the application should be filed with the Applications Filing Room in OTS-Washington.

Applicants subject to the Bank Merger Act (BMA) are required to file four additional copies of the application with the Regional Director. These copies should be distributed by the Regional Office to the Department of Justice, Office of the Comptroller of the Currency, Federal Reserve Board, and Federal Deposit Insurance Corporation.

If the applicant proposes to assume deposits from another FDIC-insured depository institution under 563.22(a), the applicant should file an application on Form 1639 – Interagency Bank Merger Act Application. As indicated above, if the applicant proposes to assume deposit liabilities from another savings institution, the other savings institution must also file with OTS. Two OTS-regulated entities may make a joint filing and submit the appropriate information for each institution.

If the applicant proposes to sell assets and/or transfer liabilities to another depository institution, or to engage in the bulk purchase or sale of assets or liabilities not made in the ordinary course of business to either an insured or noninsured depository institutions under 563.22(c), it should file either an application on Form 1589 (Transfer Application) or a notice on Form 1584 (Notice Filing Pursuant to 12 C.F.R. § 563.22(c)).

For applications filed under either §§ 563.22(a)(2) or (c), the applicant should include the following information if it has not otherwise been provided in connection with the application forms:

- Sufficient information for OTS to understand the financial condition of the applicant after the transaction. If the institution will undergo major changes in its operations as a result of the transaction, OTS may require the submission of a complete business plan for the applicant institution. The applicant should contact the appropriate Regional Office to determine if a business plan will be required;
- Sufficient information for OTS to address the criteria set forth in 12 C.F.R. § 563.22(d)(1) and (2);
- If the applicant is purchasing assets and/or assuming liabilities from a non-savings institution or a non-FDIC-insured institution, the application should:

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- * Provide verification that the institution will continue to comply with the lending and investment limitations of Section 5(c) of HOLA; and
 - * Include detailed calculations that verify that the applicant institution will continue to meet the Qualified Thrift Lender (QTL) test subsequent to the transaction.
- Any employment agreements being entered into or amended in connection with the transaction; and
 - The application should indicate if actions are required by any other regulatory agencies. If so, the applicant should specify the agencies, filings, and actions.

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.

Special Considerations

For applications filed to assume the deposit liabilities of another insured depository institution, the following publication requirements and comment procedures apply. Filings under 563.22(c) are not subject to these requirements.

Publication Requirements

Unless OTS finds that it must act immediately to prevent the default of one of the savings institutions involved, the applicant must publish notice of its intent to assume liability to pay deposits made in an FDIC-insured depository 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. In addition to the initial publication, the applicant must publish on a weekly basis for a 30-day period. 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 resulting savings institution is to be located. If the Regional Office determines that the primary language of a significant number of adult residents of the

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community is a language other than English, the applicant may also be required to publish notice simultaneously in the appropriate language(s). A sample publication notice may be found in the Publication Forms section of the handbook (Section 020).

Comment Procedures

Any person may submit a written comment to the Regional Office supporting or opposing a transaction within the publication period. OTS will not consider any late filed comments unless the commenter demonstrates good cause for why he/she 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 application. OTS can extend the comment period with demonstrated good cause for why a commenter was unable to submit a timely comment. The duration of an extension request is 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 his/her 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 conferences 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

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and 516.180, 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 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.

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

Eligibility Examinations

If a non-OTS-regulated depository institution proposes to transfer a significant level of assets and/or liabilities to an OTS-regulated institution, OTS may conduct an eligibility examination or review of the assets and/or liabilities being transferred. For depository institutions that have recently been examined by a federal or state banking or trust regulator and received satisfactory ratings (CAMELS 1 or 2, Compliance 1 or 2, CRA Outstanding or Satisfactory, Trust 1 or 2), OTS may decide not to require an eligibility examination, unless the application raises a material issue not addressed by the report of examination. Also, when the most recent safety and soundness examination is older than six months, OTS will consider the need for an eligibility examination due to the age of the existing examination report. Absent these concerns, OTS will generally rely on the most recent report of examination as part of its review of the application.

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

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(PERK) requesting more detailed information that should be made available to the examiners upon their arrival. OTS does not normally charge a fee for an eligibility examination. However, OTS may impose an hourly fee if the examiners encounter significant problems that require additional review beyond the scope of a standard eligibility examination.

Accountholder Notification

If an institution has filed an application to transfer deposit liabilities to another depository institution, the institution must notify an affected accountholder of the proposed account transfer and advise the accountholder of the option of retaining the account in the applicant institution under the following circumstances:

- The applicant will be transferring account liabilities to an institution that does not have its accounts insured by the FDIC or the National Credit Union Share Insurance Fund; or
- The applicant is a mutual savings institution and proposes to transfer account liabilities to a stock depository institution.

The notice should allow an affected accountholder at least 30 days to consider whether to retain accounts in the transferring savings institution.

Trust Operations

If the applicant is acquiring trust assets from a depository institution and has not previously been approved to exercise the appropriate type of trust powers or has not been approved to exercise trust powers in the state in which they will now be exercised, a trust powers application must be filed. However, if the applicant is a state chartered savings institution and is acquiring trust assets, it does not need to file a trust application. See Section 620 of the handbook for guidance on the processing of trust powers applications.

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 nondelegated will be transmitted from OTS-Washington. Correspondence on delegated applications will generally come 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. For nondelegated applications, the

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application will not be considered filed until received by both OTS-Washington and the Regional Office.

For nondelegated applications that involve specialty areas, such as CRA, trust, or insurance issues, a copy of the application must be provided 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 review requests for a waiver of an application requirement that certain information be supplied, in a timely manner. 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 an 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 the 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 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

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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 application being deemed complete, commencing the period for review.

Applications filed to assume deposits from an FDIC-insured institution under 563.22(a)(2) are deemed to be automatically approved 30 calendar days after OTS sends written notice that the application is complete, unless:

- The acquiring institution does not meet the criteria for expedited treatment under § 516.5;
- The Regional Office recommends to OTS-Washington the imposition of nonstandard conditions prior to approving the application;
- OTS suspends the applicable time frames under § 516.190;
- OTS raises objections to the transaction;
- The resulting savings institution would be one of the largest depository institutions competing in the relevant geographic market (see 12 C.F.R. §§ 563.22(f)(5)-(f)(7) for further details);
- The Herfindahl-Hirschman Index (HHI) in the relevant geographic area was more than 1800 before the transaction and the increase in the HHI used by the transaction would be 50 or more;
- In a transaction involving potential competition, OTS determines that the acquiring institution is one of three or fewer potential entrants into the relevant geographic area;
- The acquiring institution has assets of \$1 billion or more and proposes to acquire assets of \$1 billion or more;
- The resulting institution has a composite CRA rating of less than satisfactory, or is otherwise seriously deficient with respect to OTS nondiscrimination regulations and the deficiencies have not been resolved to the satisfaction of OTS;
- The transaction involves any supervisory or assistance agreement with OTS or FDIC;
- The transaction is part of a conversion under 12 C.F.R. Part 563b;
- The transaction raises a significant issue of law or policy; or
- The transaction is opposed by any constituent institution or contested by a competing acquiror.

Applications that do not qualify for the 30-day automatic approval are subject to the 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.

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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 a determination is made 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.

Notices under Expedited Treatment

If OTS determines that a filing under 563.22(c) may be processed under expedited treatment, OTS must be notified of the transaction at least 30 days prior to the effective date.

Within five business days of receipt of the notice and fee, OTS must notify the applicant of the notice's receipt. The appropriate fee must accompany each notice in order for the filing to be considered filed.

The applicant may engage in the proposed activities upon the expiration of 30 calendar days after the filing date of its notice, unless OTS takes one of the following actions before expiration of that time period:

- Requests, in writing, any additional information necessary to supplement the notification;
- Notifies the applicant that the notice is subject to standard treatment as it raises a supervisory concern, raises a significant issue of law or policy, or requires significant additional information;
- Suspends the time frames pursuant to 12 C.F.R. § 516.190; or
- Disapproves of the notice.

Failure by OTS to act within 30 calendar days of receipt of the notice for processing shall result in the filed notice being accepted. If supplemental information is requested, the applicant will have 30 days

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to provide such information. The 30-day time frame will begin anew upon receipt of such information.

For purposes of calculating all 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.

Bank Merger Act

The Bank Merger Act (BMA) states that OTS may not approve: (i) any proposed merger transaction that would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States; or (ii) any merger transaction the effect of which, in any section of the country, may be to substantially lessen competition, tend to create a monopoly or, in any other manner, restrain trade, unless OTS finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. Additionally, the BMA requires that OTS take into consideration the financial and managerial resources, future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. **The BMA applies to all applications filed under 563.22(a)(2).**

Unless it has been determined that immediate action is necessary and competitive factors reports have therefore been dispensed with, the reviewer must send a copy of the application (provided by the applicant as detailed above) to and request reports on the competitive factors involved from the Attorney General (Department of Justice); the Comptroller of the Currency; the appropriate Federal Reserve Bank; and the Federal Deposit Insurance Corporation. Generally, the reports should be furnished by the agencies within 30 calendar days of request. However, in certain emergency situations this time frame may be lessened to ten days (see § 563.22(e)(2)).

For certain transactions that are inherently competitively neutral, the Department of Justice has agreed to allow OTS to use a streamlined processing procedure. Such transactions include: (i) mergers between savings associations if at least 50 percent of the voting stock of the involved institutions is owned by the same company, person, or group of persons and/or companies acting in concert, or if one of the savings associations controls the other; (ii) the purchase of assets and assumption of liabilities of branch offices, if a single savings and loan holding company owns more than 50 percent of the outstanding voting stock of each of the savings associations involved in the transaction; and (iii) mergers between an interim savings association and an existing savings association to facilitate the formation of a unitary savings and loan holding company.

For competitively neutral transactions the initial letter sent with the application copy to the Department of Justice will indicate that the transaction is deemed to have received “interim approval” and request confirmation that the application is subject to the special processing procedure. Provided OTS’s final approval of the application is granted after passage of 30 days from the filing date, the

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transaction may be consummated immediately upon approval as opposed to waiting 15 days after approval as required under ordinary BMA transactions.

Immediately upon approval of an application, OTS must provide a letter to the Attorney General/DOJ informing it of the approval and including a copy of the approval letter/order.

Sample BMA letters for each of the above scenarios are included in the Bank Merger Act Transmittal Forms Section of the handbook (Section 030).

Regulatory Criteria

The authority of OTS to act on an application by a savings institution under this section is set forth in 12 USC §§ 1828(c)(2) and (c)(5) and 12 C.F.R. § 563.22. Additionally, if a savings institution will be purchasing assets and/or assuming deposit liabilities, OTS must consider these applications under the Community Reinvestment Act of 1977, 12 USC §§ 2901-2905, as set forth in 12 C.F.R. Part 563e.

For all applications filed under 12 C.F.R. §§ 563.22(a) and (c), OTS will consider the following criteria.

- The capital level of the applicant savings institution;
- Managerial resources of the applicant savings institution;
- The financial resources and future prospects of the applicant savings institution;
- The convenience and needs of the communities to be served;
- The conformity of the transaction to applicable law, regulation, and supervisory policies; and
- Factors relating to the fairness of and disclosure concerning the transaction.

With regard to the effect of the CRA on purchase and/or assumption applications, the applicant institution's record in meeting the credit needs of its community, consistent with safe and sound operations, is a consideration in approval of the application.

Decision Guidelines

The statutory and regulatory requirements for determining whether OTS should approve an application by a savings institution to purchase or sell assets and/or assume or transfer liabilities from a depository institution are designed to ensure the viability and safe and sound operation of the applicant savings institution. In general, the analysis should conclude that capital is sufficient to support the operations of the institution following the transaction and that management has the necessary expertise and controls to implement the business plan of the institution. OTS should conclude that the community will be served and that the transaction will comply with applicable rules

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and regulations. In addition, the transaction should be fair to all parties concerned (savings account holders, borrowers, creditors, and stockholders of each savings association). OTS should consider the following factors 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?
 - * OTS Form 1639, OTS Form 1584, or OTS Form 1589;
 - * Copies of proposed employment contracts and evidence of regulatory compliance;
 - * Pro forma financial information, including capital calculations, showing the impact of the transaction on the applicant institution and for the first year following the transaction;
 - * If required by OTS, a three-year business plan for the applicant institution;
 - * Additional copies of the application to be forwarded to the Department of Justice and other banking regulators for review under the Bank Merger Act;
 - * If there will be any changes in market area to be served, an amended CRA plan for the resulting institution; and
 - * Information to demonstrate that the application meets relevant approval standards.
- If a non-OTS regulated depository institution proposes to sell a significant level of assets and/or transfer a significant level of liabilities to an OTS-regulated institution, has the Regional Office contacted the appropriate regulator to discuss the supervisory and examination background of the selling or transferring institution? Has the Regional Office obtained and reviewed examination reports from the primary federal or state regulator, if appropriate?
- If there is not a recent examination of the institution that proposes to transfer a significant level of assets and/or liabilities to an OTS-regulated institution, has an eligibility examination or review (onsite or offsite) of those assets or liabilities been completed, if appropriate?
- Has the applicant made the appropriate notification to accountholders if required by 12 C.F.R. § 563.22(e)(5)?
- Has the applicant complied with the HOLA, and all other laws, rules, and regulations and policies of the OTS concerning purchase and assumption transactions?
- Does the application include a full description of the basic terms and conditions of the transaction?
- Does the transaction appear to be the result of arms' length bargaining?
- Does the board of directors and senior management have the qualifications and experience necessary to operate the applicant institution in a safe and sound manner?

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- Are any proposed increases in compensation reasonable? Note that an increase in excess of the greater of 15 percent or \$10,000 gives rise to a presumption of unreasonableness and sale of control. Sufficient information should be submitted to rebut this presumption (for example, increased responsibilities and duties of management).
- Will an advisory board be elected? If so, members should not be elected for a term greater than 1 year.
- Does the application describe and justify the duties and responsibilities and any compensation to be paid to the advisory board?
- Are advisory board fees reasonable? Note that advisory board fees in excess of 115 percent of directors' fees paid by the selling savings institution prior to the transaction will give rise to a presumption of unreasonableness and sale of control. Sufficient information should be provided to rebut this presumption (for example, increased responsibilities and duties of the directors).
- Do proposed employment agreements comply with the requirements of 12 C.F.R. § 563.39 and RB 27-a?
- Will the balance sheet and business strategy of the applicant institution comply with the lending and investment limitations of Section 5(c) of HOLA and 12 C.F.R. Part 560 following the transaction?
- Has the applicant provided financial projections that are reasonable and well supported?
- Is the transaction consistent with the applicant's business objectives?
- Has the applicant provided for appropriate management and policies for any significant new activities or risks to be assumed?
- How does the transaction change the institution's risk profile?
- Will future operations be profitable?
- Does the application provide information concerning the accounting and tax treatment of the transaction?
- Is the applicant's proposed operation of any additional branches consistent with OTS's branching policy statement (12 C.F.R. § 556.5) and Section 5(r) of HOLA?
- Are the fees to be paid for any professional services in connection with the transaction fair?
- Do the financial projections demonstrate compliance with OTS capital requirements?
- Is capital adequate based on the proposed business philosophy of the applicant institution?
- Does the applicant indicate that QTL compliance will be maintained?
- Does the applicant institution have a satisfactory history of compliance with the CRA and a reasonable plan to meet its obligations under the CRA in the future?

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- If the transaction will result in any lessening of competition in any section of the country, are the anticompetitive effects clearly outweighed by the probable effect of the transaction in meeting the convenience and needs of the communities to be served?
- Has OTS received responses from the Department of Justice and the banking regulators regarding the competitive factors involved in the transaction?
- Will the applicant savings institution meet the identified convenience and needs in the target market, including the low- and moderate-income needs after the transaction is completed?
- Will the applicant institution continue to provide credit for housing consistent with safe and sound banking principles?

Conditions

Generally, the following conditions will be imposed on any approval of an application for a savings institution to purchase or sale assets and/or assume or transfer liabilities from a depository institution:

- The Savings Bank 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 proposed transaction must be consummated no earlier than 15 calendar days (*if subject to BMA*) and no later than 120 calendar days from the date of the approval letter;
- On the business day prior to the date of consummation of the proposed transaction, the chief financial officer of the Savings Bank 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 Savings Bank as disclosed in the application;
- The Savings Bank 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 Savings Bank shall 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 in connection with a purchase or assumption transaction. Any nonstandard conditions imposed will be based on the individual circumstances surrounding the institution and the transaction itself. In circumstances where nonstandard conditions will be imposed, they 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.

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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.

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's applications staff 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 applications staff 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 Office, including a review of the documentation maintained in the application file.

INFORMATION SOURCES

Statutes

- Section 3(l) FDIA (12 USC § 1813(l))
- Section 3(p) FDIA (12 USC § 1813(p))
- Section 5(c) HOLA (12 USC § 1464(c))
- Sections 5(d)(2) and (3) FDIA (12 USC § 1815)
- Section 5(r) HOLA (12 USC § 1464(r))
- Section 10(m) HOLA (12 USC § 1467a)
- Section 18(c) FDIA (12 USC § 1828(c))
- Section 42 FDIA (12 USC § 1831r-1)
- 12 USC §§ 2901-2905

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Regulations

12 C.F.R. Part 516
12 C.F.R. § 556.5
12 C.F.R. § 563.22
12 C.F.R. § 563.39
12 C.F.R. § 330.4 (FDIC's Deposit Insurance Coverage regulations)
12 C.F.R. Part 563e

OTS Bulletins/Memoranda/Orders

Transmittal 220, June 30, 1999
Regulatory Bulletin 27a, March 5, 1993
Legal Alert Memo 10, December 8, 1989
Legal Alert Memo 17, October 26, 1990
Order No. 95-177, September 26, 1995
Thrift Bulletin 48-17

Other

FDIC Deposit Summary - Can be accessed from the FDIC's web page. Specific address:
www.fdic.gov/news/publications/public/index.html#statistical

U.S. Department of Justice Merger Guidelines, June 14, 1982

OTS Forms

Form 1584
Form 1589
Form 1639

This handbook section provides guidance on notices filed by individuals seeking to acquire control of a savings institution. The Office of Thrift Supervision (OTS) has the authority to prevent an individual of questionable integrity or financial condition from acquiring control of a savings institution. Furthermore, OTS has the authority to deny a proposed acquisition of control if it would lessen competition in the banking industry or have an adverse effect on the Savings Association Insurance Fund (SAIF) or Bank Insurance Fund (BIF).

12 C.F.R. § 574.4 includes a list of the circumstances under which an individual is deemed to have acquired control of a savings institution. Control of an institution is divided into two categories: rebuttable control and conclusive control. Rebuttable control occurs, for example, when, at a minimum, ten percent of any class of voting stock, or 25 percent of any class of stock, is acquired, and a control factor exists (e.g., acquiror is one of the two largest holders of any class of stock). A more detailed discussion of rebuttable control is provided in Section 320, Rebuttals.

An individual has acquired conclusive control of a savings institution if the individual, or a group of individuals acting in concert, acquires more than 25 percent of a class of the institution's voting stock or controls the election of a majority of the directors of the institution. If an individual proposes to acquire conclusive control, or is in a rebuttable position and elects not to rebut control, the individual must file a notice of change in control (notice). Except for special circumstances set forth in 12 C.F.R. § 574.3(d), OTS must issue a no-objection letter prior to the acquisition of control.

Note: The definition of a savings institution, as set forth in 12 C.F.R. § 574.2(p), includes a savings and loan holding company.

FILING REQUIREMENTS

Delegated Authority

Generally, notices filed under this section may be processed by the Regional Office under delegated authority. Notices that are not delegated to the Regional Office are those involving: a significant issue of law or policy; filings under 12 C.F.R. § 563b.3(i); approval of requested waivers of statutes, regulations, OTS policy or significant notice requirements; adverse comments and formal meetings; hostile or contested acquisitions, opposition proxy solicitations or other potential acquisitions where there is a competing acquiror; person(s) subject to a pending notice of charges or formal investigation; or raise significant competitive factors. See Delegation Section 040 of the handbook for information on the delegation process

Expedited and Standard Processing Procedures

This notice is not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. Accordingly, the notice for change in control will be processed utilizing the procedures set forth in 12 C.F.R. § 574.6.

Prefiling Meeting Requirements

It is the applicant's responsibility to contact the Regional Office in a reasonable time period in advance of filing the notice, to discuss whether a prefiling meeting will be required. Since this notice is identified as a type that may necessitate a prefiling meeting, OTS anticipates that a meeting will be held in certain cases. The purpose of the meeting is to permit OTS and the applicant to identify any legal or policy issues before submission of the notice, and enable the applicant to address these issues early in the process. The Regional Office has the discretion to require a prefiling meeting, and 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 notice until the prefiling meeting requirements in 12 C.F.R. Part 516 are met, leading to significant delays in processing the notice.

When a meeting is required, the applicant should contact the Regional Office to determine which individuals should be present at the meeting. These individuals will be expected to discuss the salient aspects of the proposed transaction. Depending upon the circumstances of the proposed transaction, the Regional Office may require that information be provided prior to the meeting in a time frame in advance of the meeting acceptable to the Regional Office. If the Regional Office determines that the proposed transaction warrants the submission of a draft business plan, the plan at a minimum should:

- Describe clearly and completely the projected operations and activities;
- Provide financial projections for a three-year period;
- Discuss the associated risks and the impact of the transaction on the institution;
- 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 institution will serve the credit and lending needs in its target market.

Information and Form Requirements

Notices must receive approval prior to the acquisition of control except for certain transactions.

For the following transactions, the acquiror must file the appropriate notice within 90 days of acquisition of control. The acquiror must not take any action to direct management or policies of the institution or which are designed to effect a change in the business plan of the institution other than voting on matters that may be presented to stockholders by management, until OTS has acted favorably on the notice.

- Control acquired through *bona fide* gift;
- Control acquired through liquidation of a loan contracted in good faith where the loan was not made in the ordinary course of business of the lender;

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- Control acquired through a percentage increase in ownership following a stock split or redemption that was not *pro rata*; or
 - Control determined pursuant to 12 C.F.R. § 547(a) or (b) as a result of actions by third parties that are not within the control of the acquiror.

Control acquired through testate or intestate succession is also exempt from the filing requirements of 12 C.F.R. Part 574, provided that the acquiror transmits written notification of the acquisition to OTS within 60 days of the acquisition and provides such additional information as OTS may specifically request.

If delegated, all notices and the applicable filing fee should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant is required to file the original and two conformed copies of each notice. In addition, the applicant should provide three additional copies. These copies should be distributed by the Regional Office to the Office of the Comptroller of the Currency, Federal Reserve Board and Federal Deposit Insurance Corporation. If the applicant wishes to acquire a state-chartered institution, one additional copy should also be provided. All copies are to be clearly marked as to the type of filing, and should contain all exhibits and other pertinent documents. One copy must contain original signatures on all executed documents. For applications that are not delegated to the Regional Office, an additional three copies of the application should be filed with the Applications Filing Room in OTS-Washington.

Each notice submitted to OTS for action should include the following:

- Interagency Notice of Change in Control;
- Interagency Biographical and Financial Report, including financial statements for an acquiror's proprietary interests;
- Attachment A to Regulatory Bulletin 20;
- FBI fingerprint cards completed by the acquiror and processing fee made payable to OTS and submitted to the Regional Office;
- If funds are to be borrowed to acquire the stock, copies of any loan agreement or commitment letter;
- Three-year business plan;
- Proxy material; and
- Copies of any filings made with other regulatory agencies.

Confidentiality

The applicant must submit in writing, concurrently with the submission of the notice, any requests to keep specific portions of the notice 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 a notice 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 notice 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 notice. 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 and Comment Procedures

The applicant shall publish notice of its change in control filing no earlier than three days before and no later than three days after filing the notice, in accordance with the requirements of 12 C.F.R. § 574.6(d). Notice shall 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 institution is 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). See Publication Forms Section 020 of the handbook for examples of publication language.

Any person may submit a written comment supporting or opposing the application within 20 days after the filing date of the application. Up to an additional 20 days to submit comments may be obtained upon a showing of good cause, if a written request is received by OTS within the initial 20-day period. Comments received after the comment period shall not be part of the record and need not be considered by OTS. The duration of an extension request is 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 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.

Waiver of Certified Financial Statements

The Regional Director, or his/her designee, may grant, or deny, a request for the waiver of certified financial statements for an acquiror's proprietary interests, provided that the acquiror files the following information:

- A statement supporting the acquiror's contention that production of certified financial statements is unduly burdensome.

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- A table setting forth: (1) the acquiror's percent of interest and amount of investment in the savings institution; and (2) the amount of investment as a percentage of the acquiror's total assets, net worth, and gross income.

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 institution's stock. With respect to any changes in these individuals as a result of this application, said individuals must submit, at a minimum, an 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 will conduct a background investigation in compliance with RB-20. If appropriate, the review may also require OTS to contact other regulatory agencies to seek additional comments on the applicants. 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.

Safe Harbor Filings and Certifications of Ownership

An acquiror, including any person acting in concert, who owns less than 25 percent of the institution's voting stock, has no control factors present (see discussion in Section 320), and has no plans to solicit proxies from other stockholders, may make a "safe harbor" filing with OTS. In order to qualify for the safe harbor, an acquiror must submit a certification in the form set forth at 12 C.F.R.

§ 574.4(f)(1). OTS will accept a safe harbor filing when the certification is properly filed. Acquirors who claim safe harbor status may vote their stock freely and dissent with respect to their institution stock. It should be noted that the filing is not mandatory, but is available to investors who seek certainty that their investment complies with OTS control regulations.

Upon the acquisition of ten percent or more of any class of stock of an institution under circumstances that do not give rise to a conclusive or rebuttable control determination, an acquiror must file a certification of ownership with OTS in accordance with 12 C.F.R. § 574.5(a). Such certification is required based upon beneficial ownership of the stock. The certification identifies the savings institution and states that: the acquiror owns ten percent or more of any class of stock of the institution; the acquiror is not currently subject to a rebuttable or conclusive determination of control; and the acquiror will file a rebuttal or notice prior to taking any action that would give rise to a determination of control. An acquiror is not required to file a certification if the acquiror has already obtained OTS approval to acquire control or is in the process of obtaining such approval. The filing of a certification of ownership is not treated as a notice subject to any statutory or regulatory time frames for review. The certification provides OTS with notice of acquirors who have amassed substantial amounts of stock of a savings institution and, thus, are capable of acquiring control of the institution.

Interim Institutions

If an individual proposes to form an interim Federal savings institution, as defined in 12 C.F.R. § 541.18, to facilitate the acquisition of control, the transaction will be subject to the Bank Merger Act rather than the Change in Bank Control Act or 12 C.F.R. Part 574. The individual must file an application to establish and merge an interim institution.

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 institution will be organized;
- The form of any proposed transaction involving the organizing 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.

Prohibition on Offers to Acquire and Acquisitions of Stock for Three Years Following Conversion

If the subject institution converted from the mutual to stock form of ownership within the previous three years, no person may, directly or indirectly, acquire or offer to acquire the beneficial ownership of more than ten percent of any class of the institution's equity securities without OTS prior written approval. If a person violates this prohibition, the institution may not permit the person to vote shares in excess of ten percent, and may not count these shares in any shareholder vote.

Certain exceptions to the regulations governing offers to acquire stock within three years of conversion are set forth at 12 C.F.R. § 563b.3(i). OTS may deny an notice filed under 12 C.F.R. § 563b.3(i) if the proposed acquisition:

- Is contrary to the purposes of 12 C.F.R. Part 563b;
- Is manipulative or deceptive;
- Subverts the fairness of the conversion;
- Is likely to injure the institution;
- Is inconsistent with the institution's plan to meet the credit and lending needs of its proposed market area;
- Otherwise violates law or regulation; or
- Does not prudently deploy the institution's conversion proceeds.

The primary purposes of this rule are to provide a reasonable period of time for the institution to prudently deploy the new capital according to its business plan, for it to acclimate to operating as a

public company, and to do both without the distraction of considering takeover proposals. OTS does not believe acquisitions in the first three years following conversion are in the best interests of newly converted institutions, the communities the institutions serve, or the shareholders. In addition, OTS believes that the approval of friendly acquisitions may be inconsistent with the purposes of the conversion rules. As such, the standards for allowing such acquisitions are high and should not be approved unless there are significant risks to the institution operating on a stand-alone basis.

Actions Concerning Violations

OTS staff should review for violations of the Change in Control regulations on a case-by-case basis. During the review period, the shareholder(s) under review is prohibited from (i) receiving dividends from the subject institution and (ii) voting on his/her stock, other than proportionately with other stockholders.

OTS may take one or more of the following actions concerning a violation of the change in control regulations:

- Require the shareholder(s) under review to file a notice with the appropriate OTS office. (If OTS issues a no-objection letter, the violation will be remedied as of the date of the no-objection letter.)
- Require the shareholder to divest his/her stock holdings below a control threshold.
- Impose one or more enforcement actions against the shareholder(s).

The Reviewing Analyst should consult with the appropriate Regional Counsel to determine what action should be taken.

REVIEW GUIDELINES

Processing Procedures and Time Frames

As noted in the Delegated Authority section, certain notices are not subject to delegated authority and are processed concurrently with OTS-Washington staff. As a general matter, correspondence from OTS regarding notices that are nondelegated will be transmitted from OTS-Washington. Correspondence on delegated notices will generally come from the Regional Office.

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

Immediately upon receiving a notice, Regional staff should submit copies of the notice to the other appropriate Federal regulators for comments and allow 30 days for the regulators to review and provide comments. For notices relating to the acquisition of control of a state-chartered institution, the Regional staff should forward a copy of the notice and allow 30 days for the state authority to

review and provide comments. OTS should consider the views and recommendations of federal and state agencies in determining whether to disapprove a proposed acquisition of control.

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

- Deem the notice complete;
- Request, in writing, any additional information necessary to deem the notice complete; or
- Decline to further process the notice 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 notice for processing shall result in the filed notice being deemed complete, commencing the period for review.

OTS must timely review requests for a waiver of a notice 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 notice or may be treated as grounds for denial or disapproval of the notice.

After the timely filing of any additional information in response to an 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 notice complete;
- Deem the notice complete; or
- Decline to further process the notice 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 notice being deemed complete, commencing the period for review.

For transactions involving a contribution of assets (companies, loans, receivables, etc.) to the institution, OTS may elect to conduct an eligibility examination during the review process. OTS will

not deem a notice complete until it concludes the examination. In addition, OTS may request additional information as a result of the eligibility examination that must be submitted in accordance with the time frames set forth in this section.

Once the notice has been deemed complete, there is a 60-day review period during which time OTS will take into consideration all factors present in the notice 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 notice is deemed accepted automatically, and the applicant may thereafter consummate the transaction.

During the review period, OTS may request additional information if the information is necessary to resolve or clarify the issues presented in the notice. OTS may also notify the applicant that the notice is incomplete and require that the applicant to submit additional information to complete the notice. 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 before the expiration of the period for review.

Pursuant to 12 U.S.C. § 1817(j)(1) and 12 C.F.R. § 574.6(c)(3)(ii), the review period may be further extended not to exceed two additional times for not more than 45 days each time if:

- OTS determines that any acquiring party has not furnished all the information required by 12 C.F.R. Part 574;
- In OTS's judgment, any material information submitted is substantially inaccurate;
- OTS has been unable to complete an investigation of each acquiror because of any delay caused by, or the inadequate cooperation of, such acquiror; or
- OTS determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31 of the United States Code.

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.

Under 12 C.F.R. § 516.290, if OTS has not acted on a pending notice within two calendar years after the filing date, OTS may deem the notice withdrawn unless OTS determines that the applicant is actively pursuing a final determination on the notice. Notices 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 notice 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.

Regulatory Criteria

Authority to act on a notice is granted in the Change in Bank Control Act (12 U.S.C. § 1817(j)). The regulations under this statute are found in 12 C.F.R. Part 574. Specifically, 12 C.F.R. § 574.7(d) sets forth the grounds upon which a notice may be disapproved. These grounds include situations where:

- The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the banking business in any part of the United States.
- The effect of the proposed acquisition of control, in any section of the country, may be to substantially lessen competition, to create a monopoly, or in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.
- The financial condition of the acquiring person might jeopardize the financial stability of the institution or prejudice the interests of the depositors of the institution.
- The competence, experience, or integrity of the acquiring person, or any of the proposed management personnel, indicates that it would not be in the interests of the depositors of the institution, OTS, or the public to permit such person to control the institution.
- The acquiring person fails or refuses to furnish information requested by OTS.
- OTS determines that the proposed acquisition would have an adverse effect on the SAIF or BIF.

Note: If it appears that grounds for disapproval of a notice are present, OTS-Washington should be consulted as soon as possible to determine whether there is an adequate basis for disapproval.

12 C.F.R. § 574.7(g) sets forth a list of presumptive disqualifiers that, if applicable, could result in the disapproval of a potential acquiror's notice. The purpose of these regulatory provisions is to put potential acquirors on notice as to the grounds upon which a notice may be disapproved, unless adequately refuted. The following factors give rise to a rebuttable presumptive disqualifier:

- During the ten year period immediately preceding filing of the notice, criminal, civil, or administrative judgments, consents, or orders, and any indictments, formal investigations, examinations, or civil or administrative proceedings (excluding routine or customary audits, inspections and investigations) that terminated in any agreements, undertakings, consents or orders, issued against, entered into by, or involving the acquiror or affiliates of the acquiror by any Federal or state court, any department, agency, or commission of the U.S. Government, any state or municipality, any Federal Home Loan Bank, any self-regulatory trade or professional organization, or any foreign government or governmental entity, that involve:
 - * Fraud, moral turpitude, dishonesty, breach of trust or fiduciary duties, organized crime, or racketeering;

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- * Violation of securities or commodities laws or regulations;
 - * Violation of depository institution laws or regulations;
 - * Violation of housing authority laws or regulations; or
 - * Violation of the rules, regulations, codes of conduct or ethics of self-regulatory trade, or professional organizations.
- Denial, or withdrawal after receipt of formal or informal notice of an intent to deny, by the acquiror or affiliates of the acquiror, of:
 - * Any application relating to the organization of a financial institution;
 - * An application to acquire any financial institution or holding company thereof under the Savings and Loan Holding Company Act or the Bank Holding Company Act;
 - * A notice relating to a change in control of any of the foregoing under the Change in Savings and Loan Control Act or the Change in Bank Control Act; or
 - * An application or notice under a state holding company or change in control statute.
 - The acquiror or affiliate(s) of the acquiror were placed in receivership or conservatorship during the preceding ten years, or any management official of the acquiror was a management official or director (other than an official or director serving at the request of OTS, the Federal Deposit Insurance Corporation, the former Resolution Trust Corporation, or the former Federal Savings and Loan Insurance Corporation) or controlling shareholder of a company or savings institution that was placed into receivership, conservatorship, or a management consignment program, or was liquidated during his or her tenure or control or within two years thereafter.
 - Felony conviction of the acquiror, an affiliate of the acquiror, or a management official of the acquiror or its affiliate.
 - Knowingly making any written or oral statement to OTS or any predecessor agency (or its delegate) in connection with an notice, notice or other filing under 12 C.F.R. Part 574 that is false or misleading with respect to a material fact or omits a material fact with respect to information furnished or requested in connection with such an application, notice, or other filing.
 - Acquisition and retention of stock in the savings institution, at the time of submission of an application or notice, in violation of 12 C.F.R. § 574.3 or its predecessor sections.
 - Liability for amounts of debt that, in the opinion of OTS, create excessive risks of default and pressure on the savings institution to be acquired.
 - Acquisition of control would result in a significant change in the business strategy of the institution that would implement activities inconsistent with economical home financing.

The presence of any of these considerations may constitute grounds for disapproval of a proposed acquisition if not adequately addressed by the acquiror. In order to rebut a presumptive disqualifier on integrity grounds, an acquiror should submit materials proving that the conduct in question has

ceased, has become irrelevant, or otherwise should not warrant a disapproval decision. With regard to financial factors, the submission of an acceptable business plan or the acquiror's commitment to raise additional capital (for the acquiror) may be sufficient to rebut a presumptive disqualifier.

Decision Guidelines

The statutory and regulatory requirements are designed to ensure that the individuals seeking to acquire control of an institution will provide for the continued viability and safe and sound operation of the institution. The analysis should conclude that the proposed acquirors have the financial, ethical and managerial wherewithal to operate the institution in a safe and sound manner and expertise to implement the business plan. In addition, OTS must also conclude that the proposed transaction is in compliance with applicable rules and regulations. If, based upon the review, OTS has determined that the acquirors will adversely affect the institution; a denial recommendation may be the appropriate course of action. OTS should consider the following factors 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:
 - * Interagency Notice of Change in Control;
 - * Interagency Biographical and Financial Report, including financial statements for an acquiror's proprietary interests;
 - * Attachment A to Regulatory Bulletin 20;
 - * FBI fingerprint cards completed by the acquiror and processing fee made payable to OTS and submitted to the Regional office;
 - * If funds are to be borrowed to acquire the stock, copies of any loan agreement or commitment letter;
 - * Three-year business plan;
 - * Proxy material; and
 - * Copies of any filings made with other regulatory agencies.
- Is a notice the appropriate filing? OTS should determine whether the acquisition involves an individual or group of individuals acting in concert constituting a company as defined in 12 C.F.R. § 574.2(f). If a company is the acquiror, a holding company notice is the appropriate filing (see Holding Company Acquisitions Section 510). If an individual is a director or officer of a savings and loan holding company, or controls more than 25 percent of the voting shares of such holding company, and proposes to acquire control of an institution that is not a subsidiary of the savings and loan holding company, an H-(e)2 application is required.
- Have all appropriate parties joined in the filing? OTS should determine whether the person(s) filing the notice is acting in concert with another person(s) who has not filed. In addition, OTS should determine whether any trusts or voting agreements would qualify as

savings and loan holding companies pursuant to 12 C.F.R. § 574.2(q) or 574.2(r), respectively.

- Did the certification or background check (FBI, LEXIS/NEXIS and/or Westlaw, and CIIS) of the individual(s) indicate that they have been the subject of any enforcement, criminal or questionable actions?
- Has the acquiror served as a management official or been a controlling person of another savings institution, savings and loan holding company, commercial bank, or bank holding company? If so, have the appropriate regulators been contacted for comment on the acquiror?
- Does the Interagency notice of Change in Control or information disclosed in the background checks raise a presumptive disqualifier as to the acquiror's integrity, competence, or financial condition? If so, has the acquiror provided information to OTS to successfully rebut the disqualifier?
- Does the acquiror own or control a business that engages in an activity that the target institution or its service corporation may engage, such as real estate development, mortgage lending, or insurance sales? If so, the acquiror should be required to identify those specific areas where any conflicts exist and should provide OTS with a set of specific policies and procedures to avoid potential conflicts.
- If the target institution was recently converted, has the acquiror filed and received approval of an application under 12 C.F.R. § 563b.3(i) prior to filing the notice?
- Has the acquiror indicated the method by which the institution's stock will be acquired (i.e., open market purchase, tender offer, etc.)? The specifics of the transaction should be detailed prior to OTS deeming the notice sufficient.
- How will the acquiror finance the acquisition? If the funds are to be borrowed, OTS should determine whether the acquiror could service the debt without placing undue pressure on the institution to pay dividends.
- If the acquiror will borrow funds for the stock purchase, specific information concerning the loan should be provided, including a copy of the loan agreement or commitment letter.
- Does the acquiror intend to radically alter the business strategy or corporate structure of the institution? If so, do the changes raise any supervisory concerns or are inconsistent with economical home financing?
- Does the acquiror propose to make changes in the management or board of the institution? If so, the identity of the new management officials should be provided in the notice filing.
- Does the notice adequately address all statutory and regulatory grounds for disapproval of an acquisition of control?

Conditions

If OTS does not deny a notice, it will issue a nonobjection letter. Letters of nonobjection generally should state that (i) the acquisition must be consummated within one year of the date of the letter, (ii)

that acquisition must be in accordance with the terms and representations made in the notice, and (iii) that there must be no material change in circumstances prior to the acquisition.

Letters of nonobjection should specify the nature of the proposed transaction. Unless notices specifically indicate otherwise, it is assumed that the acquiror will acquire 100 percent of an institution's voting stock. If the acquisition is for less than 100 percent of the institution's voting stock, the letter should state that the no-objection applies only to the percentage (or number, as appropriate) of shares proposed to be acquired.

OTS may condition its approval of the change in control notice to include nonstandard conditions. If such nonstandard conditions are utilized, the Regional Office's digest must include appropriate justification for imposing such condition.

Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application. This requirement helps OTS to provide the public a complete listing of all notices approved with nonstandard conditions of approval.

RECORDKEEPING REQUIREMENTS

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

MONITORING AND CONTROL

The approval order or letter will generally include conditions of approval. The Regional Office will monitor compliance with all conditions imposed in connection with an notice'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.

OTS should notify the appropriate staff responsible for the supervision and examination of the institution regarding the action taken on an notice. In addition, OTS should provide the appropriate staff with copies of the approval order or letter. If an notice 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 notice 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 notice in the Regional Office, including a review of the documentation maintained in the notice file.

INFORMATION SOURCES

Statutes

12 U.S.C. § 1817(j) Change in Bank Control Act

Regulations

12 C.F.R. Part 516 Applications Processing Guidelines
12 C.F.R. § 563.183 Reports of Change in CEO or Director
12 C.F.R. § 563b.3(i) Acquisition of the Securities of Converting and
 Converted Savings Associations
12 C.F.R. Part 574 Acquisition of Control of Savings Institutions

OTS Bulletins

Regulatory Bulletin 20 Proper Investigation of Applicants and Increased
 Communications Between OTS and Other Financial
 Institution Regulatory Agencies

Forms

OTS Form 1163 Interagency Notice of Change in Control
OTS Form 1623 Interagency Biographical and Financial Report

This handbook section provides guidance on submissions filed under 12 C.F.R. § 574.4(e), to permit a passive investor, who does not control or influence the management and operations of a savings institution, to invest in an institution without having to undergo the filing procedures and intense scrutiny of an acquisition of control filing. The regulation also permits an investor to rebut the presumption of concerted action with certain parties presumed to be acting in concert. Rebuttable presumptions of concerted action are defined in 12 C.F.R. § 574.4(d). A rebuttal filing must be accepted prior to an investor exceeding a control threshold so that the Office of Thrift Supervision (OTS) has the opportunity to review the investor's proposed relationship with the institution and other investors.

12 C.F.R. § 574.4(e) provides rebuttal procedures to be followed in the event that an acquiror (a person or a company) proposes to take an action that would result in rebuttable control of an institution. The regulation also provides procedures for the filing of a rebuttal if a presumption of concerted action is raised with respect to the stockholdings of a group of individuals and/or companies.

The rebuttal procedure is available only when a party proposes to take an action (such as acquiring stock or forming a group) that would cause the party to exceed a control threshold, but not gain conclusive control (as defined in 12 C.F.R. § 574.4(a)) of an institution.

Because the rebuttal filing is made before an acquiror exceeds the rebuttal threshold, it is important to understand not only how much stock the acquiror holds and proposes to acquire directly, but also what other relationships are present that may constitute concerted action and would result in the attribution of additional stock to the acquiror.

Note: The definition of a savings institution as set forth in 12 C.F.R. § 574.2(p) includes a savings and loan holding company.

FILING REQUIREMENTS

Delegated Authority

Generally, filings made pursuant to this section may be processed by the Regional Office under delegated authority. Filings that are not delegated to the Regional Office are those that include: a significant issue of law or policy; approval of requested waivers of statutes, regulations, OTS policy or significant notice requirements; involve hostile or contested acquisitions, opposition proxy solicitations or other potential acquisitions where there is a competing acquiror; involve person(s) subject to a pending notice of charges or formal investigation; involve material waivers of the required provisions for standard rebuttal of control or action in concert filings; or raise significant competitive factor issues. See Delegation Section 040 of the handbook for information on the delegation process.

Expedited and Standard Processing Procedures

This filing is not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. Procedures for rebuttal of control filings are set forth in 12 C.F.R. § 574.4(e).

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

Rebuttal submissions must be filed and accepted prior to the acquisition of stock or control factor, except for certain transactions that are exempt from prior approval or notice under 12 C.F.R. § 574.3(d).

If delegated, all filings and the appropriate application fee should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant should file the original and two copies of the filing with the appropriate Regional Office. All copies are to be clearly marked as to the type of filing, and should contain all exhibits and other pertinent documents. One copy must contain original signatures on all executed documents. For filings that are not delegated to the Regional Office, an additional three copies of the submission should be filed with the Applications Filing Room in OTS-Washington. For specific information concerning the filing procedures, refer to Application Filing Requirements Section 010 of this handbook.

Each rebuttal of control filing submitted to OTS for action should include the following information:

- A submission (in letter form) naming the involved institution, the rebuttal parties, the number of shares and percentage of voting shares held by the rebuttal parties.
- A statement setting forth the facts and circumstances that support the acquiror's contention that no control relationship would exist if the filer of the rebuttal acquires stock or obtains a control factor with respect to a savings institution.
- An executed rebuttal of control agreement that materially conforms to the form of agreement set forth in 12 C.F.R. § 574.100. (See Exhibit I.)

Each rebuttal of concerted action filing submitted to OTS for action should include the following information:

- A submission (in letter form) naming the involved institution, the rebuttal parties, the number of shares and percentage of voting shares held by the rebuttal parties;
- A statement setting forth the facts and circumstances that clearly and convincingly demonstrate the filer's contention that no action in concert exists; and

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- An affidavit, executed by each person or company presumed to be acting in concert pursuant to 12 C.F.R. § 574.4(e)(2), stating that such person or company does not and shall not have any agreements or understandings with respect to the exercise of control over management or policies of the institution, including agreements related to voting acquisition, or disposition of the institution's stock. The affidavit should also include a recitation that the signatory is aware that the filing of a false affidavit may subject the person or company to criminal sanctions, would constitute a violation of 12 C.F.R. § 563.180(b), and would be considered a "presumptive disqualifier" under 12 C.F.R. § 574.7(g)(1)(v).

Although not required by regulation, OTS policy requires each party to a rebuttal to execute a copy of Attachment A to Regulatory Bulletin (RB) 20.

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 noted in the Delegated Authority section, certain filings are not subject to delegated authority and are processed concurrently with OTS-Washington staff. As a general matter, correspondence from OTS regarding notices that are nondelegated will be transmitted from OTS-Washington. Correspondence on delegated notices will generally come from the Regional Office.

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

If applicable, within five business days of receipt of the submission, the Regional Office will begin its background investigations on individuals who were required to submit such information in connection with the filing. The background investigations should include, at a minimum, a search of the applicants in the Westlaw, LEXIS/NEXIS, and CIIS databases. If appropriate, the review may

also require OTS to contact other regulatory agencies to seek additional comments on the applicants. This review may also require that OTS request examination reports from another agency. 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.

The applicant may acquire additional shares upon the expiration of 20 calendar days after the filing date of its submission, unless OTS takes one of the following actions before expiration of that time period:

- Request, in writing, any additional information necessary to supplement the notification;
- Return the submission to the acquiror as materially deficient; or
- Accept or reject the submission.

Failure by OTS to act within 20 calendar days of receipt of the submission for processing shall result in the filed submission being accepted. If supplemental information is requested, the applicant will have 30 days to provide such information. Upon receipt of such information, OTS has 15 calendar days to take one of the three actions noted above.

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.

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 OTS 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.

Regulatory Criteria

Rebuttal of Control

An acquiror shall be determined, subject to rebuttal, to have acquired control of a savings institution, if the acquiror:

- Acquires more than ten percent of any class of voting stock of the institution and is subject to any control factor (discussed below).
- Acquires more than 25 percent of any class of stock of the institution and is subject to any control factor.

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- Holds any combination of voting stock and revocable and/or irrevocable proxies, representing more than 25 percent of any class of voting stock of an institution, and such proxies would enable the acquiror to:
 - * Elect one-third or more of the institution's board of directors, including nominees or representatives of the acquiror currently serving on such board;
 - * Cause the institution's stockholders to approve the acquisition or corporate reorganization of the institution; or
 - * Exert a continuing influence on a material aspect of the business operations of the institution.

The following constitute control factors:

- The acquiror would be one of the two largest holders of any class of stock of the savings institution.
- The acquiror would hold more than 25 percent of the total stockholders' equity of the institution.
- The acquiror would hold more than 35 percent of the combined debt securities and stockholders' equity of the institution.
- The acquiror is party to any agreement that enables the acquiror to influence a material aspect of the management or policies of the institution or is party to any agreement pursuant to which the acquiror would possess a material economic stake in the institution resulting from a profit-sharing arrangement.
- The acquiror would have the ability, other than through the holding of revocable proxies, to direct the votes of more than 25 percent of a class of the institution's voting stock.
- The acquiror would have the power to direct the disposition of more than 25 percent of a class of the institution's voting stock other than through a public offering.
- The acquiror and/or the acquiror's representatives or nominees would constitute more than one member of the institution's board of directors.
- The acquiror or nominee or management official of the acquiror would serve as the chairman of the board of directors, chairman of the executive committee, chief executive officer, chief operating officer, chief financial officer, or in any position with similar policymaking authority in the institution.

Rebuttal of Presumption of Concerted Action

An acquiror will be presumed to be acting in concert with the following persons and companies:

- A company will be presumed to be acting in concert with a controlling shareholder, partner, trustee, or management official of such company with respect to the acquisition of stock of a savings institution, if:

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- * The company and the person own stock in the savings institution;
 - * The company provides credit to the person to purchase the savings institution's stock; or
 - * The company pledges its assets or otherwise is instrumental in obtaining financing for the person to acquire stock of the savings institution.
- A person will be presumed to be acting in concert with members of his immediate family, as defined by 12 C.F.R. § 574.2(j).
 - Persons will be presumed to be acting in concert with each other where:
 - * Both own stock in a savings institution and both are also management officials, controlling shareholders, partners, or trustees of another company, or
 - * One person provides credit to another person or obtains financing for another person to purchase stock of the savings institution.
 - A company controlling or controlled by another company and companies under common control will be presumed to be acting in concert.
 - Persons or companies will be presumed to be acting in concert where they constitute a group under the rules and regulations of the Securities Exchange Act of 1934.
 - A person or company will be presumed to be acting in concert with any trust for which such person acts as trustee (except for tax-qualified employee stock benefit plans).
 - Persons or companies will be presumed to be acting in concert with each other, and with any other person or company with which they also are presumed to act in concert.

Pursuant to 12 C.F.R. § 574.4(e)(3), the OTS may reject any rebuttal that is inconsistent with the facts and circumstances known to it or where the rebuttal does not clearly and convincingly refute the rebuttable determination of control or presumption of action in concert, and may determine to reject a submission solely on such bases.

Decision Guidelines

Rebuttal of Control

The regulatory requirements are designed to ensure that the individuals or companies maintain a passive ownership interest in, and are not in control of, the institution of savings and loan holding company. The analysis should conclude that the investors rebutting control do not and will not be in a position to influence control over the institution in any way, thereby avoiding a control filing. If it has been determined that the individuals do have control over the institution, the rebuttal must be rejected and the applicant must file a change in control notice or divest. OTS should consider the following factors in analyzing the application to determine if the transaction satisfies the applicable statutory and regulatory criteria for approval:

- Information concerning current and proposed stock holdings
 - * How much stock does the applicant directly own and how much stock will the applicant acquire?
 - * How much stock does the applicant indirectly control and how much will the applicant indirectly own after the acquisition? Should shares held by others be aggregated with the applicant's holdings?
 - * Is any of the stock currently held "immediately convertible," and, therefore, considered "voting stock" pursuant to 12 C.F.R. § 574.2(u)?
 - * Is any stock convertible at a later date? On what terms?

- Background information concerning the applicant
 - * Occupation/lines of business of the applicant.
 - * Source of funds to make the acquisition. If funds are to be borrowed, is the lender presumed to be acting in concert with the applicant?
 - * Have background checks of the applicant provided evidence of fraud or questionable dealings in the past?

- Relationship with the institution
 - * Information concerning the applicant's affiliations and business dealings with the institution.
 - * Has the applicant made a material change in the rebuttal agreement, for example, to reflect plans for representation in the management of the institution or intent to attempt to influence the operations of the institution?

- OTS should be alert for information that is inconsistent with the "passive investor" status required for a rebuttal to be accepted. Such information could include the following:
 - * The applicant has shown the desire to acquire control of the institution. Review Schedule 13D Reports (Shareholder Reports of Beneficial Ownership), if any, statements in the rebuttal filing, and any information provided by the institution.
 - * The applicant has explored the possibility of acquiring the institution.
 - * The applicant has indicated an interest in acquiring two or more board positions or other executive management positions.

Rebuttal of Concerted Action

The regulatory requirements are designed to ensure that the filing party does not have control of an institution. The analysis should conclude that the individuals rebutting concerted action are independent of one another. If it has been determined that the individuals are acting in concert, the rebuttal must be rejected and the applicant must file a change in control notice or divest. OTS should consider the following factors in analyzing the application to determine if the transaction satisfies the applicable regulatory criteria for approval:

- Relationships among filing parties
 - * Are current or prior family or business relationships present among the individuals or companies filing the rebuttal?
 - * If the only presumption is a familial tie, is there evidence that family members work together or invest in (or own) similar companies or stocks?
 - * Are the applicants comprised of a parent(s) and dependent child? (If yes, it is unlikely that the rebuttal would be accepted.)
 - * Has a parent(s) purchased stock for a child or loaned the funds for such purchase?
 - * If the presumption arises as the result of a series of business relationships, are the relationships formal and active undertakings?
 - * Do the affiliations represent a major source of income, investment or business for the applicants?
 - * What is the pattern of stock purchases by the applicants? Is there a pattern among the filers of purchasing stock at the same time, for the same price, or in the same amount?
 - * Have the applicants generally voted their stock in the same manner?
 - * Do the applicants share the same address?
 - * Do the applicants use the same accountants, investment advisors, or legal counsel?
 - * Does any information reflected in Schedule 13D reports (Shareholder Reports of Beneficial Ownership), indicate that the applicants are acting in concert?

Note: Generally, evidence of a pattern of relationships and dealings among the applicants will make it difficult to rebut the presumption of concerted action. Therefore, it is unlikely that two family members who own and operate a business together will be able to rebut the presumption. Similarly, when applicants who are not related have made a number of common investments, the presumption will be difficult to overcome.

- General information concerning each applicant, such as:
 - * Each applicant's number of shares and percentage of stock currently held.
 - * Each applicant's identity, occupation, and employer.

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- * Previous or existing relationships or transactions between each applicant and the institution that would indicate whether the applicant is exerting control over the institution.
 - * Have background checks of the applicant provided evidence of fraud or questionable dealings in the past?

General Decision Guidelines

- Is the acquiror already in violation of the regulations by acquiring such stock before filing a rebuttal?
- Does the rebuttal submission include all applicable parties?
- Does the rebuttal filing include the appropriate rebuttal agreement or affidavit?
- Has the applicant executed Certification A to RB-20?
- Has the target institution been contacted to determine if it has any objection to the rebuttal?
- Is the proposed acquiror currently in compliance with the provisions of 12 C.F.R. Part 574?
- Does the rebuttal involve an acquisition by an individual or a group of individuals acting in concert that does not constitute a company, as defined in 12 C.F.R. § 574.2(f)?
- Have all the appropriate persons filed?
- Is there any evidence that the acquiror is acting in concert with any other person who has not joined the rebuttal?
- Does the rebuttal contain the occupation of all acquirors?
- Do any of the acquirors participate in businesses similar to or in competition with the institution?
- Does the rebuttal contain a description of amounts of stock (including options) currently held by the acquirors?
- Does the rebuttal contain a description of the amount and type of stock the acquirors will acquire?
- Are the rights and convertibility features of the stock to be acquired described in the request?
- Are the rights and convertibility features of other classes of stock currently held by the acquiror described?
- Does the rebuttal outline how the acquiror proposes to acquire the stock?
- Does the rebuttal adequately explain how the acquiror intends to finance the acquisition of the stock?
- Is there any evidence that the acquiror has or will act in a manner inconsistent with the rebuttal request?
- Are there any affiliate transactions between the acquiror (or affiliates of the acquiror) and the institution? Would the transactions violate the rebuttal of control agreement?

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- Has the acquiror filed any Schedule 13Ds (Shareholder Reports of Beneficial Ownership) that reveal inconsistencies with the rebuttal?
 - Has the acquiror been checked through Westlaw? LEXIS/NEXIS? CIIS?
 - Has the acquiror been checked through the Suspicious Activity Report?
 - Is there any evidence or known fact that was disclosed in the background checks that is inconsistent with the information presented in the rebuttal?
 - Does the rebuttal disclose ownership interests in other thrifts?
 - Does the institution object to acceptance of the rebuttal filing or believe there exists certain control factors? If so, what is the basis for the objection?

If a rebuttal of concerted action:

- Are all relationships disclosed that would raise any of the presumptions of concerted action contained in 12 C.F.R. § 574.4(d)?
- If the presumption results from a family relationship, are the names and relationships fully disclosed?
- If the presumption results from a family relationship, are any of the filing parties minor children of a filing party? (Note: It is doubtful that a rebuttal of concerted action between a parent and minor child could be accepted.)
- Do other affiliations or associations exist between any of the family parties, e.g., father and adult child are business associates? (Note: If the presumption arises solely from the family relationship, and the filing clearly and convincingly demonstrates that the parties are not otherwise acting in concert, the rebuttal could be accepted.)
- Is there evidence that the filing parties have voted their shares of stock independently, such as voting differently on shareholder issues?
- Is there evidence that the filing parties purchased their stock as part of a group? (Note: For example, did each party purchase the same amount of stock at the same time?)
- Did any filing party lend money to another filing party for the purchase of stock?
- Is OTS aware of any current or prior family or business relationship among the acquirors that are not disclosed in the filing?
- Does the institution object to the acceptance to the rebuttal of concerted action filing? If so, what is the basis for the objection?

Conditions

The letter issued by OTS regarding the acceptance of a rebuttal of control should require the acquiror to transmit a copy of the executed rebuttal agreement to the savings institution to which the rebuttal pertains. Additionally, evidence of the transmission of the agreement should be submitted to the Regional Office.

OTS may condition its approval of the rebuttal of control or concerted action submission to include nonstandard conditions. If such nonstandard conditions are utilized, the Regional Office's digest must include appropriate justification for imposing such conditions.

Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application. This requirement helps OTS to provide the public a complete listing of all applications approved with nonstandard conditions of approval.

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.

MONITORING AND CONTROL

The approval order or letter will generally include conditions of approval. 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 or letter to the Regional Office within the stated time frames.

OTS should notify the appropriate staff responsible for the supervision and examination of the institution regarding the action taken on an application. In addition, OTS 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 Office, including a review of the documentation maintained in the application file.

Actions and Referrals

OTS staff should review for deviations from the terms of rebuttal of control agreements or rebuttal of concerted action affidavits. If deviations are found, the OTS staff member should consult with Regional Counsel and may refer the matter to the Office of Enforcement. If a violation is found, the shareholder(s) under review is prohibited from (i) receiving dividends from the subject institution and

(ii) voting on his/her stock, other than proportionately with other stockholders until the matter has been resolved.

OTS may take one or more of the following actions concerning deviations from the terms of rebuttal of control agreements or rebuttal of concerted action affidavits:

- Require the shareholder to divest his/her stock holdings below a control threshold.
- Impose one or more enforcement actions against the shareholder.

INFORMATION SOURCES

Statutes

12 U.S.C. § 1467a
12 U.S.C. § 1817(j)

Savings and Loan Holding Company Act
Change in Bank Control Act

Regulations

12 C.F.R. Part 516
12 C.F.R. Part 574

Applications Processing Guidelines
Acquisition of Control of Savings Institutions

OTS Bulletins

Regulatory Bulletin 20

Proper Investigation of Applicants and Increased
Communications Between the OTS and Other Financial
Institution Regulatory Agencies

Exhibit I

Rebuttal of Rebuttable Determination of Control under Part 574

I. WHEREAS

- A. [] is the owner of [] shares (the “Shares”) of the [] stock, of [name and address of the institution], which Shares represent [] percent of a class of “voting stock” of [] as defined under the Acquisition of Control Regulations (“Regulations”) of the Office of Thrift Supervision (“Office”), 12 CFR part 574 (“Voting Stock”);
- B. [] is a “savings association” within the meaning of the Regulations;
- C. [] seeks to acquire additional shares of stock of [] (“Additional Shares”), such that []’s ownership thereof will exceed 10 percent of a class of Voting Stock but will not exceed 25 percent of a class of Voting Stock of []; [and/or] [] seeks to [], which would constitute the acquisition of a “control factor” as defined in the Regulations (“Control Factor”);
- D. [] does not seek to acquire the [Additional Shares or Control Factor] for the purpose or effect of changing the control of [] or in connection with or as a participant in any transaction having such purpose or effect;
- E. The Regulations require a company or a person who intends to hold 10 percent or more but not in excess of 25 percent of any class of Voting Stock of a savings association or holding company thereof and that also would possess any of the Control Factors specified in the Regulations, to file and obtain approval of an application (“Application”) under the Savings and Loan Holding Company Act (“Holding Company Act”), 12 U.S.C. 1467a, or file and obtain clearance of a notice (“Notice”) under the Change in Control Act (“Control Act”), 12 U.S.C. 1817(j), prior to acquiring such amount of stock and a Control Factor unless the rebuttable determination of control has been rebutted;
- F. Under the Regulations, [] would be determined to be in control, subject to rebuttal, of [] upon acquisition of the [Additional Shares or Control Factor];
- G. [] has no intention to manage or control, directly or indirectly, [];
- H. [] has filed on [], a written statement seeking to rebut the determination of control, attached hereto and incorporated by reference herein (these submissions referred to as the “Rebuttal”);
- I. In order to rebut the rebuttable determination of control, [] agrees to offer this Agreement as evidence that the acquisition of the [Additional Shares or Control Factor] as proposed would not constitute an acquisition of control under the Regulations.

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- II. The Office has determined, and hereby agrees, to act favorably on the Rebuttal, and in consideration of such a determination and agreement by the Office to act favorably on the Rebuttal, [] and any other existing, resulting or successor entities of [] agree with the Office that:
- A. Unless [] shall have filed a Notice under the Control Act, or an Application under the Holding Company Act, as appropriate, and either shall have obtained approval of the Application or clearance of the Notice in accordance with the Regulations, [] will not, except as expressly permitted otherwise herein or pursuant to an amendment to this Rebuttal Agreement:
1. Seek or accept representation of more than one member of the board of directors of [insert the name of the institution and any holding company thereof];
 2. Have or seek to have any representative serve as the chairman of the board of directors, or chairman of an executive or similar committee of [insert the name of the institution and any holding company thereof]'s board of directors or as president or chief executive officer of [insert the name of the institution and any holding company thereof];
 3. Engage in any intercompany transaction with [] or []'s affiliates;
 4. Propose a director in opposition to nominees proposed by the management of [insert the name of the institution and any holding company thereof] for the board of directors of [insert the name of the institution and any holding company thereof] other than as permitted in paragraph A-1 of this Section II;
 5. Solicit proxies or participate in any solicitation of proxies with respect to any matter presented to the stockholders of [] other than in support of, or in opposition to, a solicitation conducted on behalf of management of [];
 6. Do any of the following, except as necessary solely in connection with []'s representative's performance of duties as a member of []'s board of directors:
 - (a) Influence or attempt to influence in any respect the loan and credit decisions or policies of [], the pricing of services, any personnel decisions, the location of any offices, branching, the hours of operation or similar activities of [];
 - (b) Influence or attempt to influence the dividend policies and practices of [] or any decisions or policies of [] as to the offering or exchange of any securities;
 - (c) Seek to amend, or otherwise take action to change, the bylaws, articles of incorporation, or charter of [];

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- (d) Exercise, or attempt to exercise, directly or indirectly, control or a controlling influence over the management, policies or business operations of []; or
 - (e) Seek or accept access to any non-public information concerning [];
- B. [] is not a party to any agreement with [].
 - C. [] shall not assist, aid or abet any of []'s affiliates or associates that are not parties to this Agreement to act, or act in concert with any person or company, in a manner which is inconsistent with the terms hereof or which constitutes an attempt to evade the requirements of this Agreement;
 - D. Any amendment to this Agreement shall only be proposed in connection with an amended rebuttal filed by [] with the Office for its determination;
 - E. Prior to acquisition of any additional shares of "Voting Stock" of [] as defined in the Regulations in excess of the Additional Shares, any required filing will be made by [] under the Control Act or the Holding Company Act and either approval of the acquisition under the Holding Company Act shall be obtained from the Office or any Notice filed under the Control Act shall be cleared in accordance with the Regulations;
 - F. At any time during which 10 percent or more of any class of Voting Stock of [] is owned or controlled by [], no action which is inconsistent with the provisions of this Agreement shall be taken by [] until [] files and either obtains from the Office a favorable determination with respect to either an amended rebuttal, approval of an Application under the Holding Company Act, or clearance of a Notice under the Control Act, in accordance with the Regulations;
 - G. Where any amended rebuttal filed by [] is denied or disapproved, [] shall take no action which is inconsistent with the terms of this Agreement, except after either (1) reducing the amount of shares of Voting Stock of [] owned or controlled by [] to an amount under 10 percent of a class of Voting Stock, or immediately ceasing any other actions that give rise to a conclusive or rebuttable determination of control under the Regulations; or (2) filing a Notice under the Control Act, or an Application under the Holding Company Act, as appropriate, and either obtaining approval of the Application or clearance of the Notice, in accordance with the Regulations;
 - H. Where any Application or Notice filed by [] is disapproved, [] shall take no action which is inconsistent with the terms of this Agreement, except after reducing the amount of shares of Voting Stock of [] owned or controlled by [] to an amount under 10 percent of any class of Voting Stock, or immediately ceasing any other actions that give rise to a conclusive or rebuttable determination of control under the Regulations;
 - I. Should circumstances beyond []'s control result in [] being placed in a position to direct the management or policies of [], then [] shall either (1) promptly file an Application under the Holding Company Act or a Notice under the Control Act, as appropriate, and take no affirmative steps to enlarge that control pending either a final

determination with respect to the Application or Notice, or (2) promptly reduce the amount of shares of [] Voting Stock owned or controlled by [] to an amount under 10 percent of any class of Voting Stock or immediately cease any actions that give rise to a conclusive or rebuttable determination of control under the Regulations;

- J. By entering into this Agreement and by offering it for reliance in reaching a decision on the request to rebut the presumption of control under the Regulations, as long as 10 percent or more of any class of Voting Stock of [] is owned or controlled, directly or indirectly, by [], and [] possesses any Control Factor as defined in the Regulations, [] will submit to the jurisdiction of the Regulations, including (1) the filing of an amended rebuttal or Application or Notice for any proposed action which is prohibited by this Agreement, and (2) the provisions relating to a penalty for any person who willfully violates or with reckless disregard for the safety or soundness of a savings association participates in a violation of the [Holding Company Act or Control Act] and the Regulations thereunder, and any regulation or order issued by the Office;
- K. Any violation of this Agreement shall be deemed to be a violation of the [Holding Company Act or Control Act] and the Regulations, and shall be subject to such remedies and procedures as are provided in the [Holding Company Act or Control Act] and the Regulations for a violation thereunder and in addition shall be subject to any such additional remedies and procedures as are provided under any other applicable statutes or regulations for a violation, willful or otherwise, of any agreement entered into with the Office.
- III. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one instrument representing the Agreement among the parties thereto. It shall not be necessary that any one counterpart be signed by all of the parties hereto as long as each of the parties has signed at least one counterpart.
- IV. This Agreement shall be interpreted in a manner consistent with the provisions of the Rules and Regulations of the Office.
- V. This Agreement shall terminate upon (i) the approval by the Office of []'s Application under the Holding Company Act or clearance by the Office of []'s Notice under the Control Act to acquire [], and consummation of the transaction as described in such Application or Notice, (ii) in the disposition by [] of a sufficient number of shares of [], or (iii) the taking of such other action that thereafter [] is not in control and would not be determined to be in control of [] under the Control Act, the Holding Company Act or the Regulations of the Office as in effect at that time.

VI. IN WITNESS THEREOF, the parties hereto have executed this Agreement by their duly authorized officer.

Dated: _____

By: _____
Name:
Title:

OFFICE OF THRIFT SUPERVISION

Dated: _____

By: _____

12 C.F.R. Parts 544 and 552 provide the standard requirements and permissible language for the charters and bylaws of insured federal savings institutions. These regulations ensure that the operations of an institution comply with Section 5 of the Home Owners' Loan Act (HOLA) and applicable laws, rules, and regulations governing federally chartered savings institutions. In addition to providing the standards governing charters and bylaws, 12 C.F.R. Parts 544 and 552 also describe the procedures for the filing and/or approval of charter and bylaw amendments, by notice or application, consistent with the preapproved provisions in the regulations.

Existing Charters

Federal institutions existing prior to September 15, 1983, may retain their old charters such as B, B(Rev), K(Rev), N(Rev), and L for mutual institutions, and S or T for stock institutions. If an institution proposes to adopt a new charter, or a portion thereof, however, it must adopt it in its entirety. This requirement prevents the intermingling of old and new charter provisions. Each institution may adopt its own form of bylaws. The bylaws, however, must contain provisions that comply with all requirements under 12 C.F.R. § 544.5 for mutual institutions and 12 C.F.R. §§ 552.5 through 552.6-4 for stock institutions. Model language for charter and bylaws may be found as an exhibit to this section.

Legal Opinions

A legal opinion is not required for preapproved charter or bylaw provisions. However, OTS may request a reasoned legal opinion if there are any concerns about whether a proposed amendment complies with certain laws. Such an opinion must address the permissibility of the amendment under the laws of the state where the institution's home office is located, or, if state law is unclear or silent, under Delaware's corporation laws. (12 C.F.R. §§ 544.2(a)(2)(i), 544.5(c)(1)(i), 552.4 (a)(2)(i) and 552.5(b)(i).)

Improperly Adopted Amendments

Charter: A charter amendment may be deemed invalid if it was submitted under the assumption that it is a properly adopted "preapproved" provision, but does not conform to regulatory provisions. In such instances, there are two alternatives: 1) if the discrepancy between the preapproved provision and the adopted version is minor (e.g., some variation in wording that does not alter the intent or meaning), the institution may be deemed to have adopted the provision as stated in the regulations, provided it properly discloses the impact of the amendment to members/stockholders; or 2) if the variation is such that the adopted provision conveys a different meaning, or could be subject to misinterpretation, the amendment will be treated as a request for approval of a nonconforming provision and processed accordingly.

Bylaws: In cases where OTS subsequently determines that a bylaw amendment is inconsistent with the regulations, despite the presence of a legal opinion and the acknowledgment of the filing by the Regional Director, then the amendment is rendered ineffective. The amendment will be treated as a request for approval of a nonconforming provision and processed accordingly.

Indemnification Provisions

Current OTS policy is to deny indemnification provisions that are broader than those provided by 12 C.F.R. § 545.121. Specific indemnification provisions may be included in bylaws, but indemnification provisions are not permitted in charters. Approval of an indemnification provision for an institution's bylaws may be granted under delegated authority if the provision is a verbatim citation of the regulation. Except for the use of the institution's name, where appropriate, any deviation in the language of 12 C.F.R. § 545.121 requires action by OTS.

Note: The provision of 12 C.F.R. § 545.121(f), which states that an institution having a bylaw relating to indemnification shall be governed solely by that bylaw provision is, in effect, a grandfathering provision. The intent of 12 C.F.R. § 545.121(f) is to allow those institutions having indemnification provisions in effect at the time the regulation was enacted in 1978 to continue to indemnify to the extent allowed by the institution's preexisting bylaw provision.

Anti-takeover Provisions

An anti-takeover provision is any amendment to the institution's bylaws, or in some cases to the charter, that renders more difficult or discourages a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the institution's stock, or the removal of incumbent management. The Director of OTS, or her designee, will act on all anti-takeover amendments, except those preapproved in the regulations for newly converted institutions. Anti-takeover provisions that have been found acceptable by the OTS are listed in an exhibit to this section.

Annual Meeting/Fiscal Closing: Bylaw Considerations

Although only stock institutions are required to specify their fiscal year in their bylaws, a change in the fiscal year for either a mutual or stock institution may require an amendment to the annual meeting provision of the bylaws. (A change in the annual meeting provision may also require a change in the institution's fiscal year end, whether or not the institution has a fiscal closing bylaw provision.) As the time span between annual meetings may not exceed 15-½ months, a change in the fiscal closing date may require the institution to conduct two annual meetings within the specified time period.

Publication/Notice Requirements

As charter amendments require a vote of the members/stockholders, such a vote is usually taken at an annual or special meeting. The publication and/or notice requirements for the two types of meetings are provided in the institution's bylaws and in 12 C.F.R. §§ 544.5(b)(2) and (3), and 552.6(b). Notices for the two types of meetings differ in that a special notice is required to state the subject matter of the meeting.

Approval by Members or Stockholders of Charter and/or Bylaw Amendments*Mutual Institutions*

Charter amendments of a federal mutual savings institution must be submitted to and approved by the savings institution's members at a legal meeting. (12 C.F.R. § 544.1 Section 9.) Bylaw amendments of a federal mutual savings institution must be made in accordance with the savings institution's bylaws and approved by a majority vote of the authorized board of directors (trustees) OR by a vote of the members of the savings institution. (12 C.F.R. § 544.5 Section 15.)

Stock Institutions

Charter amendments of a federal stock savings institution must be first submitted to and approved by the board of directors of the savings institution and approved by a majority of the total voters eligible to vote at a legal meeting of the shareholders of the savings institution. (12 C.F.R. § 552.3 Section 8.) Bylaw amendments of a federal stock savings institution must be made in accordance with the savings institution's bylaws and approved by a majority of the board of directors OR by a majority of the shareholders of the savings institution. (12 C.F.R. § 552.5(a).)

If a savings institution seeks to change its charter or bylaws, the Regional Office must determine whether any corresponding change(s) needs to be made to the related provisions of the bylaws or charter, respectively. A determination must be made that the appropriate changes have been or will be made.

FILING AND PROCESSING REQUIREMENTS**Information and Form Requirements**

An institution must either file a notice or an application to amend its charter and/or bylaws, depending on the nature of the amendment. The institution must file the original and two copies of each notice or application, and the appropriate processing fee, with the Regional Office of the Region in which the principal office of the institution is located. In addition to the copies filed with the Region, the applicant may also be required to file three copies with the Applications Filing Room in Washington, D.C. for those applications or notices that require concurrent processing by OTS-Washington and Regional staff. All copies are to be clearly marked as to the type of filing and should contain all exhibits and other pertinent documents. Specific filing requirements are set forth below.

*Charter Amendments**Application Filing*

If the proposed charter amendment would render more difficult or discourage a merger, proxy contest, tender offer (applicable to a stock institution), the assumption of control by a mutual accountholder of the institution (applicable to a mutual institution), the assumption of control by a holder of a block of the institution's stock (applicable to a stock institution), remove incumbent

management, or involve significant issues of law or policy, the institution must file an application requesting the prior written approval of the OTS. These types of applications are nondelegated and will be processed concurrently with the OTS Washington office. In support of an application for approval of the amendment, the institution should file the following information:

- One original and two copies of the proposed amendment, as approved by the board of directors, and certified by the institution's secretary or assistant secretary;
- A discussion of the basis for the amendment; and
- A copy of the amendment “marked” to show how the proposed charter provision varies from the current provision.

These applications will be processed in accordance with the provisions of 12 C.F.R. Part 516 (see processing procedures and time frames). In evaluating a request to adopt such an amendment, OTS will take into consideration the following:

- Has a similar provision previously received approval by OTS?
- If deemed necessary, has an opinion of legal counsel been submitted?
- Would the adoption of the amendment result in any impairment of the ability of management and/or directors to properly oversee the operations of the institution?

If the amendment is approved, it will be conditioned upon the following:

- The proposed amendments must be submitted to members/shareholders for their approval pursuant to the requirements of the institution's charter;
- The proposed amendments are described in the institution's proxy statement for the next meeting of shareholders for stock institutions;
- The full text of the proposed amendment(s) is annexed to the proxy statement; and
- The institution must submit materials that verify compliance with the above conditions to the appropriate Regional Office for review prior to issuance of final approval.

Notice Filing

If a proposed amendment does not involve a provision that would cause an application to be submitted, and is permissible under all applicable laws, rules and regulations, the institution must submit a notice of the proposed amendment to the Regional Office at least 30 days prior to the effective date of the amendment. The amendment shall automatically be approved within 30 days of the filing, provided the institution follows the requirements of its charter in adopting the amendment. The automatic approval does not apply if, prior to the expiration of the 30-day period, the Regional Office notifies the institution that the amendment is rejected, or deemed to be filed as an application. The institution should submit the following information in support of its notice:

- One signed and two conformed copies of the proposed amendment;

-
- Directors' resolution adopting the amendment and stating the text of the amendment;
 - A discussion of how the amendment deviates from the standard provision; and
 - If applicable, a legal opinion that confirms that the proposed amendment is in compliance with all laws, rules and regulations.

In evaluating a request to adopt such an amendment, OTS will take into consideration the following:

- Has a similar provision previously received approval by OTS?
- If applicable, has an opinion of legal counsel been submitted?
- Would the adoption of the amendment result in any impairment of the ability of management and/or directors to properly oversee the operations of the institution?
- Is the amendment consistent with the provisions of the regulations and the institution's charter?

If the amendment is approved, it will be conditioned upon the following:

- The proposed amendments must receive approval pursuant to the requirements of the institution's charter; and
- The institution must submit materials that set forth the effective date of the amendment, and verifies that the amendment was properly adopted.

Notification

If an institution proposes to adopt the standard form of charter set forth in 12 C.F.R. § 544.2 (for mutual institutions) or 12 C.F.R. § 555.4 (for stock institutions), or any of the charter amendments set forth in 12 C.F.R. § 544.2(b)1-4 (for mutual institutions), or 12 C.F.R. § 552.4(b)1-8 (for stock institutions), such amendments shall be effective and deemed approved at the time of adoption, if the amendment is filed with the Regional Office within 30 days after adoption and the institution follows the requirements of its charter in adopting such amendments. The institution must submit the following information within the 30-day period:

- OTS Form 1563;
- One signed and two conformed copies of the amendment; and
- Certification by the institution evidencing adoption of the proposed amendment by the board of directors and the date and vote of adoption of the proposed amendment by the members/stockholders, if applicable.

The Regional Office should review the amendment to ensure that it conforms to the required regulatory provisions and that it has been adopted in accordance with its charter and bylaws. An acknowledgement of the amendment's receipt by the Region should be sent to the institution after the review confirms that such amendment is in conformance with regulatory requirements. If the review

finds that the language of the proposed amendment does not conform to regulatory requirements, the Regional Office should promptly notify the institution that the amendment is subject to a thirty day review, or the application requirements, as discussed above.

Bylaw Amendments*Application Filing*

If the proposed amendment would render it more difficult or discourage a merger, proxy contest, tender offer (applicable to a stock institution), the assumption of control by a mutual accountholder of the institution (applicable to a mutual institution), the assumption of control by a holder of a block of the institution's stock (applicable to a stock institution), or removal of incumbent management, or be inconsistent with applicable laws, rule or regulations or the institution's charter, or involve a significant issue of law or policy, including indemnification, conflicts of interest, and limitations on director or officer liability, an application requesting the prior written approval from OTS must be filed. Furthermore, for stock institutions, the applicant must file an application if the amendment is inconsistent with the provisions of 12 C.F.R. §§ 552.6, 552.6-1, 552.6-2 and 552.6-3. The following should be submitted in support of an application:

- One original and two copies of the proposed amendment, as approved by the board of directors, and certified by the institution's secretary or assistant secretary;
- A discussion of the basis for the amendment; and
- A copy of the amendment "marked" to show how the proposed bylaw provision varies from the current provision.

These applications will be processed in accordance with the provisions of 12 C.F.R. Part 516 (see processing procedures and time frames). In evaluating a request to adopt such an amendment, OTS will take into consideration the following:

- Has a similar provision previously received approval by OTS?
- If necessary, has an opinion of legal counsel been submitted? A legal opinion may be required since many of the nonconforming amendments tend to restrict member/stockholder rights in favor of the existing board of directors and/or management.
- Would the adoption of the amendment result in any impairment of the ability of management and/or directors to properly oversee the operations of the institution?

If the amendment is approved, it will be conditioned upon the following:

- The proposed amendment must be submitted to members/shareholders for their approval pursuant to the requirements of the institution's charter;
- The proposed amendments are described in the institution's proxy statement for the next meeting of shareholders for stock institutions;
- The full text of the proposed amendment(s) is annexed to the proxy statement; and

-
- The institution must submit materials that verify compliance with the above conditions to the appropriate Regional Office for review prior to issuance of final approval.

Notice Filing

If a proposed bylaw amendment does not involve a provision that would cause an application to be submitted, and is permissible under all applicable laws, rules and regulations, the institution must submit a notice of the proposed amendment to the Region Office at least 30 days prior to the effective date of the amendment. This bylaw amendment shall automatically be approved within 30 days of the filing of the amendment, provided the institution follows the requirements of its charter in adopting the amendment. The automatic approval does not apply if, prior to the expiration of the 30-day period, the Regional Office notifies the institution that the amendment is rejected, or deemed to be filed as an application. The institution should submit the following information in support of its notice:

- One signed and two conformed copies of the proposed amendment;
- Directors' resolution adopting the amendment and stating the text of the amendment;
- A discussion of how the amendment deviates from the standard provision;
- The proposed date of the institution's special or annual meeting to consider the amendment; and
- If applicable, a legal opinion that confirms that the proposed amendment is in compliance with all laws, rules and regulations. A legal opinion may be required since many of the nonconforming amendments tend to restrict member/stockholder rights in favor of the existing board of directors and/or management.

In evaluating a request to adopt such an amendment, OTS will take into consideration the following:

- Has a similar provision previously received approval by OTS?
- If applicable, has an opinion of legal counsel been submitted?
- Would the adoption of the amendment result in any impairment of the ability of management and/or directors to properly oversee the operations of the institution?

If the amendment is approved, it will be conditioned upon the following:

- The proposed amendments must receive approval pursuant to the requirements of the institution's charter and bylaws; and
- The institution must submit materials that sets forth the effective date of the amendment, and verifies that the amendment was properly adopted.

Notification

If an institution proposes to adopt the language of the model bylaws, or any of the optional bylaws, set forth as exhibits to this section, such amendment shall be effective and deemed approved at the time of adoption, if the amendment is filed with the Regional Office within 30 days after adoption and the institution follows the requirements of its charter in adopting such amendment. The institution must submit the following information within the 30-day period:

- OTS Form 1563;
- One signed and two conformed copies of the amendment; and
- Certification by the institution evidencing adoption of the proposed amendment by the board of directors and the date and vote of adoption of the proposed amendment by the members/stockholders.

The Regional Office should review the amendment to ensure that it conforms to the required regulatory provisions and that it has been adopted in accordance with its charter. An acknowledgement of the amendment's receipt by the Region should be sent to the institution after the review confirms that such amendment is in conformance with regulatory requirements. If the review finds that the language of the proposed amendment does not conform to regulatory requirements, the Regional Office should promptly notify the institution that the amendment is subject to a thirty day review, or the application requirements, as discussed above.

Corporate Governance Procedures

A mutual institution may elect to follow the corporate governance procedures of the laws of the state where the main office of the institution is located, provided that such procedures may be elected only to the extent not inconsistent with applicable federal statutes, regulations, and safety and soundness, and such procedures do not include anti-takeover provisions, or include provisions that involve significant issues of law or policy. If an institution makes this election, it must designate in its bylaws the provision(s) from the body of law selected for its corporate governance procedures, and must file a copy of such bylaws, which are effective upon adoption, within 30 days after adoption, with OTS. The filing must indicate, where not obvious, why the bylaw provision(s) meet the requirements for adoption. Any bylaw amendment filed in accordance with these procedures will automatically be effective 30 days from the date of the filing, provided that the institution follows the requirements of its charter and bylaws in adopting the amendment. This automatic effective date does not apply if, prior to the expiration of the 30-day period, OTS notifies the institution that amendment is rejected or the amendment has been deemed an application.

Stock institutions may also elect to follow the corporate governance procedures of the laws of the state where the main office of the institution is located; the laws of the state where the institution's holding company, if any, is incorporated or chartered; Delaware General Corporation law; or The Model Business Corporation Act, provided that such procedures may be elected only to the extent not inconsistent with applicable federal statutes, regulations, and safety and soundness, and such procedures do not include anti-takeover provisions, or include provisions that involve significant issues of law or policy. All other filing requirements and procedures for adoption are the same as those for mutual institutions.

Processing Procedures and Time Frames*Applications*

As indicated, if this application does not qualify for processing under delegated authority, it 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 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.

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.

The 15-day review period commences when 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, the application will be deemed withdrawn unless OTS 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 the applicant has 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.

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.

MONITORING AND CONTROL

If the amendment is processed as a notice, a review of the amendment and documentation may be necessary to ensure that the final language as approved was, in fact, properly adopted. If this review is necessary, the Regional Director, or their designee, may date stamp the amendment upon receipt to show its filing and effectiveness and send it to the institution, accompanied by an acknowledgment letter. If the Regional Office uses a stamp that acknowledges the filing, no formal cover letter is required. If at any point it is determined that an amendment has been improperly adopted, the institution must be notified immediately and informed of the proper procedures to follow.

If the amendment is processed as an application, the approval order or letter may include conditions of approval. 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 or letter to the Regional Office 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 an application. In addition, they should be provided 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 Office, including a review of the documentation maintained in the application file.

INFORMATION SOURCES

Statutes

12 U.S.C. § 1464

Home Owners' Loan Act of 1933, Section (5)

Regulations

Federal Stock Institutions

12 C.F.R. § 545.121

12 C.F.R. § 552.3

12 C.F.R. § 552.4

Indemnification of Officers, Directors and Employees
Charters for Federal Stock Institutions
Charter Amendments (preapproved)

12 C.F.R. § 552.5	Federal Stock Savings Institution Bylaws
12 C.F.R. § 552.6 through 6-3	

Federal Mutual Institutions

12 C.F.R. § 544.1	Federal Mutual Charter
12 C.F.R. § 544.2	Charter Amendments (preapproved)
12 C.F.R. § 544.5	Federal Mutual Savings Institution Bylaws

General

12 C.F.R. Part 516	Application Processing Guidelines and Procedures
12 C.F.R. § 543.1	Corporate Title
12 C.F.R. § 545.95	Change of Office Location and Redesignation of Office

Exhibits

Examples of anti-takeover amendments the OTS has found acceptable.

Forms

OTS Form 1502-E	OTS Model Charter for Stock Institutions
OTS Form 1502-F	OTS Model Charter for Mutual Institutions
OTS Form 1518	OTS Model Bylaws for Stock Institutions
OTS Form 1577	OTS Model Bylaws for Mutual Institutions

Optional Bylaw Provisions

Integrity of Directors

Exhibit - Anti-takeover Charter and Bylaw Provisions

The following are examples of anti-takeover amendments that have been found acceptable by the OTS.

Approved Amendments

1. Introduction of new business at the annual meeting – notification to the Secretary at least 20 days prior to the annual meeting. (5 days is current requirement)
2. Nominations for directors – must be submitted in writing at least 20 days in advance of meeting or if notice is mailed 30 days or less, then at least 10 days prior to the meeting. (5 days is current requirement)
3. Qualifying director shares – deleting completely/or increasing number of shares required. (100 shares is in model bylaws, but is not a requirement)
4. Board of directors vacancies – filled only by 80% (or some lesser supermajority) of the directors then in office. (a majority of directors voting may fill vacancy under current requirements)
5. Special meetings of the stockholders – called at the request of either 80% (or some lesser supermajority) of whole board or 20% of the voting shares (board of directors or 10% of the shareholders may call special meeting under current requirement)
6. Amendments to bylaws – only by 80% (or some lesser supermajority) of whole board or 80% (or some lesser supermajority) of the shareholders. (majority of whole board or majority of shareholders can amend the bylaws under current requirements.)
7. Amendments to charter – only by 80% (or some lesser supermajority) of whole board and affirmative vote of 80% (or some lesser supermajority) of the shareholders. (majorities of both are currently required.)
8. Shareholder approval for issuance of common stock exceeding 15% of outstanding stock – eliminate.
9. Fair price amendments – requiring supermajority vote prior to entering into certain business combinations.
10. Calling special meetings – increasing the requirement to 50% of shareholders. (currently 10%)
11. Changing the number of directors – only by supermajority vote of whole board or shareholders. (board may increase number of directors until the next election of directors under current requirements)
12. Removal of directors – by cause by a majority of shareholders, without cause by a supermajority of shareholders. (removal for cause only by a majority of shareholders. No removal without cause under current requirements)
13. 563(b)(3)(i) Protection – for five years (in conjunction with a mutual to stock conversion.)

**Exhibit – Model Charter – Stock
OTS Form 1502-E**

**Office of Thrift Supervision
Federal Stock Association Charter**

Section 1. Corporate title. The full corporate title of the association is _____.

Section 2. Office. The home office shall be located in _____
_____ [city, state].

Section 3. Duration. The duration of the association is perpetual.

Section 4. Purpose and Powers. The purpose of the association is to pursue any or all of the lawful objectives of a Federal savings association chartered under section 5 of the Home Owners' Loan Act and to exercise all of the express, implied and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Office of Thrift Supervision (Office).

Section 5. Capital Stock. The total number of shares of all classes of the capital stock that the association has the authority to issue is _____, all of which shall be common stock of par [or if no par is specified then shares shall have a stated] value of _____ per share. The shares may be issued from time to time as authorized by the board of directors without the approval of its shareholders, except as otherwise provided in this Section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the association. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted to the association), labor, or services actually performed for the association, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the association, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the retained earnings of the association that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance.

Except for shares issued in the initial organization of the association or in connection with the conversion of the association from the mutual to stock form of capitalization, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association other than as part of a general public offering or as qualifying shares to a director, unless the issuance or the plan

under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

The holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors, unless the charter provides that there shall be no such cumulative voting. Subject to any provision for a liquidation account, in the event of any liquidation, dissolution, or winding up of the association, the holders of the common stock shall be entitled, after payment or provision for payment of all debts and liabilities of the association, to receive the remaining assets of the association available for distribution, in cash or in kind. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

Section 6. Preemptive rights. Holders of the capital stock of the association shall not be entitled to preemptive rights with respect to any shares of the association, which may be issued.

Section 7. Directors. The association shall be under the direction of a board of directors. The authorized number of directors, as stated in the association's bylaws, shall not be fewer than five nor more than fifteen except when a greater or lesser number is approved by the Director of the Office, or his or her delegate.

Section 8. Amendment of charter. Except as provided in Section 5, no amendment, addition, alteration, change or repeal of this charter shall be made, unless such is proposed by the board of directors of the association, approved by the shareholders by a majority of the votes eligible to be cast at a legal meeting, unless a higher vote is otherwise required, and approved or preapproved by the Office.

Attest: _____

Secretary of the Association

By: _____

President or Chief Executive Officer of the Association

Attest: _____

Secretary of the Office of Thrift Supervision

By: _____

Director of the Office of Thrift Supervision

Effective Date: _____

**Exhibit – Model Charter – Mutual
OTS Form 1502-F**

**Office of Thrift Supervision
Federal Mutual Association Charter**

Federal mutual savings banks should substitute the term “savings bank” for “association” throughout.

Section 1. Corporate title. The full corporate title of the Federal savings association is _____.

Section 2. Office. The home office shall be located in _____ [city, state].

Section 3. Duration. The duration of the association is perpetual.

Section 4. Purpose and Powers. The purpose of the association is to pursue any or all of the lawful objectives of a Federal mutual savings association chartered under section 5 of the Home Owners' Loan Act and to exercise all the express, implied and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Office of Thrift Supervision (Office).

Section 5. Capital. The association may raise capital by accepting payments on savings and demand accounts and by any other means authorized by the Office.

Section 6. Members. All holders of the association's savings, demand or other authorized accounts are members of the association. In the consideration of all questions requiring action by the members of the association, each holder of an account shall be permitted to cast one vote for each \$100, or fraction thereof, of the withdrawal value of the member's account. No member, however, shall cast more than 1000 votes. All accounts shall be nonassessable.

Section 7. Directors. The association shall be under the direction of a board of directors. The authorized number of directors shall not be fewer than five nor more than fifteen persons, as fixed in the association's bylaws, except that the number of directors may be decreased to a number less than five or increased to a number greater than fifteen with the prior approval of the Director of the Office or his or her delegate.

Section 8. Capital, surplus, and distribution of earnings. The association shall maintain for the purpose of meeting losses the amount of capital required by section 5 of the Home Owners' Loan Act and by regulations of the Office. The association shall distribute net earnings on its accounts on such basis and in accordance with such terms and conditions as may from time to time be authorized by the Director of the Office: **Provided**, that the association may establish minimum-balance requirements for accounts to be eligible for distribution of earnings. All holders of accounts of the

association shall be entitled to equal distribution of assets, **pro rata** to the value of their accounts, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association. Moreover, in any such event, or in any other situation in which the priority of such accounts is in controversy, all such accounts shall, to the extent of their withdrawal value, be debts of the association having the same priority as the claims of general creditors of the association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association.

Section 9. Amendment of charter. Adoption of any preapproved charter amendment shall be effective after such preapproved amendment has been approved by the members at a legal meeting. Any other amendment, addition, change, or repeal of this charter must be approved by the Office prior to approval by the members at a legal meeting, and shall be effective upon filing with the Office in accordance with regulatory procedures.

Attest: _____

Secretary of the Association

By: _____

President or Chief Executive Officer of the Association

Attest: _____

Secretary of the Office of Thrift Supervision

By: _____

Director of the Office of Thrift Supervision

Effective Date: _____

**Exhibit – Model Bylaws – Stock
OTS Form 1518**

**OFFICE OF THRIFT SUPERVISION
Model Bylaws for Stock Associations**

The bylaws for a Federal stock savings bank may substitute the term “savings bank” for “association.”

Article I - Home Office

The home office of the association shall be at _____ [set forth the full address] in the County of _____, in the State of _____.

Article II - Shareholders

Section 1. Place of Meetings. All annual and special meetings of shareholders shall be held at the home office of the association or at such other convenient place as the board of directors may determine.

Section 2. Annual Meeting. A meeting of the shareholders of the association for the election of directors and for the transaction of any other business of the association shall be held annually within 150 days after the end of the association's fiscal year on the __ of __ if not a legal holiday, and if a legal holiday, then on the next day following which is not a legal holiday, at __, or at such other date and time within such 150-day period as the board of directors may determine.

Section 3. Special Meetings. Special meetings of the shareholders for any purpose or purposes, unless otherwise prescribed by the regulations of the Office of Thrift Supervision (Office), may be called at any time by the chairman of the board, the president, or a majority of the board of directors, and shall be called by the chairman of the board, the president, or the secretary upon the written request of the holders of not less than one-tenth of all of the outstanding capital stock of the association entitled to vote at the meeting. Such written request shall state the purpose or purposes of the meeting and shall be delivered to the home office of the association addressed to the chairman of the board, the president, or the secretary.

Section 4. Conduct of Meetings. Annual and special meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order unless otherwise prescribed by regulations of the Office or these bylaws or the board of directors adopts another written procedure for the conduct of meetings. The board of directors shall designate, when present, either the chairman of the board or president to preside at such meetings.

Section 5. Notice of Meetings. Written notice stating the place, day, and hour of the meeting and the purpose(s) for which the meeting is called shall be delivered not fewer than 20 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, or the secretary, or the directors calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be

delivered when deposited in the mail, addressed to the shareholder at the address as it appears on the stock transfer books or records of the association as of the record date prescribed in section 6 of this article II with postage prepaid. When any shareholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. It shall not be necessary to give any notice of the time and place of any meeting adjourned for less than 30 days or of the business to be transacted at the meeting, other than an announcement at the meeting at which such adjournment is taken.

Section 6. Fixing of Record Date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of shareholders. Such date in any case shall be not more than 60 days and, in case of a meeting of shareholders, not fewer than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment.

Section 7. Voting Lists. At least 20 days before each meeting of the shareholders, the officer or agent having charge of the stock transfer books for shares of the association shall make a complete list of the shareholders of record entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address and the number of shares held by each. This list of shareholders shall be kept on file at the home office of the association and shall be subject to inspection by any shareholder of record or the shareholder's agent at any time during usual business hours for a period of 20 days prior to such meeting. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to inspection by any shareholder of record or any shareholder's agent during the entire time of the meeting. The original stock transfer book shall constitute prima facie evidence of the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders. In lieu of making the shareholder list available for inspection by shareholders as provided in the preceding paragraph, the board of directors may elect to follow the procedures prescribed in § 552.6(d) of the Office's regulations as now or hereafter in effect.

Section 8. Quorum. A majority of the outstanding shares of the association entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. If less than a majority of the outstanding shares is represented at a meeting, a majority of the shares so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to constitute less than a quorum. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number of shareholders voting together or voting by classes is required by law or the charter. Directors, however, are elected by a plurality of the votes cast at an election of directors.

Section 9. Proxies. At all meetings of shareholders, a shareholder may vote by proxy executed in writing by the shareholder or by his or her duly authorized attorney in fact. Proxies may be given

telephonically or electronically as long as the holder uses a procedure for verifying the identity of the shareholder. Proxies solicited on behalf of the management shall be voted as directed by the shareholder or, in the absence of such direction, as determined by a majority of the board of directors. No proxy shall be valid more than eleven months from the date of its execution except for a proxy coupled with an interest.

Section 10. Voting of Shares in the Name of Two or More Persons. When ownership stands in the name of two or more persons, in the absence of written directions to the association to the contrary, at any meeting of the shareholders of the association any one or more of such shareholders may cast, in person or by proxy, all votes to which such ownership is entitled. In the event an attempt is made to cast conflicting votes, in person or by proxy, by the several persons in whose names shares of stock stand, the vote or votes to which those persons are entitled shall be cast as directed by a majority of those holding such and present in person or by proxy at such meeting, but no votes shall be cast for such stock if a majority cannot agree.

Section 11. Voting of Shares by Certain Holders. Shares standing in the name of another corporation may be voted by any officer, agent, or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine. Shares held by an administrator, executor, guardian, or conservator may be voted by him or her, either in person or by proxy, without a transfer of such shares into his or her name. Shares standing in the name of a trustee may be voted by him or her, either in person or by proxy, but no trustee shall be entitled to vote shares held by him or her without a transfer of such shares into his or her name. Shares held in trust in an IRA or Keogh Account, however, may be voted by the association if no other instructions are received. Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer into his or her name if authority to do so is contained in an appropriate order of the court or other public authority by which such receiver was appointed. A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred. Neither treasury shares of its own stock held by the association nor shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the association, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for purposes of any meeting. [If charter authorizes cumulative voting, the following Section 12 shall apply, otherwise renumber Sections 13 - 16 as Sections 12 - 15.]

Section 12. Cumulative Voting. Every shareholder entitled to vote at an election for directors shall have the right to vote, in person or by proxy, the number of shares owned by the shareholder for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote, or to cumulate the votes by giving one candidate as many votes as the number of such directors to be elected multiplied by the number of shares shall equal or by distributing such votes on the same principle among any number of candidates.

Section 13. Inspectors of Election. In advance of any meeting of shareholders, the board of directors may appoint any person other than nominees for office as inspectors of election to act at such meeting or any adjournment. The number of inspectors shall be either one or three. Any such appointment shall not be altered at the meeting. If inspectors of election are not so appointed, the

chairman of the board or the president may, or on the request of not fewer than 10 percent of the votes represented at the meeting shall, make such appointment at the meeting. If appointed at the meeting, the majority of the votes present shall determine whether one or three inspectors are to be appointed. In case any person appointed as inspector fails to appear or fails or refuses to act, the vacancy may be filled by appointment by the board of directors in advance of the meeting or at the meeting by the chairman of the board or the president. Unless otherwise prescribed by regulations of the Office, the duties of such inspectors shall include: determining the number of shares and the voting power of each share, the shares represented at the meeting, the existence of a quorum, and the authenticity, validity and effect of proxies; receiving votes, ballots, or consents; hearing and determining all challenges and questions in any way arising in connection with the rights to vote; counting and tabulating all votes or consents; determining the result; and such acts as may be proper to conduct the election or vote with fairness to all shareholders.

Section 14. Nominating Committee. The board of directors shall act as a nominating committee for selecting the management nominees for election as directors. Except in the case of a nominee substituted as a result of the death or other incapacity of a management nominee, the nominating committee shall deliver written nominations to the secretary at least 20 days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the association. No nominations for directors except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by shareholders are made in writing and delivered to the secretary of the association at least five days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the association. Ballots bearing the names of all persons nominated by the nominating committee and by shareholders shall be provided for use at the annual meeting. However, if the nominating committee shall fail or refuse to act at least 20 days prior to the annual meeting, nominations for directors may be made at the annual meeting by any shareholder entitled to vote and shall be voted upon.

Section 15. New Business. Any new business to be taken up at the annual meeting shall be stated in writing and filed with the secretary of the association at least five days before the date of the annual meeting, and all business so stated, proposed, and filed shall be considered at the annual meeting; but no other proposal shall be acted upon at the annual meeting. Any shareholder may make any other proposal at the annual meeting and the same may be discussed and considered, but unless stated in writing and filed with the secretary at least five days before the meeting, such proposal shall be laid over for action at an adjourned, special, or annual meeting of the shareholders taking place 30 days or more thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of reports of officers, directors, and committees; but in connection with such reports, no new business shall be acted upon at such annual meeting unless stated and filed as herein provided.

Section 16. Informal Action by Shareholders. Any action required to be taken at a meeting of the shareholders, or any other action which may be taken at a meeting of shareholders, may be taken without a meeting if consent in writing, setting forth the action so taken, shall be given by all of the shareholders entitled to vote with respect to the subject matter.

Article III - Board of Directors

Section 1. General Powers. The business and affairs of the association shall be under the direction of its board of directors. The board of directors shall annually elect a chairman of the board and a president from among its members and shall designate, when present, either the chairman of the board or the president to preside at its meetings.

Section 2. Number and Term. The board of directors shall consist of ___ [not fewer than five nor more than fifteen] members, and shall be divided into three classes as nearly equal in number as possible. The members of each class shall be elected for a term of three years and until their successors are elected and qualified. One class shall be elected by ballot annually.

Section 3. Regular Meetings. A regular meeting of the board of directors shall be held without other notice than this bylaw following the annual meeting of shareholders. The board of directors may provide, by resolution, the time and place, for the holding of additional regular meetings without other notice than such resolution. Directors may participate in a meeting by means of a conference telephone or similar communications device through which all persons participating can hear each other at the same time. Participation by such means shall constitute presence in person for all purposes.

Section 4. Qualification. Each director shall at all times be the beneficial owner of not less than 100 shares of capital stock of the association unless the association is a wholly owned subsidiary of a holding company.

Section 5. Special Meetings. Special meetings of the board of directors may be called by or at the request of the chairman of the board, the president, or one-third of the directors. The persons authorized to call special meetings of the board of directors may fix any place, within the association's normal lending territory, as the place for holding any special meeting of the board of directors called by such persons. Members of the board of directors may participate in special meetings by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person for all purposes.

Section 6. Notice. Written notice of any special meeting shall be given to each director at least 24 hours prior thereto when delivered personally or by telegram or at least five days prior thereto when delivered by mail at the address at which the director is most likely to be reached. Such notice shall be deemed to be delivered when deposited in the mail so addressed, with postage prepaid if mailed, when delivered to the telegraph company if sent by telegram, or when the association receives notice of delivery if electronically transmitted. Any director may waive notice of any meeting by a writing filed with the secretary. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the board of directors need be specified in the notice of waiver of notice of such meeting.

Section 7. Quorum. A majority of the number of directors fixed by section 2 of this article III shall constitute a quorum for the transaction of business at any meeting of the board of directors; but if less

than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time. Notice of any adjourned meeting shall be given in the same manner as prescribed by section 5 of this article III.

Section 8. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the Office or by these bylaws.

Section 9. Action Without a Meeting. Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

Section 10. Resignation. Any director may resign at any time by sending a written notice of such resignation to the home office of the association addressed to the chairman of the board or the president. Unless otherwise specified, such resignation shall take effect upon receipt by the chairman of the board or the president. More than three consecutive absences from regular meetings of the board of directors, unless excused by resolution of the board of directors, shall automatically constitute a resignation, effective when such resignation is accepted by the board of directors.

Section 11. Vacancies. Any vacancy occurring on the board of directors may be filled by the affirmative vote of a majority of the remaining directors although less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the shareholders. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

Section 12. Compensation. Directors, as such, may receive a stated salary for their services. By resolution of the board of directors, a reasonable fixed sum, and reasonable expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the board of directors. Members of either standing or special committees may be allowed such compensation for attendance at committee meetings as the board of directors may determine.

Section 13. Presumption of Assent. A director of the association who is present at a meeting of the board of directors at which action on any association matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention shall be entered in the minutes of the meeting or unless he or she shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the association within five days after the date a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 14. Removal of Directors. At a meeting of shareholders called expressly for that purpose, any director may be removed only for cause by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against the removal would be sufficient to elect a director if then cumulatively voted at an election of the class of directors of which such director is a part. [If cumulative voting has been deleted, the preceding sentence should be deleted.] Whenever the holders

of the shares of any class are entitled to elect one or more directors by the provisions of the charter or supplemental sections thereto, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

Article IV - Executive and Other Committees

Section 1. Appointment. The board of directors, by resolution adopted by a majority of the full board, may designate the chief executive officer and two or more of the other directors to constitute an executive committee. The designation of any committee pursuant to this Article IV and the delegation of authority shall not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

Section 2. Authority. The executive committee, when the board of directors is not in session, shall have and may exercise all of the authority of the board of directors except to the extent, if any, that such authority shall be limited by the resolution appointing the executive committee; and except also that the executive committee shall not have the authority of the board of directors with reference to: the declaration of dividends; the amendment of the charter or bylaws of the association, or recommending to the shareholders a plan of merger, consolidation, or conversion; the sale, lease, or other disposition of all or substantially all of the property and assets of the association otherwise than in the usual and regular course of its business; a voluntary dissolution of the association; a revocation of any of the foregoing; or the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest.

Section 3. Tenure. Subject to the provisions of section 8 of this article IV, each member of the executive committee shall hold office until the next regular annual meeting of the board of directors following his or her designation and until a successor is designated as a member of the executive committee.

Section 4. Meetings. Regular meetings of the executive committee may be held without notice at such times and places as the executive committee may fix from time to time by resolution. Special meetings of the executive committee may be called by any member thereof upon not less than one day's notice stating the place, date, and hour of the meeting, which notice may be written or oral. Any member of the executive committee may waive notice of any meeting and no notice of any meeting need be given to any member thereof who attends in person. The notice of a meeting of the executive committee need not state the business proposed to be transacted at the meeting.

Section 5. Quorum. A majority of the members of the executive committee shall constitute a quorum for the transaction of business at any meeting thereof, and action of the executive committee must be authorized by the affirmative vote of a majority of the members present at a meeting at which a quorum is present.

Section 6. Action Without a Meeting. Any action required or permitted to be taken by the executive committee at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members of the executive committee.

Section 7. Vacancies. Any vacancy in the executive committee may be filled by a resolution adopted by a majority of the full board of directors.

Section 8. Resignations and Removal. Any member of the executive committee may be removed at any time with or without cause by resolution adopted by a majority of the full board of directors. Any member of the executive committee may resign from the executive committee at any time by giving written notice to the president or secretary of the association. Unless otherwise specified, such resignation shall take effect upon its receipt; the acceptance of such resignation shall not be necessary to make it effective. No notice of any meeting need be given to any member thereof who attends in person. The notice of a meeting of the executive committee need not state the business proposed to be transacted at the meeting.

Section 9. Procedure. The executive committee shall elect a presiding officer from its members and may fix its own rules of procedure, which shall not be inconsistent with these bylaws. It shall keep regular minutes of its proceedings and report the same to the board of directors for its information at the meeting held next after the proceedings shall have occurred.

Section 10. Other Committees. The board of directors may by resolution establish an audit, loan, or other committee composed of directors as they may determine to be necessary or appropriate for the conduct of the business of the association and may prescribe the duties, constitution, and procedures thereof.

Article V - Officers

Section 1. Positions. The officers of the association shall be a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The offices of the secretary and treasurer or comptroller may be held by the same person and a vice president may also be either the secretary or the treasurer or comptroller. The board of directors may designate one or more vice presidents as executive vice president or senior vice president. The board of directors may also elect or authorize the appointment of such other officers as the business of the association may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

Section 2. Election and Term of Office. The officers of the association shall be elected annually at the first meeting of the board of directors held after each annual meeting of the shareholders. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as possible. Each officer shall hold office until a successor has been duly elected and qualified or until the officer's death, resignation, or removal in the manner hereinafter provided. Election or appointment of an officer, employee, or agent shall not of itself create contractual rights. The board of directors may authorize the association to enter into an employment contract with any officer in accordance with regulations of the Office; but no such contract shall impair the right of the board of directors to remove any officer at any time in accordance with section 3 of this article V.

Section 3. Removal. Any officer may be removed by the board of directors whenever in its judgment the best interests of the association will be served thereby, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the board of directors for the unexpired portion of the term.

Section 5. Remuneration. The remuneration of the officers shall be fixed from time to time by the board of directors.

Article VI - Contracts, Loans, Checks, and Deposits

Section 1. Contracts. To the extent permitted by regulations of the Office, and except as otherwise prescribed by these bylaws with respect to certificates for shares, the board of directors may authorize any officer, employee, or agent of the association to enter into any contract or execute and deliver any instrument in the name of and on behalf of the association. Such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the association and no evidence of indebtedness shall be issued in its name unless authorized by the board of directors. Such authority may be general or confined to specific instances.

Section 3. Checks; Drafts. etc. All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the association shall be signed by one or more officers, employees or agents of the association in such manner as shall from time to time be determined by the board of directors.

Section 4. Deposits. All funds of the association not otherwise employed shall be deposited from time to time to the credit of the association in any duly authorized depositories as the board of directors may select.

Article VII - Certificates for Shares and Their Transfer

Section 1. Certificates for Shares. Certificates representing shares of capital stock of the association shall be in such form as shall be determined by the board of directors and approved by the Office. Such certificates shall be signed by the chief executive officer or by any other officer of the association authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the association itself or one of its employees. Each certificate for shares of capital stock shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the association. All certificates surrendered to the association for transfer shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares has been surrendered and canceled, except that in the case of a lost or destroyed certificate, a new certificate

may be issued upon such terms and indemnity to the association as the board of directors may prescribe.

Section 2. Transfer of Shares. Transfer of shares of capital stock of the association shall be made only on its stock transfer books. Authority for such transfer shall be given only by the holder of record or by his or her legal representative, who shall furnish proper evidence of such authority, or by his or her attorney authorized by a duly executed power of attorney and filed with the association. Such transfer shall be made only on surrender for cancellation of the certificate for such shares. The person in whose name shares of capital stock stand on the books of the association shall be deemed by the association to be the owner for all purposes.

Article VIII--Fiscal Year

The fiscal year of the association shall end on the _____ of _____ of each year. The appointment of accountants shall be subject to annual ratification by the shareholders.

Article IX - Dividends

Subject to the terms of the association's charter and the regulations and orders of the Office. The board of directors may, from time to time, declare, and the association may pay, dividends on its outstanding shares of capital stock.

Article X - Corporate Seal

The board of directors shall provide an association seal, which shall be two concentric circles between which shall be the name of the association. The year of incorporation or an emblem may appear in the center.

Article XI - Amendments

These bylaws may be amended in a manner consistent with regulations of the Office and shall be effective after: (i) approval of the amendment by a majority vote of the authorized board of directors, or by a majority vote of the votes cast by the shareholders of the association at any legal meeting, and (ii) receipt of any applicable regulatory approval. When an association fails to meet its quorum requirements, solely due to vacancies on the board, then the affirmative vote of a majority of the sitting board will be required to amend the bylaws.

**Exhibit – Model Bylaws – Mutual
OTS Form 1577****OFFICE OF THRIFT SUPERVISION
Model Bylaws for Mutual Savings Associations**

The bylaws for a Federal mutual savings bank may substitute the term “savings bank” for “association.” The term “trustees” may be substituted for the term “directors.”

1. **Annual meeting of members.** The annual meeting of the members of the association for the election of directors and for the transaction of any other business of the association shall be held, as designated by the board of directors, at a location within the state that constitutes the principal place of business of the association, or at any other convenient place the board of directors may designate, at (insert date and time within 150 days after the end of the association's fiscal year, if not a legal holiday, or if a legal holiday then on the next succeeding day not a legal holiday). At each annual meeting, the officers shall make a full report of the financial condition of the association and of its progress for the preceding year and shall outline a program for the succeeding year.
2. **Special meetings of members.** Special meetings of the members of the association may be called at any time by the president or the board of directors and shall be called by the president, a vice president, or the secretary upon the written request of members of record, holding in the aggregate at least one-tenth of the voting capital of the association. Such written request shall state the purpose of the meeting and shall be delivered at the principal place of business of the association addressed to the president. For purposes of this section, “voting capital” means FDIC-insured deposits as of the voting record date. Annual and special meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order or any other set of written procedures agreed to by the board of directors.
3. **Notice of meeting of members.** Notice of each meeting shall be either published once a week for the two successive calendar weeks (in each instance on any day of the week) immediately prior to the week in which such meeting shall convene, in a newspaper printed in the English language and of general circulation in the city or county in which the principal place of business of the association is located, or mailed postage prepaid at least (insert number no less than 15) days and not more than (insert number not more than 45) days prior to the date on which such meeting shall convene, to each of its members of record at the last address appearing on the books of the association. Such notice shall state the name of the association, the place of the meeting, the date and time when it shall convene, and the matters to be considered. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such meeting shall convene. If any member, in person or by authorized attorney, shall waive in writing notice of any meeting of members, notice thereof need not be given to such member. When any meeting is adjourned for 30 days or more, notice of the adjournment and reconvening of the meeting shall be given as in the case of the original meeting.

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4. **Fixing of record date.** For the purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose, the board of directors shall fix in advance a record date for any such determination of members. Such date shall be not more than 60 days nor fewer than 10 days prior to the date on which the action, requiring such determination of members, is to be taken. The member entitled to participate in any such action shall be the member of record on the books of the association on such record date. The number of votes which each member shall be entitled to cast at any meeting of the members shall be determined from the books of the association as of such record date. Any member of such record date who ceases to be a member prior to such meeting shall not be entitled to vote at that meeting. The same determination shall apply to any adjourned meeting.
 5. **Member quorum.** Any number of members present and voting, represented in person or by proxy, at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of the members shall determine any question, unless otherwise required by regulation. Directors, however, are elected by a plurality of the votes cast at an election of directors. At any adjourned meeting any business may be transacted which might have been transacted at the meeting as originally called. Members present at a duly constituted meeting may continue to transact business until adjournment.
 6. **Voting by proxy.** Voting at any annual or special meeting of the members may be by proxy pursuant to the rules and regulations of the Office, provided, that no proxies shall be voted at any meeting unless such proxies shall have been placed on file with the secretary of the association, for verification, prior to the convening of such meeting. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the member. All proxies with a term greater than eleven months or solicited at the expense of the association must run to the board of directors as a whole, or to a committee appointed by a majority of such board. Accounts held by an administrator, executor, guardian, conservator or receiver may be voted in person or by proxy by such person. Accounts held by a trustee may be voted by such trustee either in person or by proxy, in accordance with the terms of the trust agreement, but no trustee shall be entitled to vote accounts without a transfer or such accounts into the trustee name. Accounts held in trust in an IRA or Keogh Account, however, may be voted by the association if no other instructions are received. Joint accounts shall be entitled to no more than 1000 votes, and any owner may cast all the votes unless the association has otherwise been notified in writing.
 7. **Communication between members.** Communication between members shall be subject to any applicable rules or regulations of the Office. No member, however, shall have the right to inspect or copy any portion of any books or records of a Federal mutual association containing: (i) a list of depositors in or borrowers from such association; (ii) their addresses; (iii) individual deposit or loan balances or records; or (iv) any data from which such information could reasonably be constructed.
 8. **Number of directors, membership.** The number of directors shall be ___[not fewer than five nor more than fifteen], except where authorized by the Office. Each director shall be a member of the association. Directors shall be elected for periods of one to three years and until their successors are elected and qualified, but if a staggered board is chosen, provision

shall be made for the election of approximately one-third or one-half of the board each year, as appropriate [State-chartered savings banks converting to Federal savings associations may include alternative provisions for the election and term of office of directors so long as such provisions are authorized by the Office.]

9. **Meetings of the board.** The board of directors shall meet regularly without notice at the principal place of business of the association at least once each month at an hour and date fixed by resolution of the board, provided that the place of meeting may be changed by the directors. Special meetings of the board may be held at any place specified in a notice of such meeting and shall be called by the secretary upon the written request of the chairman or of three directors. All special meetings shall be held upon at least 24 hours written notice to each director unless notice is waived in writing before or after such meeting. Such notice shall state the place, date, time, and purposes of such meeting. A majority of the authorized directors shall constitute a quorum for the transaction of business. The act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board. Action may be taken without a meeting if unanimous written consent is obtained for such action. The board may also permit telephonic participation at meetings. The meetings shall be under the direction of a chairman, appointed annually by the board, or in the absence of the chairman, the meetings shall be under the direction of the president.
10. **Officers, employees, and agents.** Annually at the meeting of the board of directors of the association following the annual meeting of the members of the association, the board shall elect a president, one or more vice presidents, a secretary, and a treasurer or comptroller: Provided, that the offices of president and secretary may not be held by the same person and a vice president may also be the treasurer or comptroller. The board may appoint such additional officers, employees, and agents as it may from time to time determine. The term of office of all officers shall be one year or until their respective successors are elected and qualified. Any officer may be removed at any time by the board with or without cause, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed. In the absence of designation from time to time of powers and duties by the board, the officers shall have such powers and duties as generally pertain to their respective offices. Any indemnification by the association of the association's personnel is subject to any applicable rules or regulations of the Office.
11. **Vacancies, resignation or removal of directors.** Members of the association shall elect directors by ballot: Provided, that in the event of a vacancy on the board between meetings of members, the board of directors may, by their affirmative vote, fill such vacancy, even if the remaining directors constitute less than a quorum. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the members. Any director may resign at any time by sending a written notice of such resignation to the association delivered to the secretary. Unless otherwise specified therein such resignation shall take effect upon receipt by the secretary. More than three consecutive absences from regular meetings of the board, unless excused by resolution of the board, shall automatically constitute a resignation, effective when such resignation is accepted by the board. At a meeting of members called expressly for that purpose, directors or the entire board may be removed, only with cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

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12. **Powers of the board.** The board of directors shall have the power: (a) By resolution, to appoint from among its members and remove an executive committee, which committee shall have and may exercise the powers of the board between the meetings of the board, but no such committee shall have the authority of the board to amend the charter or bylaws, adopt a plan of merger, consolidation, dissolution, or provide for the disposition of all or substantially all the property and assets of the association. Such committee shall not operate to relieve the board, or any member thereof, of any responsibility imposed by law; (b) To appoint and remove by resolution the members of such other committees as may be deemed necessary and prescribe the duties thereof; (c) To fix the compensation of directors, officers, and employees; and to remove any officer or employee at any time with or without cause; (d) To extend leniency and indulgence to borrowing members who are in distress and generally to compromise and settle any debts and claims; (e) To limit payments on capital which may be accepted; (f) To reject an application for an account or membership; and (g) To exercise any and all of the powers of the association not expressly reserved by the charter to the members.
13. **Execution of instruments, generally.** All documents and instruments or writings of any nature shall be signed, executed, verified, acknowledged, and delivered by such officers, agents, or employees of the association or any one of them and in such manner as from time to time may be determined by resolution of the board. All notes, drafts, acceptances, checks, endorsements, and all evidences of indebtedness of the association whatsoever shall be signed by such officer or officers or such agent or agents of the association and in such manner as the board may from time to time determine. Endorsements for deposit to the credit of the association in any of its duly authorized depositories shall be made in such manner as the board may from time to time determine. Proxies to vote with respect to shares or accounts of other associations or stock of other corporations owned by, or standing in the name of, the association may be executed and delivered from time to time on behalf of the association by the president or a vice president and the secretary or an assistant secretary of the association or by any other persons so authorized by the board.
14. **Nominating committee.** The chairman, at least 30 days prior to the date of each annual meeting, shall appoint a nominating committee of three persons who are members of the association. Such committee shall make nominations for directors in writing and deliver to the secretary such written nominations at least 15 days prior to the date of the annual meeting, which nominations shall then be posted in a prominent place in the principal place of business for the 15-day period prior to the date of the annual meeting, except in the case of a nominee substituted as a result of death or other incapacity. Provided such committee is appointed and makes such nominations, no nominations for directors except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by members are made in writing and delivered to the secretary of the association at least 10 days prior to the date of the annual meeting, which nominations shall then be posted in a prominent place in the principal place of business for the 10-day period prior to the date of the annual meeting, except in the case of a nominee substituted as a result of death or other incapacity. Ballots bearing the names of all persons nominated by the nominating committee and by other members prior to the annual meeting shall be provided for use by the members at the annual meeting. If at any time the chairman shall fail to appoint such nominating committee, or the nominating committee shall fail or refuse to act at least 15 days prior to the annual

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- meeting, nominations for directors may be made at the annual meeting by any member and shall be voted upon.
15. **New business.** Any new business to be taken up at the annual meeting, including any proposal to increase or decrease the number of directors of the association, shall be stated in writing and filed with the secretary of the association at least 30 days before the date of the annual meeting, and all business so stated, proposed, and filed shall be considered at the annual meeting; but no other proposal shall be acted upon at the annual meeting. Any member may make any other proposal at the annual meeting and the same may be discussed and considered; but unless stated in writing and filed with the secretary 30 days before the meeting, such proposal shall be laid over for action at an adjourned, special, or regular meeting of the members taking place at least 30 days thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of the reports of officers and committees, but in connection with such reports no new business shall be acted upon at such annual meeting unless stated and filed as herein provided.
16. **Seal.** The seal shall be two concentric circles between which shall be the name of the association. The year of incorporation, the word "Incorporated" or an emblem may appear in the center.
17. **Amendment.** Adoption of any bylaw amendment pursuant to § 544.5 of the Office's regulations, as long as consistent with applicable law, rules and regulations, and which adequately addresses the subject and purpose of the stated by law section, shall be effective after (i) approval of the amendment by a majority vote of the authorized board, or by a vote of the members of the association at a legal meeting; and (ii) receipt of any applicable regulatory approval. When an association fails to meet its quorum requirement solely due to vacancies on the board, the bylaws may be amended by an affirmative vote of a majority of the sitting board.
18. **Age limitations.** [Bylaws on age limitations must comply with all Federal laws, such as the Age Discrimination in Employment Act and the Employee Retirement Income Security Act.]
(a) Directors. No person ___ years of age shall be eligible for election, reelection, appointment, or reappointment to the board of the association. No director shall serve as such beyond the annual meeting of the association immediately following the director becoming ___ (fill in age used above), except that a director serving on ___ (fill in bylaw adoption date) may complete the term as director. This age limitation does not apply to an advisory director.
(b) Officers. No person __ years of age shall be eligible for election, reelection, appointment, or reappointment as an officer of the association. No officer shall serve beyond the annual meeting of the association immediately following the officer becoming _ (fill in age used above), except that an officer serving on ___ (fill in bylaw adoption date) may complete the term. However, an officer shall, at the option of the board, retire at age ___ if the officer has served in an executive or high policy-making post for at least two years immediately prior to retirement and is immediately entitled to nonforfeitable annual retirement benefits of at least ____.

Exhibit – Optional Bylaws*Integrity of Directors*

A person is not qualified to serve as a director if he or she: (1) is under indictment for, or has ever been convicted of, a criminal offense involving dishonesty or breach of trust and the penalty for such offense could be imprisonment for more than one year, or (2) is a person against who a banking agency has, within the past ten years, issued a cease and desist order for conduct involving dishonesty or breach of trust and that order is final and subject to appeal, or (3) has been found either by a regulatory agency whose decision is final and not subject to appeal or by a court to have (i) breached a fiduciary duty involving personal profit or (ii) committed a willful violation of any law, rule or regulation governing banking, securities, commodities or insurance, or any final cease and desist order issued by a banking, securities, commodities or insurance regulatory agency.

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This handbook section provides guidance regarding the requirements and procedures to implement a conversion of an OTS regulated State-chartered savings institution to a Federally chartered savings institution.

With the approval of OTS, an OTS regulated State-chartered savings institution may convert directly to a Federal stock savings institution pursuant to 12 C.F.R. § 552.2-6, or to a Federal mutual charter under 12 C.F.R. §§ 543.8 through .10. To convert to a Federal savings institution, the institution, upon conversion, must have its deposits insured by the FDIC and must comply with all applicable state and federal statutes, OTS regulations and policies, and must obtain all necessary regulatory, shareholder, and/or member approvals.

FILING REQUIREMENTS

Delegated Authority

Generally, the Regional Office may process applications filed under this section under delegated authority. However, certain situations may cause a filing to be nondelegated, including applications that raise a significant issue of law or policy, or that seek regulatory waivers. See Delegation Section 040 of the handbook for further information on the delegation process.

Expedited and Standard Procedures

The 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 Requirement

The applicant must contact the Regional Office in a reasonable time period in advance of filing the application, to discuss whether a prefiling meeting is required prior to submission of the application contact the Regional Office. Since the existing savings institution is typically well known to OTS, a prefiling meeting generally will not be required. The purpose of a meeting, when required, is to permit OTS and the applicant to identify any legal or policy issues before submission of the application, and to enable the applicant to address these issues early in the process. The Regional Office will coordinate 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 until the prefiling meeting requirements in 12 C.F.R. Part 516 are met.

When a meeting is required, the applicant should contact the Regional Office to determine which representatives from the applicant should attend the meeting, and what information will need to be provided in advance of the meeting. These individuals will be expected to discuss the salient aspects of the proposed transaction. The applicant may be required to submit a draft business plan to the

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Regional Office prior to the meeting in a time frame in advance of the meeting acceptable to the Regional Office. When a business plan is required, the plan at a minimum should include:

- A clear and complete description of the projected operations and activities;
- Financial projections for a three-year period stating all significant assumptions used in preparing the projections;
- A discussion of the associated risks and impact of the transaction on the institution;
- Identification of 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
- A discussion to demonstrate how the charter will serve the credit and lending needs in its target market.

Information and Form Requirements

All applications should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant should file the original and two copies of the application, and application fee with 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. For applications that are not delegated to the Regional Office, an additional three copies of the application should be filed with the Applications Filing Room in OTS-Washington.

The applicant must submit OTS Form 1582 and its required information (outlined below) when seeking to convert from a State-chartered, OTS-regulated savings institution to a Federal savings institution.

For All Converting Institutions

- A copy of the Plan of Conversion approved by a majority of the board of directors or trustees;
- A legal opinion that the transaction is permissible under state law;
- A copy of the converting institution's current charter and bylaws, including amendments;
- A copy of the proposed Federal savings institution's charter and bylaws; and
- If the proposed charter and/or bylaws differ from the pre-approved language set forth by regulation, submission of a justification for the need for such provisions and a discussion regarding the effect on the institution if the non-conforming provisions are denied.

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Additional Requirements For Converting Stock Institutions

- A detailed description of the types and classes of stock issued. Provide a listing and discussion of stockholders' rights; dividends rights; redemption and conversion features; preemption; approval of new issues; approval of mergers and acquisitions; liquidation and dissolution; and other preferences or distinctions between types and classes of stock;
- A detailed description of the terms of the exchange involving the existing types and classes of stock for stock in the proposed Federal savings institution. Compare the variations in shareholders' rights between the rights available with the State charter, and rights available with the Federal charter. Any variations in the pre-approved language for the proposed Federal stock charter must be underlined and clearly highlighted;
- Legal opinions that the submissions and descriptions filed regarding stock characteristics and stockholders' rights are legally accurate under applicable law; and
- A legal certification that the proposed form of charter and bylaws are permissible for a Federal stock savings institution.

Additional Requirements for Converting Mutual Institutions

- Additional materials required by 12 C.F.R. §§ 543.8 through .10.

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., 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.

SPECIAL CONSIDERATIONS

Publication Requirements

Public notice is not required for applications involving the conversion of a State-chartered, OTS-regulated savings institution to a Federal savings institution.

Asset Composition

Section 5(c) of HOLA discusses permissible loans and investments for federal savings institutions and limits certain types of lending to a percentage of assets or capital. Investment limitations under State law may permit higher investment limitations or permit investments not authorized for a Federal savings institution. In these cases, OTS may permit a converted institution to retain the assets in excess of the limitations for a period of two years following the conversion, based on an acceptable business plan evidencing that the asset composition will be brought into compliance with the limitations of Section 5(c) in a safe and sound manner. Extension periods in excess of two years will be granted on a limited and case-by-case basis, upon submission of compelling justification for the longer time frame. All requests for extensions exceeding a two year period will require the filing to be processed on a nondelegated basis. A request for approval of the exception must be submitted with the application.

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.

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 nondelegated will be transmitted from OTS-Washington. Correspondence on delegated applications will generally come 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. For nondelegated applications, the application will not be considered filed until received by both OTS-Washington and the Regional Office.

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

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- 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.

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

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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 OTS 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

OTS will consider the application and any information submitted with the application, and may approve the application in accordance with Section 5(e) of HOLA and 12 C.F.R. § 543.2(g)(1). Converting institutions that have been in existence less than three years will be subject to all approval criteria and other requirements applicable to de novo Federal savings institutions.

The application can be approved provided:

- All required information and all documents have been properly executed;
- The application is not contested by the State chartering authority or other regulatory agency, including any protest to an associated application related to the conversion application;
- The provisions in the plan of conversion are acceptable; and
- The transaction poses no supervisory or legal concerns.

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There are no specific regulatory criteria for denial of the application. If the application does not involve a related application, the denial may be based upon objection to due to supervisory reasons, legal reasons, or objections expressed by other regulatory agencies.

Decision Guidelines

OTS considers a charter conversion transaction to be a business decision of the converting institution. In general, the analysis should conclude that the converted institution will be operated in compliance with the laws, rules and regulations applicable to a Federal savings institution, and that the institution will receive the required shareholder/member and regulatory approvals required to consummate the transaction. 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:
 - * OTS Form 1582?
 - * Evidence that the conversion proposal was adopted by a majority of the directors/trustees?
 - * Current Charter and Bylaws, including all amendments?
 - * Proposed Charter and Bylaws in conformance with OTS regulations, or with justification for any modifications to the pre-approved language?
 - * Legal opinion regarding compliance with State law requirements?
 - * Listing of specific types of investments and activities requested to be grandfathered?
- Does the proposed charter conform to the requirements of 12 C.F.R. §§ 544.1 and .2 (OTS Form 1502-F), or 12 C.F.R. §§ 552.3 and .4 (OTS Form 1502-E)?
- Do the proposed bylaws conform to the requirements of 12 C.F.R. § 544.5 (OTS Form 1577), or 12 C.F.R. §§ 552.6 through .6-3 (OTS Form 1518)?
- Have the procedures for charter and bylaw amendments been followed and appropriate documentation been provided by the applicant with regard to non-conforming charter or bylaw provisions?

Conditions

Generally, the following conditions will be imposed on any approval for an OTS-regulated, State-chartered depository institution that will convert to a Federal savings institution.

- A resolution from the institution's board of directors which indicates that all investments, capital accounts or activities not permitted by the HOLA shall be disposed of or discontinued at the earliest possible date without material loss to the applicant, or on any other date which may be determined by OTS;

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- The applicant must receive all required regulatory and shareholder/member approvals for the proposed transaction and submit copies of all such approvals to the Regional Office 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 approval, unless extended by the Regional Director for good cause; and
 - 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.

Nonstandard Conditions

There generally are no nonstandard conditions issued for the subject application. However, in circumstances where nonstandard conditions are imposed, 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

All correspondence related to the processing of the notice or application must 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 must be arranged in chronological order.

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 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 savings institution regarding the action taken on an application, and provide staff with copies of the approval order or letter. If an application is approved, the first examination of the savings 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.

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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(i) Conversion to a Federal Charter
12 U.S.C. § 1464	HOLA, Section 5(r) Out-of-State Branches

Regulations

12 C.F.R. Part 516	Applications Processing Guidelines
12 C.F.R. § 543.1	Corporate Titles of Federally Chartered Institutions
12 C.F.R. § 543.8 through .14	Conversion from State Mutual to Federal Mutual
12 C.F.R. § 544.1 through .5	Charter and Bylaws for Federal Mutual
12 C.F.R. § 552.2-6	Conversion from State Stock to Federal Stock
12 C.F.R. § 552.3 through 6.3	Charter and Bylaws for Federal Stock
12 C.F.R. Part 560	Lending and Investment Limitations

Other

Regulatory Bulletin 20	Background Investigations
Regulatory Bulletin 27-a	Executive Compensation and Employment Contracts
Regulatory Bulletin 32-5	Qualified Thrift Lender Test
Thrift Bulletin 48-(current)	Fees and Assessments
23A and 23B of the Federal Reserve Act	Transactions with Affiliates

Application Forms

OTS Form 1582	Application for Conversion From a State-Chartered Stock or Mutual Association into a Federal Stock or Mutual Savings Association or Savings Bank
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This handbook section provides guidance regarding the conversion of a non-OTS-regulated depository institution to a Federally chartered savings institution. This section addresses the following types of charter conversions: (a) non-OTS-regulated State savings bank converting to a Federal thrift; (b) commercial bank converting to Federal thrift; and (c) credit union converting to a Federal thrift.

With the approval of OTS, any depository institution may convert directly to a Federal stock savings institution pursuant to 12 C.F.R. § 552.2-6, or to a Federal mutual charter under 12 C.F.R. §§ 543.8 through .10. To convert to a Federal thrift charter, the institution, upon conversion, must have its deposits insured by the FDIC and must comply with all applicable State and Federal statutes, OTS regulations and policies, and obtain all necessary regulatory, shareholder and/or member approvals.

OTS may also approve the indirect conversion of a stock depository institution to a Federal stock savings institution pursuant to 12 C.F.R. §§ 552.2-1, 552.13 and 563.22(a), through the merger of the stock depository institution into an interim Federal stock savings institution. Depository institution is defined in 12 C.F.R. § 552.13(b)(4) as “any commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank or a credit union, chartered in the United States and having its principal office located in the United States.”

In order to convert directly to a Federal savings institution, the converting depository institution must be authorized to engage in a direct conversion under its existing statutes and regulations. A National Bank has authority pursuant to 12 C.F.R. § 5.24(f) to engage in a direct conversion to a Federal savings institution. Other depository institutions are not necessarily authorized to engage in a direct conversion under their existing charter and therefore must provide a legal opinion describing how the proposed structure is authorized under Federal and State laws.

Credit unions are not authorized to convert directly to a Federal stock savings institution. A credit union may convert to a Federal stock savings institution subsequent to its conversion to a Federal mutual savings institution, pursuant to 12 C.F.R. Part 563b. OTS will generally require the converted credit union to operate as a Federal mutual savings institution for at least one year before entertaining an application to convert to the stock form of organization.

FILING REQUIREMENTS

Delegated Authority

Generally, the Regional Office under delegated authority may process applications filed under this section, with the exception of applications involving State chartered trust companies and credit unions. An application proposing the conversion of a State chartered trust company or a credit union to a Federal savings institution charter is not eligible for delegated processing. Certain situations may cause any delegated filing to be non-delegated, including applications that raise a significant issue of law or policy or that seek regulatory waivers. See Delegation Section 040 of the handbook for further information on the delegation process.

Expedited and Standard Procedures

The 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 prior to submission of the application to discuss the need for meetings related to its application to convert to a Federal savings institution. Depending upon the circumstances of the proposal, multiple meetings may be required in advance of the conversion to a Federal savings institution.

Prefiling Meeting Requirement

The applicant must meet with the Regional Office for at least one prefiling meeting if the proposal involves a conversion of either a commercial bank or a credit union to a Federal savings institution. For transactions involving a conversion to a Federal savings institution from a State-chartered savings bank regulated by the Federal Deposit Insurance Corporation (FDIC), the Regional Office, at its discretion, may require a prefiling meeting. In any case, it is the applicant's responsibility to contact the Regional Office in a reasonable time period in advance of filing the application to discuss prefiling meeting requirements. 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 to enable the applicant to address these issues early in the process. The Regional Office will coordinate 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 until the prefiling meeting requirements in 12 C.F.R. Part 516 are met.

When a meeting is required, the applicant should contact the Regional Office to determine which representatives from the applicant should attend the meeting, and what information will need to be provided in advance of the meeting. These individuals will be expected to discuss the salient aspects of the proposed transaction. The applicant may be required to 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 include:

- A clear and complete description of the projected operations and activities;
- Financial projections for a three-year period;
- A discussion of the associated risks and impact of the transaction on the institution;
- Identification of 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

- A discussion to demonstrate how the charter will serve the credit and lending needs in its target market.

Preopening Meeting

In transactions covered by this section, the applicant will generally be required to meet with the Regional Office for a “preopening” meeting following approval of the application, but prior to its conversion to a Federal savings institution. The Regional Office will contact the applicant to discuss the forum for the meeting and who should attend. Regional Office staff will discuss the following with the applicant: satisfaction of conditions of approval; supervision and examination process; responsibility and fiduciary duty of the board of directors and management; and, any regulatory issues germane to the successful operation of the savings institution.

Information and Form Requirements

All applications should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant should file the original and two copies of the application, and application fee with 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. For applications that are not delegated to the Regional Office, an additional three copies of the application should be filed with the Applications Filing Room in OTS-Washington.

No specific application form or instructions exist for applications by a non-OTS-regulated financial institution to convert to a Federal savings institution. The filing requirements vary depending upon the structure of the transaction, i.e. whether the transaction is proposed as a direct conversion, or involves an indirect conversion using a newly-chartered Federal savings institution in a merger or a purchase and assumption transaction. Set forth below are the basic filing requirements for these types of applications (additional information may be required on a case-by-case basis):

General Information

- Legal name of applicant(s), including name of holding company, if applicable;
- Complete address of home office and any branch offices;
- Name, telephone number and address of contact person(s) for the application;
- Complete list and description of all subsidiaries of the bank or credit union;
- Summary of proposed transaction and reasons for conversion;
- Discussion of deposit insurance for the resulting savings institution;
- Proposed charter and bylaws conforming to 12 C.F.R. §§ 552.3 and 552.5 (stock) or 12 C.F.R. §§ 544.1 and 544.5 (mutual). Copies of a model charter and model bylaws are available in the Applications Handbook, which is contained on the OTS Website. Certain

variations from the models are set forth in the regulations and considered preapproved. OTS must specifically approve any other variations; and

- Board of directors' resolution authorizing the transaction.

Opinions

- A legal opinion describing how the proposed transaction is permissible under Federal and State laws; and
- A tax opinion describing the consequences of the proposed transaction.

Financial Information

- Three-year business plan meeting OTS requirements;
- Call reports for the last three years of operation for depository institutions without independent audit reports;
- Copies of the three most recent independent audit reports of the converting depository institution, if applicable;
- Copies of financial reports filed with the existing principal regulator and the Securities and Exchange Commission, if applicable, for the holding company(ies) or depository institution since the date of the last independent audit;
- A capital reconciliation showing compliance with OTS capital requirements and a discussion of any differences between the applicant's accounting standards and the standards required by OTS. OTS Schedule CCR and the instructions, as well as information on capital adequacy, should be reviewed in preparing this reconciliation;
- A general description of the deposit, investment and lending activity of the institution, including an approximate percentage of assets each type of investment and loan represents; and
- A summary of deposits and assets attributable to each office location.

Director and Senior Management Information

- Each director and senior executive officer of the applicant that will continue in his/her position at the resulting Federal savings institution, must submit the following:
 - * Name and Position;
 - * An executed Interagency Biographical and Financial Report (OTS Form 1623);
 - * An executed RB-20 Certification;
 - * Two completed FBI fingerprint cards (with OTS nomenclature) for each individual (plus a \$23 processing fee per individual set);

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- * For each director, submit an executed Oath of Director of FDIC-Insured Institution;
 - * Copies of any existing or proposed employment contracts. The agreements must comply with OTS guidelines set forth in RB 27a and 12 C.F.R. §§ 563.39 and 563.161; and
 - * For a converting stock depository institution, a listing of all entities owning or controlling more than 10% of the stock, directly or indirectly, alone or acting in concert.
- OTS policy requires background investigations to be completed in accordance with the guidance in RB-20. 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. For those individuals who have been previously reviewed and approved by the appropriate bank regulatory authority, OTS will typically grant a waiver of the biographical and financial report and fingerprint card. For directors and officers who have been associated with the existing bank for a sufficient amount of time to assess their effectiveness (typically involving tenures in excess of one year or through one examination cycle), a waiver of these documents may also be granted. For all other individuals, the Regional Office will 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.

For Existing Bank Holding Companies that will not become Savings and Loan Holding Companies, submit the following items of Application H-(e):

- Cover page and signature page;
- Item 110 - Details of Proposed Acquisition;
- Item 120 - Regulatory Issues;
- Item 220 - Controlling Shareholders/Affiliates; and
- Item 410 - Management Officials.

For Stock chartered institutions, submit the following items:

- Form of stock certificate, which must include any required restrictive legends; and
- All documents pertinent to the purchase and distribution of stock, including stock warrants and option plans.

Other Information

- Copies of applications submitted to other agencies and, upon their receipt, approval letters;

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- Copies of the three most recent safety and soundness examination reports prepared by the principal regulator;
 - Copies of the most recent compliance, CRA, and/or specialty examination report prepared by the principal regulator;
 - Copies of all current formal enforcement actions relating to the applicant, its holding company(ies), controlling persons, subsidiaries and affiliates;
 - A description of the investment and lending activity of the existing depository institution, including the total amount of each type of investment and loan, as well as the percent of assets each category constitutes. To the extent that any particular investment or loan category exceeds the percentage of assets limitations imposed by Section 5(c) of HOLA, identify the assets and provide a plan, including time frames, to meet such limitations. Requests for a grace period permitted under Section 5(c)(5)(A) of HOLA should be submitted as part of the application;
 - A completed QTL worksheet as of the most recent quarter, and a schedule that projects the proposed savings institution's QTL performance over the three year business plan. For institutions with interstate branch networks (i.e., branches outside the state in which the institution's home office is located), the converting institution must also demonstrate compliance with Section 5(r) of HOLA. If none of the exceptions in Section 5(r)(2) apply, the proposed savings institution must separately demonstrate QTL in each state where it operates an interstate branch or branches. To the extent that the savings institution will fail to comply with its minimum QTL requirement, the applicant must provide a plan, including time frames, to meet such limitations. Requests for a QTL waiver should be submitted as part of the application. Applications requesting a QTL waiver are non-delegated;
 - Copies of the financial depository institution's current charter and bylaws;
 - Identify EDP servicers used by the applicant or describe the extent of EDP work performed in-house;
 - If the converting institution operates a transactional web site, information describing the web site, its activities, and security and testing procedures should be provided;
 - In a direct conversion, copies of the executed OTS Form 1582. Any sections that do not apply should be marked "Not Applicable" with an explanation provided;
 - In transactions involving indirect conversions, the applicant is required to submit OTS Form 1495 to establish the savings institution for the merger with the existing depository institution;
 - If the applicant currently operates service corporations or subsidiaries and plans to continue the proposed activities, it must file a service corporation application or an operating subsidiary application pursuant to 12 C.F.R. Part 559. Application must be made with OTS, as well as the FDIC pursuant to 12 U.S.C. § 303.141 (see Subordinate Organizations Section 605 of the Handbook for additional information); and
 - If the applicant currently operates a trust department and plans to continue to engage in trust activities, it must file a trust application under 12 C.F.R. Part 550. See Trust Powers Section 620 of the Handbook for further information regarding trust activities.

Community Reinvestment Act

- A detailed discussion of the CRA plan for the institution and how the savings institution will satisfy its obligations pursuant to 12 C.F.R. Part 563e.

Holding Company and Controlling Shareholder Information

If the converting depository institution has a holding company that will become a savings and loan holding company in the transaction, a holding company application must be filed pursuant to 12 C.F.R. Part 574 (see Holding Companies Section 500 of the Handbook for additional information). If the resulting savings institution is controlled directly by one or more individuals, or by persons acting in concert to control the savings institution, a Change of Control Notice may be necessary pursuant to 12 C.F.R. Part 574 (see Control Section 300 of the handbook for additional information).

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.

SPECIAL CONSIDERATIONS

Publication Requirements

OTS requires publication under 12 C.F.R. Section 543.2(d) for applications involving a direct conversion of an existing depository institution to a Federal savings institution. OTS requires publication of a notice for the formation of a Federal savings institution for an indirect conversion, but permits such publication to occur simultaneously with the public notice required in 12 C.F.R. § 563.22 and 12 U.S.C. § 1828(c) for the merger or purchase and assumption transaction (see Combinations Section 200 and Bank Merger Act Transmittal Forms Section 030 of the Handbook for additional information). Additional public notice requirements may apply for transactions involving change in control applications filed pursuant to 12 C.F.R. § 574.3, involving either a holding company(ies) (see Holding Companies Section 500 of the Handbook for additional information), or where the converting

depository institution is controlled by one or more individuals (see Control Section 300 of the Handbook for additional information).

- Comment Procedures

Any person may submit a written comment to the Regional Office supporting or opposing a charter conversion 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 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 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 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.

Transition Period For Corporate Governance

12 C.F.R. § 543.11(c) provides that a six-year plan of governance may be submitted by a State-chartered mutual savings bank, in circumstances where the converting institution has not previously provided for the election of its governing board (trustees, director or managers) by a vote of the members of the institution (some states authorize perpetual boards), and does not want to elect the entire board at the organization meeting. The intended plan provides that within six years, the entire board of directors would be elected by a vote of the members in increments of at least one-fifth of the number of members in each year beginning within two years of conversion. The plan also provides that the newly converted federal savings bank may be organized by its preconversion governing board and addresses the manner of amending the institution's charter during the first two years and other organization and disclosure matters.

Qualified Thrift Lender (QTL) or Domestic Building and Loan Association Tax Test (DBLA)

The converting depository institution should meet the QTL test upon its conversion to a federal savings institution. For institutions with interstate branch networks (i.e., branches outside the state in which the institution's home office is located), the converting institution must also satisfy QTL in each state individually where it operates an interstate branch or branches pursuant to Section 5(r) of HOLA, subject to certain exemptions in Section 5(r)(2). The assets of all branches in each state (not each out-of-state branch separately) are aggregated in determining compliance with QTL for each state. Alternatively, an institution may satisfy its QTL requirements by meeting the domestic building and loan association test of the Internal Revenue Code.

A converting depository institution may be unable to satisfy its QTL requirements initially. OTS will consider granting a converted institution a QTL waiver for up to a two-year period to permit the institution to make a reasonable transition without sacrificing safety and soundness considerations and prudent lending practices. 12 U.S.C. § 1467a(m)(2) allows temporary and limited exceptions to be granted by the OTS. OTS will decide to grant the extension based upon a finding that extraordinary circumstances exist. Any exception would be based upon an acceptable business plan evidencing timely compliance in a safe and sound manner. If the converting institution cannot meet QTL in a state outside the home office state, OTS will consider granting a waiver for good cause for up to a two year period to comply with Section 5(r) of the HOLA. A request for approval of the exception and/or waiver must be submitted with the application.

Asset Composition

Section 5(c) of HOLA discusses permissible loans and investments for Federal thrifts and limits certain types of lending to a percentage of assets or capital. It is not uncommon for converting depository institutions to exceed these limitations, especially in consumer and commercial loans. Based on an acceptable business plan evidencing that the asset composition will be brought into compliance with the limitations of Section 5(c) in a safe and sound manner, OTS will generally permit a converted institution to achieve compliance with such limitations within two years following the conversion [see Section 5(c)(5)]. A request for approval of the exception must be submitted with the application and can be approved by the Regional Office.

Credit Union Memberships

Credit unions may be members of corporate credit unions and have deposits and capital accounts in such entities. The deposits may be considered commercial loans under HOLA, but the member capital accounts are considered equity investments and are, therefore, impermissible. In some instances, the capital account may not be withdrawn for a certain period of time. Accordingly, OTS may allow the converted credit union to hold the investment until divestiture is possible. A request to retain any such impermissible investments must be submitted with the application.

Credit Union Sponsored Shared Service Facilities

In some instances, credit unions may participate in a shared service facility that is regulated by the National Credit Union Administration. The facility resembles a typical branch office, is generally designated as a “Credit Union Service Center”, and allows the members of the various sponsoring credit unions to conduct certain banking transactions on facility premises. Generally, credit union members may withdraw funds, make deposits, transfer funds between accounts at their credit union, verify account information, and renew time deposits and cash checks. Converting credit unions may wish to continue this type of arrangement for their members' convenience. OTS has allowed this type of arrangement, provided that proper controls and oversight of the activities are in place. The application should include sufficient evidence that such controls and oversight are in place.

Deposit Insurance

Generally, in an indirect conversion involving an existing Bank Insurance Fund (BIF) depository institution, the applicant must submit an application and receive approval from the Federal Deposit Insurance Corporation (FDIC) or Savings Association Insurance Fund (SAIF) for insurance of accounts. BIF-depository institutions converting directly to a Federal savings institution have been permitted to retain their BIF insurance of accounts. The applicant should address the impact of the transaction on its deposit insurance. Questions regarding deposit insurance should be discussed with FDIC.

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.

Eligibility Examinations

OTS anticipates that it will conduct an eligibility examination of all credit unions proposing to convert to a Federal savings institution, due to the significant differences in their operations and regulatory oversight structure compared to other converting depository institutions. For converting entities that are not credit unions and have been recently examined by a Federal or State banking or trust regulator, and received satisfactory ratings (CAMELS 1 or 2, Compliance 1 or 2, CRA Outstanding or Satisfactory, Trust 1 or 2) OTS generally will not require an eligibility examination, unless the application raises a material issue not addressed by the report of examination. Also, when the most recent safety and soundness examination is older than six months, OTS will consider the need for an eligibility examination due to the age of the existing examination report. Absent these concerns, OTS will generally rely on the most recent report of examination as part of its review of the application.

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 normally does not 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.

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 non-delegated will be transmitted from OTS-Washington. Correspondence on delegated applications will generally come 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. For nondelegated applications, 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 applicable, OTS must contact other regulatory agencies to seek additional comments on the applicants, or to request a copy of examination reports from another agency. For applications involving insurance companies, the Regional Office must contact the Insurance Risk Management Specialist in OTS-Washington and request 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 is non-delegated and 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.

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.

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 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 OTS 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

Applications to convert to a Federal thrift are generally subject to the same standards for approval as applications for permission to organize a new thrift as set forth in 12 C.F.R. §§ 543.2(g)(1) and 552.2-1(b). 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' 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.

For the criteria above, the existence of the depository institution will generally serve to demonstrate that a need exists, and that the conversion will not result in undue injury to existing financial 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.

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.

If the application involves the formation of a de novo thrift and the merger or purchase and assumption of the converting institution into the newly-chartered de novo, the application will also be reviewed under the standards for mergers or purchase and assumptions set forth at Section 10(s) of HOLA, Sections 5(d)(3) and 18(c) of FDIC, and 12 C.F.R. §§ 552.13 and 563.22(d).

Converting institutions that have been in existence less than three years will be subject to all approval criteria and other requirements applicable to de novo Federal institutions, including the policy considerations outlined in 12 C.F.R. § 543.3.

Decision Guidelines

The statutory and regulatory requirements are designed to ensure the viability and safe and sound operation of the savings institution. In general, the analysis should conclude that capital is sufficient in relationship to the risk-profile of the institution, management has the necessary expertise and controls to implement the business plan, the institution will meet the needs of the community it will serve, and that the converted institution will be operated in compliance with the laws, rules and regulations applicable to a Federal savings institution. If, based upon this review, it is determined that the savings institution will not operate in compliance with laws, rules and regulations applicable to a savings institution, or that the institution lacks the management or financial resources to ensure the institution is prudently run in a safe and sound manner, a denial recommendation may be necessary. 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:
 - * OTS Form 1623 (Interagency Biographical and Financial Report); properly executed RB-20 Certification; and FBI Fingerprint Cards, for each 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 addressing 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?
 - * Three-year business plan?

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- * CRA plan?
 - * Notices and/or application forms for related filings, i.e. subsidiaries, trust powers, etc.?
 - * Listing of all subscribers to capital stock that are directors, senior executive officers, ten percent shareholders, and other insiders?
 - * Information to demonstrate that the application meets relevant approval standards?
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- Did the certification or background check (FBI, LEXIS/NEXIS and/or Westlaw, and CIIS) of proposed management and ownership 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 (i.e., prior employment with any type of 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 savings 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. § 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?
 - Will the applicant comply with the Management Interlocks Act?

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- 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 sub-prime 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?
 - 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 savings institution have a reasonable plan to meet its obligations under the CRA?
 - Will the savings institution meet the identified convenience and needs in the target market, including the low- and moderate-income needs?
 - Will the savings institution provide credit for housing consistent with safe and sound banking principles?
 - Will Internet banking activities be conducted in compliance with OTS and Interagency policy?
 - Do the charter and bylaws comply with regulatory requirements?
 - Has the institution addressed the continuation of deposit insurance by FDIC?

Conditions

Generally, the following conditions will be imposed on any approval for institutions that are converting from a non-OTS-regulated depository institution to a Federal thrift charter.

- The applicant must receive all required regulatory and shareholder approvals for the proposed transaction and submit copies of all such approvals to the Regional Office prior to consummation of the proposed transaction;

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- The applicant must consummate the proposed transaction within one hundred and twenty (120) calendar days from the date of approval, unless extended by the Regional Director for good cause;
 - 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 converting 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 savings 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 converting 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 Office, and the Regional Office 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; and
 - The Applicant must operate within the parameters of its business plan. The Applicants and the savings 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 savings institution's products,) for the prior, written non-objection of the Regional Office. 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 letter for a conversion 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 letter must be summarized in the National Applications Tracking System record for the application. Listed below are examples of most common nonstandard conditions:

- Any contracts or agreements pertaining to transactions with affiliates, not yet submitted to the OTS for review, must be provided to the Regional Office at least 30 calendar days prior to execution for a written non-objection prior to implementation;

- (For trust only applicants): At least 50 percent of the audit and investment committees established by the savings institution must be directors who are not officers or employees of the savings 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 Office; and
- The institution must comply with the investment and lending limitations contained in Section 5(c)(2)(D) of HOLA within two years.

RECORDKEEPING REQUIREMENTS

All correspondence related to the processing of the notice or application must 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 non-delegated 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 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 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 savings institution regarding the action taken on an application, and provide staff with copies of the approval order or letter. If an application is approved, the first examination of the savings 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
12 U.S.C. § 1464

HOLA Section 5(b); Deposits and Related Powers
HOLA Section 5(c); Loans and Investments

Section: Conversion of Bank or Credit Union to a Federal Charter

Section 430

12 U.S.C. § 1464	HOLA Section 5(e); Character and Responsibility
12 U.S.C. § 1464	HOLA, Section 5(i) Conversion to a Federal Charter
12 U.S.C. § 1464	HOLA, Section 5(o) Conversion of State Savings Banks
12 U.S.C. § 1464	HOLA Section 5(q); Tying Arrangements
12 U.S.C. § 1464	HOLA, Section 5(r) Out-of-State Branches
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. § 543.1	Corporate Titles of Federally Chartered Institutions
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. § 543.8 through .14	Conversion from State Mutual to Federal Mutual
12 C.F.R. § 544.1 through .5	Charter and Bylaws for Federal Mutual
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. § 552.2-6	Conversion from State Stock to Federal Stock
12 C.F.R. § 552.3 through .6-3	Charter and Bylaws for Federal Stock Associations
12 C.F.R. § 552.13	Combinations involving Federal Stock Institutions
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
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 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
23A and 23B of the Federal Reserve Act	Transactions with Affiliates
OTS Form 1518	Model Bylaws for Stock Associations
Fees and Assessments Thrift Bulletin	

Application Forms

OTS Form 1582	Application for Conversion From a State-Chartered Stock or Mutual Association into a Federal Stock or Mutual Savings Association or Savings Bank
OTS Form 1623	Interagency Biographical and Financial Report

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.

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

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

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

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

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

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

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

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

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.

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?
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- 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

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- 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

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, <i>et seq.</i>	Community Reinvestment Act
12 U.S.C. §§ 3201, <i>et seq.</i>	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

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

**Section: Conversion of Savings Institutions
From the Mutual Form of Organization
To the Stock Form of Organization**

Section 450

To be provided.

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.

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.

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.

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.

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

This handbook section provides guidance on applications filed by companies seeking to acquire control of a savings institution. It is important to note that the definition of savings institution includes a savings and loan holding company as defined at 12 C.F.R. § 574.2(q). This means that control of a savings institution can be acquired directly by acquisition of the institution's stock or indirectly through the acquisition of the stock of an existing savings and loan holding company. Office of Thrift Supervision (OTS) review is required for either type of acquisition.

Written approval from OTS is required prior to a company acquiring control of a savings institution. OTS has the authority to prevent a company with questionable financial and managerial strength from acquiring an institution. In reviewing the managerial resources of an applicant, OTS must consider the competence, experience and integrity of the officers, directors, and principal shareholders of the applicant.

In reviewing a holding company application, OTS must consider a potential acquiror's proposed plans for the operation of the institution, the competitive impact of an acquisition, and, in certain cases, the convenience and needs of the community to be served. OTS will also review a potential acquisition to determine whether it would be detrimental to the institution or to the insurance risk of the Federal Deposit Insurance Corporation (FDIC).

12 C.F.R. § 574.4 includes a list of the circumstances under which a company is deemed to acquire control of a savings institution. For the purposes of the control regulations and application requirements, control of an institution is divided into two categories: conclusive control and rebuttable control.

In general, a company is deemed to acquire conclusive control of a savings institution if it acquires more than 25 percent of a class of the institution's voting stock or controls the election of a majority of the directors of the institution. If a company proposes to acquire conclusive control, it must file a holding company application and receive approval from OTS prior to acquiring control.

Rebuttable control occurs when 10 percent of any class of voting stock, or 25 percent of any class of stock, is acquired and a control factor exists (e.g. acquiror is one of the two largest holders of any class of stock). A detailed discussion of other control and rebuttable control factors is provided in Section 320 of this handbook.

FILING REQUIREMENTS

Delegated Authority

Generally, applications filed under this section may be processed by the Regional Office under delegated authority. Applications that are not delegated to the Regional Office are those that include: a significant issue of law or policy; foreign acquirors, insurance companies, investment companies, pension funds, investment advisors and securities firms that have not been previously approved by OTS; relate to permission to organize, conversions of state-chartered trust companies and non-bank banks to federal savings banks, and mutual to stock conversion applications; approval of requested waivers of statutes, regulations, OTS policy or significant application requirements; subject to adverse comments and have formal meetings; involve hostile or contested acquisitions, opposition

proxy solicitations or other potential acquisitions where there is a competing acquiror; involve person(s) subject to a pending notice of charges or formal investigation; include qualified stock issuances filed under 12 C.F.R. § 574.8; raise significant competitive factor issues; or involve the approval of non-cash capital contributions. See Delegation Section 040 of the handbook for information on the delegation process.

Expedited and Standard Processing 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. § 574.6.

Prefiling Meeting Requirements

It is the applicant's responsibility to contact the Regional Office in a reasonable time period in advance of filing the application, to discuss whether a prefiling meeting will be required. Holding company applications have been identified as the type that may necessitate a prefiling 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. The Regional Office has the discretion to require a prefiling meeting, and 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 until the prefiling meeting requirements in 12 C.F.R. Part 516 are met, leading to significant delays in processing the application.

When a meeting is required, the applicant should contact the Regional Office to determine which individuals should be present at 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 and the impact of the additional business activities on the institution;
- Identify any additional directors and/or senior executive officers that will be appointed as a result of the proposed transaction, with documentation to support that these individuals have the required qualifications and experience to prudently oversee the resulting operations; and,
- Demonstrate how the charter will serve the credit and lending needs in its target market.

Information and Form Requirements

If delegated, all applications should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant is required to file the original and two conformed copies of each application. If the applicant wishes to acquire a state-chartered institution, one additional copy should also be provided. All copies are to be clearly marked as to the type of filing, and should contain all exhibits and other pertinent documents. One copy must contain original signatures on all executed documents. For applications that are not delegated to the Regional Office, an additional three copies of the application should be filed with the Applications Filing Room in OTS-Washington.

Immediately upon receiving an application relating to the acquisition of control of a state-chartered institution, the Regional staff should forward a copy of the application and allow 30 days for the state authority to review and provide comments. OTS should consider the views and recommendations of federal and state agencies in determining whether to disapprove a holding company acquisition.

Companies must file an H-(e) application to acquire any savings institution or savings and loan holding company. If an individual seeks to obtain control, the appropriate filing is a change in control notice. All acquisitions by a company will fall into one of the following five categories: 1) H-(e)1; 2) H-(e)1-S; 3) H-(e)2; 4) H-(e)3; and 5) H-(e)4. While the requirements for each category of holding company acquisition are different, they are all set forth in one booklet of instructions, the Form H-(e) (OMB No. 1550-0015).

- An H-(e)1 application is required when a company, other than a savings and loan or bank holding company, seeks to acquire one savings institution (i.e., a new unitary holding company is created or a trust that is not excluded from the definition of a savings and loan holding company (12 C.F.R. § 574.2(q)) acquires control of a savings institution).
- An H-(e)1-S application must be filed in situations where a savings institution proposes a corporate reorganization involving the formation of a shell holding company. This type of application has a 45-day automatic approval provision. In order for a transaction to qualify for processing as an H-(e)1-S, the applicant must meet the following requirements:
 - * The creation of the holding company is the sole transaction included in the application (other than the creation of an interim institution that will disappear upon consummation of the transaction). An H-(e)1-S, however, can be filed in conjunction with an institution's standard mutual to stock conversion;
 - * The board of directors and executive officers of the holding company are individuals who, at the time of acquisition, are directors and executive officers of the institution;
 - * The acquisition raises no significant issues of law or policy; and
 - * The holding company agrees to comply with the conditions to be imposed in an approval of the transaction, pursuant to 12 C.F.R. § 574.7(a)(2)(F) and (G).
- An H-(e)2 application must be filed by: (1) a savings and loan holding company seeking to acquire and hold separately one or more savings institutions, or (2) any company, except a

bank holding company, or subsidiary thereof, seeking to acquire more than one savings institution and hold the thrifts as separate entities.

- An H-(e)3 application must be filed by: (1) a savings and loan holding company seeking to acquire through a merger, consolidation, or purchase of assets, a savings institution or uninsured institution or a savings and loan holding company; or (2) any company, other than a bank holding company, or subsidiary thereof, seeking to acquire through a merger, consolidation, or purchase of assets two or more savings institutions.
- An H-(e)4 application is an information filing that must be filed in connection with a claim that a reorganization is exempt from prior written OTS approval. Such reorganizations must involve solely the acquisition of control of a savings institution by a newly formed company that is controlled by the same acquirors that controlled the savings institution for the immediately preceding three years. To qualify for this type of filing, the transaction can involve no other transactions, such as an assumption of a current owner's debt by the newly formed company. The H-(e)4 filing must be accepted before the company acquires control of the institution.

Based upon the type of filing, the applicant will be required to submit certain documents and information set forth in the H-(e) Application Package. Please see the chart in the General Instructions section to determine what items are required to be addressed by each applicant. The application form address eight categories of information requirements:

- Proposed Transaction(s)
- General Background
- Financial Resources (Including a Three-year Business Plan)
- Managerial Resources
- Future Prospects
- Convenience and Needs of the Community
- Competitive Factors
- Voting Trusts and Corporate Trustees

If the holding company application involves a foreign holding company, the foreign holding company must submit a Foreign Holding Company Agreement. (See Exhibit A.)

Additional forms to supplement the H-(e) Application Package may be necessary, i.e., forms seeking approval for permission to organize, subsidiaries, trust powers, biographical and financial reports complete with supporting documentation, and business plan. These forms and 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 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 shall publish notice of its intent to acquire a savings institution no earlier than three days before and no later than three days after filing the application, in accordance with the requirements of 12 C.F.R. § 574.6(d). For H-(e)3 applications, the applicant must also publish notice in accordance with the Bank Merger Act (BMA) (12 USC § 1828(c)(2)), as codified in 12 C.F.R. § 563.22(e). 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 institution is 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 permission to organize or branch purchase applications filed pursuant to 12 C.F.R. §§ 543.2 and 563.22. 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 (H-(e)1, H-(e)1-S and H-(e)2 Applications)

Any person may submit a written comment supporting or opposing the application within 20 days after the filing date of the application. Up to an additional 20 days to submit comments

may be obtained upon a showing of good cause, if a written request is received by OTS within the initial 20-day period. 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 concern and will assist in the disposition of the application. The duration of an extension request is 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 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.

- Comment Procedures (*H-(e)3 Application*)

Any person may submit a written comment to the Regional Office supporting or opposing an H-(e)3 application within 30 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 application. OTS can extend the 30-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 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 516.180, 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, 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 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.

Bank Holding Company Acquisitions

Bank holding companies and their subsidiaries are not subject to the requirements of section 10 of the Home Owners' Loan Act. As a result, bank holding companies and their subsidiaries are not required to file holding company applications with OTS to acquire savings institutions. However, bank holding companies seeking to acquire a savings institution are required to submit an application, pursuant to section 4(c)(8) of Bank Holding Company Act, to the Federal Reserve Board (FRB). The

FRB will then forward a copy of the application to OTS for comments and recommendations. In general, OTS will have 30 days to provide comments to the FRB, but the FRB may shorten the period in the case of an emergency situation.

Background Checks

OTS policy requires background investigations of all applicants, their affiliates, current and proposed senior executive officers and directors of the applicant, and any individuals or groups acting in concert who own or control, directly or indirectly, ten percent or more of the applicant's stock. At a minimum, individuals must submit an Interagency Biographical and Financial form, FBI Fingerprint Card, and a Regulatory Bulletin (RB) 20 Certification Form. The RB-20 Certification Form should be submitted by the applicant and its affiliates in accordance with the bulletin. 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 will conduct a background investigation in compliance with RB-20. If appropriate, the review may also require the Reviewing Analyst to contact other regulatory agencies to seek additional comments on the applicants, such as the functional regulator (i.e. state insurance regulator, SEC, NASD, etc.). 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

In certain circumstances, OTS may have concerns regarding the qualifications of an acquirer to control a financial institution, related to existing operations that will become affiliated with the acquired institution, if issues involving the treatment of consumers, regulatory compliance, or other matters were identified during the background review. 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.

The Regional Office should determine the need for an eligibility examination as early in the examination 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.

Transactions With Affiliates

Sections 23A and 23B of the Federal Reserve Act, addressing transactions with affiliates, apply to savings institutions as if the savings institution were an FRB member bank. Implementing regulations are located at 12 C.F.R. §§ 563.41 and 563.42. These sections incorporate two special provisions, set forth at 12 U.S.C. § 1468(a)(1), that: 1) prohibit a savings institution from purchasing or investing in securities of an affiliate; and 2) allow loans to be made only to those affiliates engaged in activities permissible for bank holding companies.

Bank Merger Act

All applications filed under 12 C.F.R. Part 574 that involve mergers of savings institutions must also be reviewed and approved under the BMA. These filings include applications in which a savings and loan holding company proposes to acquire by merger, consolidation, or purchase of assets, a savings and loan institution and applications involving corporate reorganizations in which an interim institution is formed to facilitate the reorganization. Additionally, if an individual chooses to form an interim institution to accomplish an acquisition of control, the BMA, rather than the Change in Bank Control Act, would apply.

The BMA states that OTS may not approve (1) any proposed merger transaction that would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States; or (2) any merger transaction the effect of which, in any section of the country, may be to substantially lessen competition, tend to create a monopoly or, in any other manner, restrain trade, unless OTS finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. Additionally, the BMA requires that OTS take into consideration the financial and managerial resources, future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

Applicants subject to the BMA are required to file four additional copies of the application with the Regional Director.

The Regional Director should request a competitive factors report from the Attorney General of the Department of Justice (DOJ), the Office of the Comptroller of the Currency, the FRB, and the Federal Deposit Insurance Corporation (FDIC) within five calendar days after the receipt of an application. The above agencies should provide the requested reports within 30 calendar days. See Bank Merger Act Transmittal Forms Section 030 of the handbook for the form letters.

OTS must immediately notify the Attorney General of any approval of a proposed merger transaction that is subject to the BMA. The Regional Office should send such notice on the day that the merger is approved (See Bank Merger Act Transmittal Forms Section 030 of the Handbook for the form letters).

Transactions requiring approval under the BMA may not be consummated prior to the 15th calendar day after the date of approval by OTS. The approval letter sent to the applicant should specify that consummation cannot take place before the appropriate date.

The DOJ has specified certain types of competitively neutral merger transactions that are subject to a streamlined processing procedure. These transactions include: (1) mergers between two or more savings institutions, if at least 50 percent of the voting stock of all of the institutions involved is controlled by the same company, person, or group of persons, or if one savings institution controls another; and (2) mergers between an interim savings institution and an existing savings institution to facilitate the formation of a unitary savings and loan holding company in a holding company reorganization.

Upon receipt of an application involving a competitively neutral merger, the Regional Director should forward a letter to the DOJ stating that the application has been granted “interim approval” for purposes of the BMA. The letter should also request confirmation that the proposed transaction is subject to streamlined processing (See Bank Merger Act Transmittal Forms Section 030 of the handbook for the form letter). If the DOJ does not object to the merger transaction within the 30-day period, the merger may be consummated immediately upon OTS approval of the transaction (provided that final approval is granted after passage of the 30 day period).

Prohibition on Offers to Acquire and Acquisitions of Stock for Three Years Following Conversion

If the target institution converted from the mutual to stock form of ownership within the previous three years, no person or company may, directly or indirectly, acquire or offer to acquire the beneficial ownership of more than ten percent of any class of the institution’s equity securities without OTS prior written approval. If a person or company violates this prohibition, the institution may not permit the person or company to vote shares in excess of ten percent, and may not count these shares in any shareholder vote.

Certain exceptions to the regulations governing offers to acquire stock within three years of conversion, are set forth at 12 C.F.R. § 563b.3(i). OTS may deny an notice filed under 12 C.F.R. § 563b.3(i) if the proposed acquisition:

- Is contrary to the purposes of 12 C.F.R. Part 563b;
- Is manipulative or deceptive;
- Subverts the fairness of the conversion;
- Is likely to injure the institution;
- Is inconsistent with the institution’s plan to meet the credit and lending needs of its proposed market area;
- Otherwise violates law or regulation; or
- Does not prudently deploy the institution's conversion proceeds.

The primary purposes of this rule are to provide a reasonable period of time for the institution to prudently deploy the new capital according to its business plan, for it to acclimate to operating as a public company, and to do both without the distraction of considering takeover proposals. OTS does

not believe acquisitions in the first three years following conversion are in the best interests of newly converted institutions, the communities the institutions serve, or the shareholders. In addition, OTS believes that the approval of friendly acquisitions may be inconsistent with the purposes of the conversion rules. As such, the standards for allowing such acquisitions are high and should not be approved unless there are significant risks to the institution operating on a stand-alone basis.

Exempt Transactions

The following transactions are exempt from the application filing requirements of 12 C.F.R. § 574.3(a):

- Control of a savings institution acquired under the terms of a will creating a trust that is excluded from the definition of a savings and loan holding company (12 C.F.R. § 574.2(q));
- A reorganization in which a company, person or group of persons that have controlled a savings institution for more than three years, seek to establish a newly formed holding company that is controlled by the same person or group. (An H-(e)4 notification is required for these types of transactions);
- Control of a savings institution acquired by a bank holding company that is registered under and subject to the Bank Holding Company Act of 1956, or any company controlled by such bank holding company;
- Control of a savings institution acquired solely as the result of a pledge or hypothecation of stock to secure a loan, or the liquidation of a loan, made in the ordinary course of business;
- Control of a savings institution acquired through a percentage increase in stock ownership following a pro rata stock dividend or stock split, if the proportional interests of the recipients remain substantially the same;
- The acquisition of additional stock by a person after approval has been received under 12 C.F.R. § 574.7, provided that the acquisition is consistent with any conditions or limitations imposed in connection with the approval and with the representations the acquiror made in the notice;
- The acquisition of up to 25 percent of a class of stock by certain tax-qualified employee stock benefit plans; and
- The acquisition of up to 15 percent of the voting stock of any savings institution by a savings and loan holding company pursuant to a qualified stock issuance (12 C.F.R. § 574.8(a)).

Prohibited Acquisitions

OTS is prohibited, pursuant to 12 U.S.C. § 1467a(e)(3) and 12 C.F.R. § 574.3(e), from approving the formation of a multiple, multi-state holding company structure if a savings institution will become an affiliate of another savings institution with which it was not previously affiliated, except in the following situations:

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- The company, or a savings institution subsidiary of such company, is authorized to acquire control of a savings institution subsidiary, or to operate a home or branch office, in the additional state or states pursuant to Section 13(k) of the Federal Deposit Insurance Act;
 - The company controls a savings institution subsidiary that operated a home or branch office in the additional state or states as of March 5, 1987; and
 - The laws, of the state in which the institution to be acquired is located, permit a savings institution, chartered by such state, to be acquired by an institution chartered by the state where the acquiring holding company or institution is located, or by a holding company that controls such a state-chartered institution.

Waivers

In accordance with the provisions of 12 C.F.R. § 574.6(g), OTS may waive the publication, public comment, and disclosure requirements related to an application in a supervisory case.

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 nondelegated will be transmitted from OTS-Washington. Correspondence on delegated applications will generally come from the Regional Office.

Within five business days of receipt of the application, by both OTS-Washington and the Regional Office, 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.

For nondelegated applications that involve specialty areas, such as trust activities or CRA issues, a copy of the application must be provided 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 application being deemed complete, commencing the period for review.

OTS must review requests for a waiver of an application requirement that certain information be supplied, in a timely manner. 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 any 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.

If an eligibility examination is conducted, the application will not be deemed complete until it concludes the examination. In addition, OTS may request additional information as a result of the eligibility examination that must be submitted 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 at 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 notice 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 shall be provided to an applicant no later than the expiration of the time period.

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.

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 OTS 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.

H-(e)1-S Applications

An H-(e)1-S application is deemed to be approved 45 calendar days after the application is properly filed unless prior to such date: (i) OTS requests additional information in writing; (ii) notifies the applicant that the application is materially deficient and will not be processed; or (iii) denies the application prior to that time. It should be noted that these applications are still subject to the publication requirements of the other long-form H-(e) applications. If a request for additional information is necessary, the application converts to an H-(e)1 and the applicant may be required to remit the difference in application fees.

H-(e)4 Applications

With respect to an H-(e)4 information filing, the Regional Director, or his/her designee has 30 calendar days after the receipt of a filing to reject the assertion that a company qualifies for the exemption from filing an acquisition application. Although there is no publication requirement for these filings, OTS may request additional information in accordance with the time frames cited above for H-(e) applications. If OTS requests additional information, the 30-day review period will commence as of the date of receipt of a complete filing. Failure by OTS to notify applicants within the 30 day time period will result in the automatic acceptance of the exemption claim.

Regulatory Criteria

The authority of OTS to act on a holding company acquisition is found in 12 USC § 1467a(e) and, in a transaction involving a merger or combination of depository institutions, 12 USC § 1828(c)(2) (the BMA). The regulations promulgated pursuant to these statutes include 12 C.F.R. Part 574 and the

merger regulations, including 12 C.F.R. §§ 546.2, 552.13, and 563.22. OTS must consider the merger regulations in all H-(e)3 filings, as well as in all proposed acquisitions involving the merger of an interim institution and the target institution. Additionally, OTS must consider all holding company applications under the Community Reinvestment Act (CRA) of 1977, 12 USC §§ 2901-2905; as set forth in 12 C.F.R. Part 563e.

Specifically, 12 C.F.R. § 574.7(c) sets forth the basic criteria upon which OTS may deny a holding company acquisition application. Accordingly, OTS may deny an application:

- If OTS finds the financial and managerial resources and future prospects of the acquiror and the institution involved would be detrimental to the institution or to the insurance risk of the Savings Association Insurance Fund (SAIF) or Bank Insurance Fund (BIF). In the case of an H-(e)2 or H-(e)3 application, OTS must also consider the convenience and needs of the community; or
- If the applicant fails or refuses to furnish information requested by OTS.

OTS must deny a holding company application:

- If OTS finds the acquisition would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States, or if the effect of the acquisition in any section of the country may be to substantially lessen competition, tend to create a monopoly, or in any other manner restrain trade, unless OTS finds that the effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served;
- If the acquiror fails to provide adequate assurances to OTS that it will make available such information on the operations of the company, or any affiliate, that OTS determines to be appropriate to determine and enforce compliance with the HOLA; or
- In the case of an application submitted by a foreign bank, if the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in the home country of the foreign bank.

In addition, applications subject to the Bank Merger Act will also be reviewed under the standards set forth in 12 C.F.R. § 563.22. While many standards are similar to those listed above, this section provides the standards under which OTS will review merger transactions, as well as certain information and filing requirements related to the transactions. Accordingly, OTS will also consider the following factors:

- The capital level of any resulting savings institution;
- The financial and managerial resources of the constituent institutions;
- The future prospects of the constituent institutions;
- The convenience and needs of the communities to be served;

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- The conformity of the transaction to applicable law, regulation, and supervisory policies; and
 - Factors relating to the fairness of and disclosure concerning the transaction.

With regard to the effect of the CRA on holding company applications, the proposed acquiror's record in meeting the credit needs of its entire community, consistent with safe and sound operations, is a consideration in the approval of an application.

The presumptive disqualifiers set forth in 12 C.F.R. § 574.7(g) must be considered with respect to holding company applications. 12 C.F.R. § 574.7(g) sets forth a list of presumptive disqualifiers that, if applicable, could result in the disapproval of a potential acquiror's application. The purpose of these regulatory provisions is to put potential acquirors on notice as to the grounds upon which an application may be disapproved, unless adequately refuted. The following factors give rise to a rebuttable presumptive disqualifier:

- During the ten year period immediately preceding filing of the application, criminal, civil, or administrative judgments, consents, or orders, and any indictments, formal investigations, examinations, or civil or administrative proceedings (excluding routine or customary audits, inspections and investigations) that terminated in any agreements, undertakings, consents or orders, issued against, entered into by, or involving the acquiror or affiliates of the acquiror by any Federal or state court, any department, agency, or commission of the U.S. Government, any state or municipality, any Federal Home Loan Bank, any self-regulatory trade or professional organization, or any foreign government or governmental entity, that involve:
 - * Fraud, moral turpitude, dishonesty, breach of trust or fiduciary duties, organized crime, or racketeering;
 - * Violation of securities or commodities laws or regulations;
 - * Violation of depository institution laws or regulations;
 - * Violation of housing authority laws or regulations; or
 - * Violation of the rules, regulations, codes of conduct or ethics of self-regulatory trade, or professional organizations.
- Denial, or withdrawal after receipt of formal or informal notice of an intent to deny, by the acquiror or affiliates of the acquiror, of:
 - * Any application relating to the organization of a financial institution;
 - * An application to acquire any financial institution or holding company thereof under the Savings and Loan Holding Company Act or the Bank Holding Company Act;
 - * A notice relating to a change in control of any of the foregoing under the Change in Savings and Loan Control Act or the Change in Bank Control Act; or
 - * An application or notice under a state holding company or change in control statute.

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- The acquiror or affiliate(s) of the acquiror were placed in receivership or conservatorship during the preceding ten years, or any management official of the acquiror was a management official or director (other than an official or director serving at the request of OTS, the FDIC, the former Resolution Trust Corporation, or the former Federal Savings and Loan Insurance Corporation) or controlling shareholder of a company or savings institution that was placed into receivership, conservatorship, or a management consignment program, or was liquidated during his or her tenure or control or within two years thereafter.
 - Felony conviction of the acquiror, an affiliate of the acquiror, or a management official of the acquiror or its affiliate.
 - Knowingly making any written or oral statement to OTS or any predecessor agency (or its delegate) in connection with an notice, notice or other filing under 12 C.F.R. Part 574 that is false or misleading with respect to a material fact or omits a material fact with respect to information furnished or requested in connection with such an application, notice, or other filing.
 - Acquisition and retention of stock in the savings institution, at the time of submission of an application or notice, in violation of 12 C.F.R. § 574.3 or its predecessor sections.
 - Liability for amounts of debt that, in the opinion of OTS, create excessive risks of default and pressure on the savings institution to be acquired.
 - Acquisition of control would result in a significant change in the business strategy of the institution that would implement activities inconsistent with economical home financing.

The presence of any of these considerations may constitute grounds for disapproval of a proposed acquisition if not adequately addressed by the acquiror. In order to rebut a presumptive disqualifier on integrity grounds, an acquiror should submit materials proving that the conduct in question has ceased, has become irrelevant, or otherwise should not warrant a disapproval decision. With regard to financial factors, the submission of an acceptable business plan or the acquiror's commitment to raise additional capital (for the acquiror) may be sufficient to rebut a presumptive disqualifier.

Decision Guidelines

The statutory and regulatory requirements are designed to ensure the continued viability and safe and sound operation of the institution, following the acquisition. In general, OTS's analysis should conclude that the acquiror has sufficient capital to consummate the acquisition, has the ability to provide funding, should the institution need additional capital. In addition, OTS should conclude that resulting management has the necessary expertise and controls to implement the business plan. In addition, OTS should conclude that the community will be served and that the transaction will be consummated in compliance with applicable rules and regulations. If, based upon the review, OTS has determined that the acquisition will adversely affect or jeopardize the financial well being of the institution or be detrimental to the community; a denial recommendation may be the course of action. OTS should consider the following factors 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:

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- * Appropriate and properly executed H-(e) application;
 - * Each newly appointed director/trustee, senior officer and new controlling shareholder(s) must submit an OTS Form 1623 (Interagency Biographical and Financial Report), properly executed RB-20 Certification and FBI Fingerprint Card;
 - * Resume or description of the managing officer's qualifications and discussion of salary and benefits, if a change has incurred;
 - * Copies of proposed employment contracts and evidence of regulatory compliance;
 - * Description of any proposed stock option plans;
 - * Three-year business plan;
 - * 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;
 - * CRA plan; and
 - * The latest audit report and annual report to shareholders.
- Financial Resources
 - * Does the applicant propose to borrow funds to finance the acquisition of a savings institution? If so, evaluate all existing debt of the acquiror and all proposed acquisition debt to determine whether the applicant's aggregate indebtedness will place an undue burden on the institution to pay dividends, management fees or upstream money in other ways.
 - * If funds are to be borrowed, the applicant should provide specific information concerning the terms of the debt, including servicing requirements.
 - * Does the applicant propose to replace the equity of the institution with debt or non-cash assets?
 - * If the applicant plans to contribute non-cash assets, the applicant should provide an appraisal acceptable to OTS to support the value of the assets.
 - * Are the non-cash assets of an intangible nature? If so, the reviewer should analyze the amount and specific character of the assets, the predictability of the projected income streams associated with the assets, and the existence of a market for the assets.
 - * Does the acquisition involve a cash-out merger that will diminish the capital and liquidity positions of the resulting institution?
 - * Does the acquiror propose to infuse sufficient capital so that the institution will meet its capital requirements under 12 C.F.R. Part 567.2?
 - * Does the proposed business plan demonstrate compliance with OTS capital requirements over the three-year projections?

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- * Does the acquiror have sufficient capital resources necessary to fund the additional operations and offset potential adverse changes in market conditions or poor operating performance?
 - * Is capital adequate based upon business philosophy or for institutions with specialized operations or higher risk profiles (i.e. internet based banking)?
 - * If the applicant has more than one class of common stock, does any of the stock have characteristics similar to debt or preferred stock?
 - * If the applicant has preferred stock outstanding, will the dividend requirements place an excessive burden on the institution's earnings or capital?
 - * Has the acquiror submitted realistic unconsolidated cash flow and income projections showing its ability to service the acquisition debt and maintain the institution's capital at required levels?
 - * Does the proposed capitalization of the holding company in a reorganization comply with the provisions of OTS capital distribution regulations (12 C.F.R. §§ 563.140 – 563.146)? Is such capitalization objectionable for supervisory reasons?
 - * Is the acquisition tax-free? If not, would the tax liability significantly affect the financial position of the institution or the acquiror?
 - * Are income-producing subsidiaries of the institution being moved or placed directly under the holding company? If so, verify that the financial condition of the institution will not be affected in a materially adverse manner, and consider implications with respect to future transactions with affiliates.
- Managerial Resources
 - * Have any of the officers or directors of the holding company or any proposed management officials of the institution served as management officials or been controlling persons of another depository institution, or depository institution holding company? If so, have the appropriate regulatory agencies been contacted for comment on these individuals?
 - * Did the background investigation indicate whether any of the officers, directors or management officials had been subject to any enforcement, criminal or questionable actions? If so, would these actions preclude any of these individuals from serving at the institution?
 - * Have the directors, major officers, and controlling persons of the applicant (and any affiliates) submitted Interagency Biographical and Financial Reports and executed Attachment A to RB-20?
 - * Was any adverse information found in the background reviews not disclosed by any individual in their RB-20 Certification or on OTS Form 1623?
 - * Does the background information, provided with regard to the expertise of proposed management officials, indicate competence and sufficient relevant management experience to handle the duties and responsibilities to be assumed?

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- * Do any proposed employment agreements include the provisions required pursuant to 12 C.F.R. § 563.39, and is executive compensation overall in compliance with the guidelines set forth in RB-27a?
 - * Does the applicant have a plan for management succession at the institution?
 - * Will the board of directors have sufficient independence from its parent holding company to ensure that the institution will continue to operate without undue influence from its parent company and affiliates?
 - * Will the applicant and the institution comply with the Depository Institutions Management Interlocks Act, as implemented by 12 C.F.R. Part 563f, upon consummation of the proposed transaction?
- Future Prospects

The reviewer should conduct a thorough review of the business plan provided by the applicant. At a minimum, the reviewer should review the following items:

- * What are the applicant's plans for the operations of the institution?
- * Does the proposed business plan satisfy OTS requirements?
- * Are the institution's new business plan and its underlying assumptions reasonable?
- * Is there a need for the additional products and services in the institution's market area?
- * Can the additional operations be established without undue injury to other local thrift and home financing institutions?
- * Do the proposed savings and lending services appear reasonable? Will the new activity increase the risk to the institution or to the SAIF or BIF?
- * Will the change in the business plan cause the institution to rely on the excessive use of brokered deposits?
- * Do any new activities present unusually high elements of risk, such as a significant volume of sub-prime loans, speculative lending, or credit card activity?
- * 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?
- * Does the acquiror have adequate managerial and financial resources to carry out its business plan proposals for the institution?
- * Does the application or business plan disclose recent changes in population, retail sales, employment, office absorption rates, housing vacancy rates and major industry in the institution's market that could have a detrimental effect on the institution?

- Competitive Effects

If an application filed under 12 C.F.R. Part 574 is subject to the Bank Merger Act, the reviewer should request from the DOJ and the banking regulatory agencies a report on the competitive effects of the transaction (see the Bank Merger Act section of these guidelines). If a savings and loan holding company is acquiring an additional institution in a transaction that does not implicate the Bank Merger Act, the reviewer must request from the DOJ (but not the other banking regulatory agencies) a report on the competitive factors of the transaction.

- * Do the competitive factors contained in the proposed acquisition exceed those found in 12 C.F.R. § 563.22(f)(5-10)? Have reports from the other agencies been received that would indicate that the proposed transaction may have an anti-competitive effect? If so, the application becomes nondelegated and OTS-Washington will provide further analysis regarding the competitive effects of the proposal.
- Convenience and Needs of the Community (H-(e)2, H-(e)3 or H-(e)1 where a thrift holding company is acquiring a thrift)
 - * Does the application substantiate that the proposed acquisition would maintain or improve the lending and deposit services offered to the community?
 - * Does the application discuss any contemplated changes regarding physical facilities or hours of operation?
 - * Does the acquisition appear to be consistent with evolving economic changes and growth in the community to be served by the institution?
- Miscellaneous Guidelines
 - * Did the background review of the acquiror and its affiliates disclose any enforcement, criminal or questionable actions? Did the review disclose violations that were considered systemic that could adversely impact the institution's operations?
 - * Did the other regulators, including other functional regulators provide any adverse comments?
 - * Has the acquiror published notification of the filing within the time frames specified in 12 C.F.R. § 574.6(d)?
 - * If the target institution was recently converted, has the acquiror filed and received approval of an application under 12 C.F.R. § 563b.3(i) prior to filing the notice?
 - * Is the applicant currently in compliance with the provisions of 12 C.F.R. Part 574? Violations of 12 C.F.R. Part 574 must be addressed before OTS acts on an application.
 - * Have all appropriate companies and individuals joined in the filing? Ascertain whether any person or company controls the acquiror. Also determine whether the company

filing the application would be deemed to be acting in concert with another company or an individual who has not filed an application.

- * Is the applicant engaged in any activities that would be impermissible for a savings and loan holding company? Section 10(c)(9)(A) of the HOLA provides that no company may directly or indirectly acquire control of a savings institution after May 4, 1999, unless the company is engaged directly or indirectly (including through a subsidiary other than a savings institution) only in activities that are permitted: (i) under section 10(c)(1)(C) or 10(c)(2) of the HOLA, or (ii) under section 4(k) of the Bank Holding Company Act. Companies that were savings and loan holding companies on May 4, 1999 (or became savings and loan holding companies pursuant to an application pending with OTS on or before that date) are not subject to section 10(c)(9)(A) or 10(c)(9)(B) of the HOLA, provided that they meet the requirement of sections 10(c)(9)(C)(i) and (ii) of the HOLA.
- * Does the application specify the amount of stock to be acquired?
- * If the target institution converted within the previous three years, the applicant must address and consider the criteria for approval set forth at 12 C.F.R. § 563b.3(i)(5).
- * If the target is a stock institution that maintains a liquidation account pursuant to 12 C.F.R. § 563b.3(f), the acquiror must maintain the liquidation account.
- * Has the applicant failed to fulfill any commitments to or any conditions imposed by OTS in connection with a prior application?
- * Does the transaction involve the formation of a multiple, multi-state holding company structure? If so, is the structure permissible pursuant to 12 C.F.R. § 574.3(e)?
- * Will the target institution pay excessive fees in connection with its acquisition in comparison with those fees paid by the acquiring entity?
- * Does the applicant own or control a business in which the institution may engage? If so, will a condition be imposed on the approval of the acquisition requiring the applicant to develop a conflict of interest statement?
- * Are any of the presumptive disqualifiers relating to integrity or financial factors as set forth in 12 C.F.R. §§ 574.7(g)(1) and 574(g)(2) present? If so, has the applicant successfully rebutted these presumptions?
- * If the institution will begin Internet operations, will the Internet banking activities be conducted in compliance with OTS and Interagency policy?
- * Has the target institution received satisfactory CRA ratings? If not, has action been taken to correct the CRA deficiencies?
- * Will the proposed acquisition require an amendment to the target institution's CRA statement? For example, will the acquisition result in a change in the number or location of branch sites? Will the applicant need to revise the "local community" delineation?
- * If a proposed acquisition involves the merger of two or more operating institutions, has the applicant submitted a new CRA statement for the resulting institution?

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- * Has the public submitted any CRA comments in connection with the subject application or in the recent past?

Conditions

Standard Conditions

Listed below are the standard conditions of approval for this application type. If OTS imposes any additional or 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, unless the Regional Director, or his/her designee, grants and extension for good cause;
- **(For applicants subject to the BMA.)** The proposed merger must not be consummated prior to 15 calendar days after the date of approval;
- On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the proposed holding company and 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 holding company and 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 holding company, 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;
- The holding company 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;
- **(For applicants subject to the BMA.)** The holding company must advise, in writing, all depositors whose accounts increase above \$100,000 as a result of the transaction, of the effect of the transaction on their insurance coverage within 30 calendar days of the effective date of the proposed transaction;
- **(If the application involves a potential tax liability and a certification has not been provided.)** Prior to consummation of the acquisition, the Applicant must file with the Regional Director either a ruling from the Internal Revenue Service or an opinion of tax counsel acceptable to the Regional Director that states that the proposed transaction will not result in any significant tax liability to the institution; and
- **(Acquisition of a converting or recently converted institution.)** In the case of a holding company reorganization involving a converting or recently converted institution, approval is

conditioned on the applicant being subject to 12 C.F.R. §§ 563b.3(c)(9), (c)(17), (c)(18), (c)(19), (g)(1), (g)(4) and (i) to the same extent as the institution would be, and the applicant not taking any action that would prevent its shares from being listed from a National or Regional Securities Exchange or quoted or reported on the NASDAQ system.

If an interim institution is formed to facilitate the acquisition, the following conditions are imposed with regard to the interim:

- The organization of interim must be completed pursuant to 12 C.F.R. § 552.2-1(h);
- Upon completion of the organization of interim, the board of directors of interim and the institution must ratify the Agreement and Plan of Reorganization;
- The proposed merger must be effective within 120 calendar days of the date of the approval resolution;
- No later than 5 calendar days after the date of consummation of the merger (of interim and institution), the institution must submit a certification of legal counsel stating the effective date of the merger and that the merger has been consummated in accordance with the Agreement and Plan of Reorganization; and
- Interim must not open for business.

Nonstandard Conditions

It is not unusual for the approval of a holding company application to contain nonstandard conditions of approval. Additional conditions may be warranted in circumstances where the proposed acquisition is integrated with services or activities involving affiliates, where securities affiliates exist, where anti-tying issues are present, or due to unique characteristics or the risk profile of the resulting institution. All nonstandard conditions of approval must be supported with justification in the recommendation memorandum related to approval of the application. Listed below are examples of frequently seen nonstandard conditions:

- The institution must operate within the parameters of its business plan. The holding company and the institution must submit any proposed major deviations or material changes from the plan (including changes resulting from decisions made by the holding company), and in particular, those pertaining to cross-marketing by the institution and its affiliates, 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 sent to the FDIC Regional Office. The institution must submit to the Regional Office quarterly variance reports on the business plan for the first three years of its operations.
- The 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.
- **(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 institution's board of directors must be individuals who are not officers

or employees of the Applicants or affiliates thereof and have not otherwise been determined by the Regional Director to lack sufficient independence, and at least one member of the 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 institution and has not otherwise been determined by the Regional Director to lack sufficient independence. At least 50 percent of the audit (**OPTIONAL LANGUAGE (for trust only applicants): trust and investment**) committee established by the institution must be directors who are not officers or employees of the institution, the Applicants or any affiliates and have not otherwise been determined by the Regional Director to lack sufficient independence. 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, the proposed appointment of any permanent executive officers or directors of the institution is subject to the prior review and non-objection of the Regional Director.
- For the first eighteen months of operation, 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 and must receive his written non-objection prior to implementation.
- **(If the Applicant utilizes purchase or push down accounting.)** Within 120 calendar days from the date of consummation of the acquisition, the applicant must submit an opinion from its independent auditor, satisfactory to the Regional Director, that (i) indicates that the applicant consummated the transaction in accordance with generally accepted accounting principles; (ii) specifically describes, as of the effective date of the acquisition, any intangible assets, including goodwill, and discount of assets arising from the assets to be recorded; and (iii) substantiates the reasonableness of amounts attributed to intangible assets and the related amortization periods and methods.
- **(For institutions that will market its products through its affiliates or cross-market products.)** The holding company, its affiliates and the 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 Office at least 30 calendar days prior to the commencement of the cross-marketing activity.
- **(For institutions that have "securities affiliate(s)", as defined below, the following two conditions must be included.)** A majority of the institution's board of directors must not be comprised of individuals who are directors or employees of any affiliate of the institution that engages in securities brokerage, securities dealing, investment company, or investment advisor activities (Securities Affiliate(s)).
- The 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.

Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application. This requirement helps OTS to provide the public a complete listing of all applications approved with nonstandard conditions of approval.

Note: An H-(e)4 filing is not subject to conditional approval. The only action taken with respect to such filings is a legal determination as to whether the proposed reorganization qualifies for exempt status under 12 C.F.R. Part 574. If so, the company does not need to file any further information with OTS.

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.

MONITORING AND CONTROL

The approval order or letter will generally include conditions of approval. 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 or letter to the Regional Office within the stated time frames.

OTS should notify the appropriate staff responsible for the supervision and examination of the institution regarding the action taken on an application. In addition, OTS 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 Office, including a review of the documentation maintained in the application file.

INFORMATION SOURCES

Statutes

12 U.S.C. § 1467a
12 U.S.C. § 1817(j)
12 U.S.C. § 1828(c)

Savings and Loan Holding Company Act
Change in Bank Control Act
Bank Merger Act

12 U.S.C. §§ 1843(c), 1843(k)	Bank Holding Company Act
12 U.S.C. §§ 2901, et seq.	Community Reinvestment Act
12 U.S.C. §§ 3201, et seq.	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. §§ 546, 552.13	Merger and Transfers of Assets and Liabilities and 563.22
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
12 C.F.R. § 563.43	Restrictions on Loans and Other Investments Involving Affiliated Persons
12 C.F.R. §§ 563.140, et seq.	Capital Distributions
12 C.F.R. § 563b.3(i)(3)	Offers to Acquire Recently Converted Institutions
12 C.F.R. Part 563e	Community Reinvestment Act
12 C.F.R. Part 563f	Management Interlocks
12 C.F.R. Part 567	Capital Requirements
12 C.F.R. Part 574	Acquisition of Control of Savings Institutions
12 C.F.R. Part 584	Savings and Loan Holding Companies

OTS Bulletins

RB-20	Guidelines on Proper Investigation of Applicants and Increased Communications Between OTS and Other Financial Institution Regulatory Agencies
RB-27a	Executive Compensation
Thrift Bulletin 48-(current)	Fees and Assessments
23A and 23B of the Federal Reserve Act	Transactions with Affiliates
Legal Alert	Reserve Act
Legal Alert	Application of the Bank Merger Act to Merger Memorandum No. 10 and Purchase and Assumption Transactions Involving Savings Institutions (12/08/89)
Memorandum No. 17	Public Notice and Comment Period Under the Bank Merger Act (10/26/90)

Other

Comment Rulings
Paragraph 11,467

Bank Merger Transactions: FDIC
Statement of Policy

Forms

OTS H-(e) Application Package
OTS Business Plan Guidelines
OTS Form 1623

Interagency Biographical and Financial Report

Exhibit A**FOREIGN HOLDING COMPANY AGREEMENT**

This Agreement is made by and among _____ (Non-Domestic Applicant), and (Applicant U.S.A., or collectively referred to as the Applicants), and the Office of Thrift Supervision (the OTS).

WHEREAS, Non-Domestic Applicant is a corporation duly organized under the law of the _____;

WHEREAS, Applicant U.S.A. is a company duly organized under the laws of the State of _____;

WHEREAS, the Non-Domestic Applicant and the Applicant U.S.A. jointly have submitted an application (“Application”) to the OTS for approval of the acquisition of the voting stock of _____ (“Bancorp”), the holding company for _____ (“Savings Bank”), under the provisions of Section 10(e) of the Home Owners' Loan Act, (the “Act”), and 12 C.F.R. Part 574 (the “Regulations”);

WHEREAS, the Act requires the Director to deny a holding company application if the acquiring company fails to provide adequate assurances to the Director that the company will make available to the Director such information on the operations or activities of the company, and any affiliate of the company, as the Director determines to be appropriate to determine and enforce compliance with the Act and any other statute or regulation administered by the OTS as now or hereafter in effect and applicable to the undersigned in its capacity as a savings and loan holding company; and

WHEREAS, the OTS has approved the Application, subject to certain stated conditions, including execution of this Agreement;

NOW THEREFORE, in consideration of the approval of the Application by the OTS, the parties do hereby agree as follows:

1. The Non-Domestic Applicant shall permit the OTS to examine it to such extent as the OTS may from time to time prescribe.
2. If for any reason the OTS is unable to perform the examinations referred to in 1. above, the Non-Domestic Applicant, at the request of the OTS, shall maintain at the home office of the Applicant U.S.A. such books, records and other information concerning the operation of the Non-Domestic Applicant as may be requested by the OTS. Such information shall be transmitted promptly after being requested by the OTS and shall be in such form and for such periods, and shall contain such methods of verification, as the OTS may direct without requiring the creation of records exclusively for this purpose.

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3. The Non-Domestic Applicant shall transmit to the OTS such periodic reports as may from time to time be requested by the OTS or the Regional Director of the appropriate Regional Office and as required by the applicable OTS regulations now or hereafter in effect. The Non-Domestic Applicant shall not be required to create records exclusively for this purpose. Such reports shall be transmitted promptly after request by the OTS and shall be in such form and for such periods, and shall contain such methods of verification, as the OTS may direct.
 4. The Non-Domestic Applicant shall take all reasonable steps to permit the OTS to have access to any information or report with respect to any examination of it conducted by a federal or _____ regulatory agency or other foreign authority, so long as such access is not objected to by such authority, and provided further, that, consistent with U.S. law, the OTS will accord the same level of confidentiality to such reports as that accorded by the foreign authority.
 5. The Non-Domestic Applicant shall execute within 30 days from the date of the approval of the Application and file with the OTS through its Regional Office, an irrevocable appointment, in form satisfactory to the OTS, of the President and/or any other officer of the Applicant U.S.A. as its agent for service of process. The Non-Domestic Applicant shall maintain an agent for service of process until the earlier of (i) the agreement of the OTS to termination of the appointment, or (ii) ten years after the release by OTS of the Non-Domestic Applicant from registration as a savings and loan holding company as provided in Section 10(b)(6) of the Act. If the agent for service of process is replaced, the new appointment shall be executed as described herein within 30 days.
 6. Within 30 days of the date of the approval of the Application, the chief executive officer, the chief financial officer, the senior executive vice president and the secretary, or their equivalents, of the Non-Domestic Applicant shall individually execute and file with the OTS through its Regional Office, irrevocable appointments, in form satisfactory to the OTS, of the President and/or any other officer of the Applicant U.S.A. as their agent for service of process for the purpose of any proceedings under the Act or the Federal Deposit Insurance Act and the rules and regulations promulgated pursuant thereto by the OTS and any other statute or regulation administered by the OTS as now or hereafter in effect, and applicable to such persons as officials of a savings and loan holding company, for so long as they serve in such capacity. The Non-Domestic Applicant shall notify the OTS of any changes in the individual holders of their listed offices, and any new holder of such office shall execute an appointment as herein prescribed within 30 days. If an agent for service of process is replaced, a new appointment shall be executed as herein prescribed within 30 days. Each appointment shall expire at such time as a particular officer of the Non-Domestic Applicant, as described above, leaves such office, unless such appointment is required to be maintained by statute.
 7. The Non-Domestic Applicant agrees to cause the Applicant U.S.A. not to sell, pledge, hypothecate, or otherwise encumber or dispose of any shares of the outstanding capital stock of Bancorp, the Savings Bank or any subsidiary companies thereof, owned by the Applicant U.S.A. without the prior written approval of the OTS.

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8. The Non-Domestic Applicant consents to be bound by all applicable provisions of the Act; the Federal Deposit Insurance Act; and the rules and regulations promulgated pursuant thereto by the OTS and any other statute or regulation administered by the OTS as now or hereafter in effect and applicable to the undersigned in its capacity as a savings and loan holding company for so long as the Non-Domestic Applicant is a savings and loan holding company.

 9. The Non-Domestic Applicant agrees that at any time during which it controls, directly or indirectly, the Savings Bank, the stock of such Savings Bank shall be held in the name of a savings and loan holding company which is organized under the laws of a state of the United States.

 10. This Agreement shall be effective and binding upon the parties hereto and any assignee or successor in interest to any of said parties. Applicant U.S.A. agrees to take all reasonable steps within its power to secure compliance with the provisions of this Agreement by the Non-Domestic Applicant. As used in this Agreement, the terms “savings association,” “subsidiary,” “savings and loan holding company,” “affiliate,” “control,” and other terms listed in Section 10(a) of the Act shall have the meanings ascribed to said terms in that section, and the regulations of the OTS thereunder.

 12. This Agreement is being required by the OTS as a condition of approving the Application filed by the Applicants. The provisions of this Agreement are intended to supplement and are not in derogation of, nor do they in any way limit or restrict, the rights and powers of the OTS under the Act, the Federal Deposit Insurance Act, and any other statute or regulation, as now or hereafter in effect, administered by the OTS.

IN WITNESS WHEREOF, the parties hereto, by the persons duly authorized whose signatures appear below, have respectively executed this Agreement in duplicate originals on the dates respectively set forth below, the date of this Agreement being the last of said dates.

Certified copies or appropriate resolutions of the respective boards of directors of the parties of the first part authorizing the execution of this Agreement are attached hereto and made a part hereof.

Date: _____

(Company Name)

By: (Name, Title)

Date: _____

Director
Office of Thrift Supervision

To be provided.

This handbook section provides information on the business activities in which uninsured subsidiaries of certain savings and loan holding companies can engage. The provisions of 12 C.F.R. §§ 584.2-1 and 584.2-2 prevent holding companies and their uninsured subsidiaries from engaging in activities that constitute a serious risk to the financial safety or stability of a savings institution subsidiary.

FILING REQUIREMENTS

Delegated Authority

The Regional Office may process an application or notice to engage in permissible activities unless it presents issues of law or policy requiring OTS-Washington review. See Delegation Section (Section 040) of the handbook for further information.

Expedited and Standard Processing Procedures

This type of application is not subject to the expedited processing procedures in 12 C.F.R. Part 516.

Prefiling Meeting Requirements

Prefiling meetings are not required for this filing. However, applicants are encouraged to contact the Regional Office, particularly if the proposal represents a significant transaction, or involves unique or novel issues, to discuss whether a prefiling meeting would expedite the application process.

Information and Form Requirements

Certain holding companies are exempt from the prior notice or application requirements of 12 C.F.R. §§ 584.2-1 and 584.2-2. An exempt holding company is:

- Any savings and loan holding company that controls only one savings institution and such institution is in compliance with the Qualified Thrift Lender (QTL) test; or
- Any savings and loan holding company that controls more than one savings institution, if all, or all but one of the savings institution subsidiaries, were acquired pursuant to an acquisition under §§ Sections 13(c) or 13(k) of the Federal Deposit Insurance Act, or §§ 406(f) and 408(m) of the National Housing Act, as in effect immediately prior to the date of enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and all savings institution subsidiaries are in compliance with the QTL.

In addition, certain nonexempt holding companies that received approval prior to March 5, 1987 to acquire control of a savings institution may engage in any activity, directly or indirectly, in which it was lawfully engaged on March 5, 1987, without notice or application to the OTS, provided:

- The holding company does not acquire control of a savings institution after August 10, 1987, unless pursuant to a supervisory acquisition;

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- The savings institution subsidiary continues to qualify as a domestic building and loan association under the Internal Revenue Code;
 - The holding company does not expand its activities beyond those permissible under 12 C.F.R. § 584.2(b) after March 5, 1987;
 - The subsidiary institution does not increase the locations from which it does business, unless acquired through a supervisory acquisition as discussed previously; and
 - The savings institution subsidiary does not permit an overdraft on behalf of an affiliate.

All other savings and loan holding companies are considered to be nonexempt and subject to the prior notice or application requirements. Pursuant to 12 C.F.R. § 584.2(b), a nonexempt holding company may engage in the following activities without notice to the OTS:

- Furnishing or performing management services for a subsidiary savings institution;
- Conducting an insurance agency or an escrow business;
- Holding, managing, or liquidating assets owned by or acquired from a subsidiary savings institution;
- Holding or managing properties used or occupied by a subsidiary savings institution; and
- Acting as trustee under a deed of trust.

Furthermore, a nonexempt holding company may engage in any activity set forth in 12 C.F.R. § 584.2-1 or any activities the Board of Governors of the Federal Reserve System has deemed permissible for bank holding companies pursuant to 12 C.F.R. §§ 225.24 and 225.28 unless the OTS, by regulation, prohibits or limits any such activity for savings and loan holding companies. Prior to engaging in any of these activities, a nonexempt holding company must comply with the prior notice or application provisions contained in 12 C.F.R. §§ 584.2-1(c) and 584.2-2(d).

A nonexempt holding company should file the original and two copies of the notice or letter application, and the applicable processing fee, with the Regional Office in accordance with 12 C.F.R. Part 516. Applicants that wish to apply for prescribed services or activities, pursuant to 12 C.F.R. § 584.2-1, must file an OTS Form 1564, "Notice to Commence Prescribed Services or Activities for Savings and Loan Holding Companies." Applications filed under 12 C.F.R. § 584.2-2 to engage in permissible bank holding company activities should be made in letter form. Where an activity is described both in 12 C.F.R. § 584.2-1 and 12 C.F.R. § 584.2-2, the holding company may follow the notice procedures of 12 C.F.R. § 584.2-1. 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. The documents should be filed with the Regional Director, or his/her designee, of the Region where the principal office of the applicant's subsidiary savings institution is located or, in some circumstances, with the Regional Office that has supervisory authority over the savings institution subsidiary (e.g., an institution may be geographically located within one Region, but supervised and examined out of a different Region as determined by the location of a "lead" institution within a multiple holding company structure).

A filing under 12 C.F.R. § 584.2-1 or 584.2-2 should generally contain the following:

- Identification of the entity that will conduct the proposed activity and whether it is an existing entity proposing to expand business activities, a new company formed solely for the purpose of conducting the proposed activity, or whether it is to be acquired by the holding company or a subsidiary thereof;
- Organizational history of the entity including where and when incorporated, discussion of management structure, description of existing lines of business and, if applicable, how the entity is regulated;
- Discussion of ownership structure of the entity, its position within the holding company structure and identification of thrift affiliates within the organization;
- Detailed description of the proposed activities including target market area and/or customer base. This section should also contain information to demonstrate that the entity possesses (or describe the manner in which it plans to obtain) adequate management expertise to properly conduct the new business activity. In instances where there are common management officials between the entity engaging in the new activity and the savings institution, applicants should address what effect, if any, the appropriation of management resources to the new activity will have on the degree of oversight afforded the savings institution;
- Description of any transactions with the savings institution that are contemplated (e.g., services will be performed for or on behalf of the institution, institution will extend credit to the uninsured affiliate, lease of office space, etc.). Such transactions are governed by 12 C.F.R. §§ 563.41 and 563.42. In addition, any other relationships or issues that may give rise to potential conflicts of interest should be fully disclosed and supplemented by a plan to avoid conflicts of interest;
- Discussion of how the new activities will produce benefits to the public such as greater convenience, increased competition or gains in efficiency that outweigh possible adverse effects (e.g., undue concentration of resources, decreased or unfair competition, unsound financial policies). It should also be demonstrated that the conduct of the new activities would not directly or indirectly have an adverse effect upon the operations or competitive stance of the savings institution; and
- Documentation to support the authority to engage in or commence the proposed activities including, but not limited to, authorization under articles of incorporation and bylaws, Securities and Exchange Commission regulations, state licensing or other requirements. Additionally, in the case of applications under 12 C.F.R. § 584.2-2, applicants must provide reference to the specific regulatory provision or order under which the Board of Governors of the Federal Reserve System has recognized that the proposed activity is permissible for bank holding companies.

Financial statements as follows:

1. Unconsolidated and consolidated financial statements of the holding company and of the entity that will engage in the new activity as of a date within 90 days prior to the date of filing;
2. If the statements provided above are not audited, audited statements of condition, as of a date within one year, should be filed. If the fiscal year of the holding company or subsidiary has ended within 90 days prior to the date of filing, audited statements may be as of the end of the preceding fiscal year; and
3. Three-year projected financial statements (balance sheet, income and expense, cash flow) of the holding company and of the entity that will engage in the new activity, on both a consolidated and unconsolidated basis, that reflect operating results from the new line of business.

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

For notices filed pursuant to 12 C.F.R § 584.2-1

Within five business days of receipt of the notice and the filing fee, the Regional Office must notify the applicant of its receipt. The appropriate fee must accompany the notice in order for it to be considered filed. The activity or service may be commenced if the Regional Director, or his/her designee, does not take objection within 30 days of a properly filed notice for a de novo activity, or 60 days in the case of an acquisition of a going concern.

For applications filed under 12 C.F.R. § 584.2-2

Within five business days of receipt of the application and the filing fee, the Regional Office must notify the applicant of its receipt. The appropriate application fee must accompany the application in order for it to be considered filed.

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.

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, the 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, you 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, the application may be deemed withdrawn unless OTS 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

In evaluating notices submitted pursuant to 12 C.F.R. § 584.2-1, the OTS must find that the activity is one of the listed activities, and would be a proper incident to the operations of savings institutions and would not be detrimental to the interest of savings account holders.

In evaluating applications filed under 12 C.F.R. § 584.2-2, the OTS will consider whether the activity is one of the activities permitted under 12 C.F.R. §§ 225.24 and 225.28, and can reasonably be expected to produce benefits to the public that outweigh the possible adverse effects of permitting the activity. The analysis will also include an evaluation of the financial and managerial resources of the applicant, including its subsidiaries and the effect of the proposed transaction on those resources.

Decision Guidelines

In evaluating a notice or application to engage in a new activity by a savings and loan holding company, the OTS will consider the effects of the activity on the overall operations of the applicant and its subsidiary institution(s). The evaluation will include the availability of experienced management to conduct the activity, the overall risk the activity poses to the applicant and the subsidiary institution(s), any contemplated intercompany relationships involving the subsidiary institution(s), and the reliance, if any on any resources of the subsidiary institution(s) the applicant anticipates necessary to conduct the activity. In conducting the analysis the OTS will take into consideration the following:

- Is the activity within 12 C.F.R. § 584.2-1 (notice) or 12 C.F.R. § 584.2-2 (application)?
- Can the activity reasonably be expected to provide benefits, such as greater convenience, increased competition, or gains in efficiency, to the public that would outweigh any possible adverse effects, such as undue concentration of resources, decreased or unfair competition, or conflicts of interest?
- Does the managerial and financial resources of the holding company, its subsidiaries, and any company to be acquired appear sufficient to support the conduct of the activity?
- Is the activity properly incidental to the operations of savings institutions and is not detrimental to the interests of savings account holders?
- Will the expansion of business activities, and conduct of such activities, pose serious direct or indirect risk to the financial safety or stability of the savings institution?
- Is the financial position of the holding company and its uninsured subsidiaries adequate to absorb capitalization, acquisition and/or start-up costs and to support conduct of the activity, while preserving the holding company's ability to provide a positive or neutral effect on the savings institution subsidiary (e.g., the institution is allowed to operate with marginal or inadequate capital while the holding company appropriates funds to expand other business activities)?
- Will the holding company have the ability to comply with any capital maintenance agreement, after giving effect to the effect of the new activity on its operations (both on a start-up and pro-forma basis)?
- Does it appear the savings institution may be relied upon to support operations of the uninsured affiliate or to service related debt obligations of the parent (pressure for increasing levels of dividends to be upstreamed to the parent)?
- Will the attention of common management be channeled away from the affairs of the savings institution to such an extent that it will adversely effect the institution's operations?
- What are the effects of potential conflicts of interest?
- What is the track record of the holding company and its subsidiaries in meeting projected operating results, in dealing with the savings institution, and in the area of regulatory compliance?

Conditions

There are no standard conditions imposed in these filings. Nonstandard conditions may be imposed on a case by case basis. If nonstandard conditions are recommended, the Regional Office's digest must include appropriate justification for imposing such conditions. Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application.

RECORDKEEPING REQUIREMENTS

The OTS should 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.

MONITORING AND CONTROL

The manner in which the new activity is conducted and its effect upon the resources of the holding company and upon the savings institution's operations should be followed through the normal course of monitoring and examining the holding company organization. It should be noted that, where there is reasonable cause to believe that continuation of any activity, or ownership or control of any uninsured subsidiary, constitutes a serious risk to the financial safety, soundness or stability of the savings institution subsidiary and is inconsistent with the sound operations of the institution, the holding company may be ordered (upon notice and opportunity for hearing) to terminate any activity or ownership of any uninsured subsidiary.

The appropriate staff responsible for the supervision and examination of the institution and holding company should be notified of the action taken on an application and provided with copies of the approval letter. If an application is approved, the first examination of the institution following the approval should include a review of compliance with any 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. § 1467a(a)	Home Owners' Loan Act, Definitions
12 U.S.C. § 1467a(c)	Home Owners' Loan Act, Holding Company Activities
12 U.S.C. § 1467a(m)	Home Owners' Loan Act, Qualified Thrift Lender Requirements
12 U.S.C. § 1843	Bank Holding Company Act of 1956, Section 4(c)(8) (Interests in Nonbanking Organizations)

Regulations

12 C.F.R. § 225.23	Federal Reserve Board Regulations for Bank Holding Companies (List of Permissible Nonbanking Activities)
12 C.F.R. § 225.25	Federal Reserve Board Regulations for Bank Holding Companies (Activities approved on a case-by-case basis)
12 C.F.R. § 563.50	Qualified Thrift Lender Status
12 C.F.R. § 584.2(a)	Prohibited Activities
12 C.F.R. § 584.2(b)	Activities Permissible for all Holding Companies
12 C.F.R. § 584.2a	Exempt Savings and Loan Holding Companies and Grandfathered Activities
12 C.F.R. § 584.2-1	Prescribed Services and Activities of Savings and Loan Holding Companies
12 C.F.R. § 584.2-2	Permissible Nonbanking Activities of Savings and Loan Holding Companies

Forms

OTS Form 1564

This handbook section provides information regarding the requirements and guidelines to be used in reviewing applications and notices filed by institutions to establish and invest in subordinate organizations.

A subordinate organization is any corporation, partnership, business trust, association, joint venture, pool, syndicate, or other similar business organization in which an institution has a direct or an indirect ownership interest.

12 C.F.R. Part 559 sets forth Office of Thrift Supervision (OTS) regulatory requirements regarding the establishment of subordinate organizations by institutions. Subpart A of Part 559 applies to federal institutions and Subpart B applies to both federal and state institutions. As discussed below, subordinate organizations are categorized as either operating subsidiaries or service corporations.

FILING REQUIREMENTS

Delegated Authority

Generally, applications and notices filed under this section may be processed by the Regional Office under delegated authority. However, certain situations may cause a filing to be nondelegated, including: (i) applications containing a significant issue of law or policy; (ii) service corporation applications involving activities not previously approved by OTS; and (iii) applications involving subordinate organizations that propose to engage in activities outside of the United States.

Expedited and Standard Processing Procedures

OTS processes applications using two procedures, expedited treatment and standard treatment. Applications filed under this section may qualify for expedited or standard treatment, depending on the type of investment or activity proposed by the subordinate organization.

Expedited Processing

The institution is eligible for expedited treatment if it satisfies all of the following criteria:

1. Has a composite CAMELS rating of “1” or “2;”
2. Has a CRA rating of “Satisfactory” or better;
3. Has a Compliance rating of “1” or “2;”
4. Meets or exceeds the minimum capital requirements set forth in 12 C.F.R. Part 567; and
5. Has not been notified that it is in troubled condition.

If the institution qualifies for expedited processing, a notice is filed with the appropriate Regional Office. OTS considers a filing to be appropriately filed when sufficient information to evaluate the proposal was received from the applicant in its notice. Please refer to the Processing Procedures and Time Frames discussion of this section for more information on processing procedures and applicable time frames for notices.

Notices submitted by institutions eligible for expedited treatment are deemed “applications” for purposes of statutory and regulatory requirements referring to applications.

Standard Processing

If the applicant does not qualify for expedited processing, it must file an application subject to standard application processing time frames. Specifically, the institution is subject to standard processing if any of the following conditions exist regarding the institution:

1. Has a composite CAMELS rating of “3,” “4” or “5;”
2. Has a less than “Satisfactory” CRA rating;
3. Has a Compliance rating of “3,” “4” or “5;”
4. Has inadequate capital or fails at least one of its capital requirements;
5. Has been notified that it is in troubled condition;
6. The applicant is not a savings institution; or
7. The applicant has not received a composite CAMELS rating, a CRA rating, or a compliance rating from any federal banking regulator.

Please refer to the Processing Procedures and Time Frames discussion of this section for more information on applicable time frames for applications.

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

All institutions (both Federal and State) must file either an application or a notice with OTS before commencing an activity in a new subordinate organization or before engaging in any new activity through an existing subordinate organization. The following institutions are exempt from these filing requirements: (i) any Federal savings bank that was chartered prior to October 15, 1982 as a savings bank under state law; or (ii) a institution that acquired its principal assets from an institution that was chartered prior to October 15, 1982 as a savings bank under state law. (See 12 C.F.R. § 559.11 and 12 USC § 1828(m)(5)).

If delegated, all applications and notices should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant should file the original and two copies of the application or notice with 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. For applications that are not

delegated to the Regional Office, an additional three copies of the application should be filed with the Applications Filing Room in OTS-Washington.

Operating Subsidiaries

The filing is a 30-day notice, regardless of the treatment of the institution (expedited versus standard). An institution should file OTS Form 1579 prior to establishing an operating subsidiary. However, the notice may become an application with 30/60 day time frames under 559.11 if OTS notifies the applicant that the notice presents supervisory concerns or raises significant issues of law or policy.

Service Corporations*Expedited Filer*

An institution eligible for expedited treatment should file OTS Form 1466 or OTS Form 1562 for preapproved service corporation activities (as set forth in § 559.4) or securities brokerage activities through a service corporation, as applicable. In addition, § 559.11 requires that all notices include the information that the FDIC requires under 12 C.F.R. § 303.141. The notice can turn into an application with 30/60 day time frames under § 559.11 if OTS notifies the applicant that the notice presents supervisory concerns or raises significant issues or policy or law. If the activity is not preapproved, but is reasonably related to the activities of a financial institution, an application is required (559.3(e)(2)(i)).

Standard Filer

Standard filers can file a 30-day notice if the service corporation activity is one authorized to the parent thrift, except taking deposits. Again, the notice will become an application with 30/60 day time frames under § 559.11, if OTS notifies the applicant that the notice presents supervisory concerns, or raises significant issues of law or policy. Any application subject to 30/60 day time frames must be filed for activities reasonably related to the activities of financial institutions, and pre-approved activities listed in 559.4(b) through (i).

The information requested below will be required for all applications subject to standard processing filed under this section.

- Copy of the notice filed with the FDIC including the information required by 12 C.F.R. § 303.141;
- Copy of any agreement between the subordinate organization, the institution and/or any third party in conjunction with the transaction;
- Resolution by the institution's board of directors authorizing the establishment of the subsidiary organization;
- Name and address of the subordinate organization and, if newly organized, state of incorporation;
- Complete description of the proposed activities;

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- Copy of the institution's business plan regarding the conduct of the activity;
 - A description of the institution's expertise in the activity;
 - A brief description of the institution's policy and practice with regard to any anticipated involvement in the activity by a director, executive officer or principal shareholder of the institution or any related interest of such a person;
 - Citation to any applicable state statutory or regulatory authority regarding the conduct of the activity;
 - Amount of the institution's existing or proposed direct or indirect investment in the subsidiary organization, along with evidence of compliance with any applicable investment limitation or capital requirement;
 - The institution's proposed ownership percentage of the subsidiary organization. If it is less than 100 percent, the filing should identify the other owners and their respective ownership interests;
 - Three year income and expense projections for the subordinate organization;
 - Evidence that the institution and the subordinate organization will maintain separate existences pursuant to 12 C.F.R. § 559.10;
 - Articles of incorporation and bylaws of the subordinate organization; and
 - Copy of any other required regulatory approvals.

Notices or applications to participate in a joint venture through a subsidiary organization should also include the following additional information:

- The name and principal office of the joint venture;
- A detailed explanation of the financial arrangements between the participants;
- The most recent balance sheet and income statement of the joint venture; and
- Regulatory history of the other parties to the joint venture.

Securities Brokerage Activities

Notices or applications to engage in securities brokerage activities through a service corporation should also include a description of how the institution will comply with the requirements set forth in 12 C.F.R. § 545.74 and OTS Thrift Bulletin 23-2.

Exercise of Salvage Power

Under § 559.13, an institution may exercise its salvage power to make a contribution or a loan to its service corporation or a lower tier entity that exceeds the maximum amount otherwise permitted by law or regulation. A notice or an application filed under this section should demonstrate that: the salvage investment protects the institution's interest in the service corporation; the investment is

consistent with safety and soundness; and the institution considered alternatives to the salvage investment and determined that none of the alternatives was satisfactory.

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 nondelegated will be transmitted from OTS-Washington. Correspondence on delegated applications will generally come 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. For nondelegated applications, the application will not be considered filed until received by both OTS-Washington and the Regional Office.

For nondelegated applications that involve specialty areas, such as insurance or trust activities or CRA issues, a copy of the application must be provided 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

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- 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 review requests for a waiver of an application requirement that certain information be supplied, in a timely manner. 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 an 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 the 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 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 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.

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, you may deem the application withdrawn unless OTS 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.

Notices under Expedited Treatment

Within five business days of receipt of the notice and fee, OTS must notify the applicant of the notice's receipt. The appropriate fee must accompany each notice in order for the filing to be considered filed.

The applicant may engage in the proposed activities upon the expiration of 30 calendar days after the filing date of its notice, unless OTS takes one of the following actions before expiration of that time period:

- Request, in writing, any additional information necessary to supplement the notification;
- Notifies the applicant that the notice is subject to standard treatment as it raises a supervisory concern, raises a significant issue of law or policy, or requires significant additional information; or
- Disapproves of the notice.

Failure by OTS to act within 30 calendar days of receipt of the notice for processing shall result in the filed notice's being accepted. If supplemental information is requested, the applicant will have 30 days to provide such information. The 30-day time frame will begin anew upon receipt of such information.

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

Service Corporations

Under 12 C.F.R. Part 559, OTS may approve a service corporation application if the following requirements are met:

- A first tier service corporation may only be owned by institutions with home offices in the state where the applicant has its home office. (559.3(b)(2));
- A first tier service corporation must be organized under the laws of the state where the federal institution's home office is located. (559.3(d)(2));
- A service corporation may engage in preapproved activities listed in § 559.4 or activities reasonably related to the activities of financial institutions (with OTS approval). (559.3(e)(2)). If the institution is eligible for expedited treatment, its service corporation may be a depository institution; however, deposit taking is not a preapproved activity;
- A service corporation may invest in all types of lower tier entities as long as the lower tier entity is engaged solely in activities that are permissible for a service corporation. (559.3(f)(2));
- A federal institution may invest in the capital stock, obligations, or other securities of service corporations as long as the aggregate outstanding investment does not exceed three percent of assets. Any investment in excess of two percent of assets must serve primarily community, inner city, or community development purposes. Additional funds may be loaned by the institution to its service corporation subject to the restrictions discussed in § 559.5; and
- OTS may, at any time, limit an institution's investment in any of these entities, or may limit or refuse to permit any activities of any of these entities, for supervisory, legal, or safety and soundness reasons.

Operating Subsidiaries

Under 12 C.F.R. Part 559, OTS may approve an operating subsidiary application if the following requirements are met:

- More than 50 percent of the voting shares must be owned, directly or indirectly, by the federal institution and no other person or entity may exercise effective operating control. (559.3(c)(1));
- An operating subsidiary may only engage in activities permissible for a federal institution. (559.3(e)(1));
- An operating subsidiary may itself hold an operating subsidiary, and it may also invest in other types of lower tier entities. (559.3(f)(1));
- There are no limits on the amount that a federal institution may invest in an operating subsidiary, either separately or in the aggregate. In addition, there are no restrictions on the geographic location of an operating subsidiary; or

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- OTS may, at any time, limit an institution's investment in any of these entities, or may limit or refuse to permit any activities of any of these entities, for supervisory, legal, or safety and soundness reasons.

Decision Guidelines

The criteria for determining whether OTS should allow an institution to make an investment in a subordinate organization were developed to ensure that the activity or investment would not compromise the safe and sound operation of the institution. In that regard, the analysis should conclude that the proposed activity or investment and the level of investment is permissible under OTS statutes and regulations; that management has the expertise to implement the business plan of the subsidiary; that the business plan of the subsidiary is viable; and that there are no other supervisory reasons to object to the proposed investment or activity. To assist in this analysis, the following items should be provided and the following factors should be addressed:

- Name(s) and address(es) of the subsidiary and the parent institution.
- Name, location, and state of incorporation of the subsidiary.
- A statement regarding whether the subsidiary is to be wholly-owned by the parent company. If not, what percentage of the capital stock is to be owned by others and who are the other entities?
- Articles of incorporation and bylaws of the subsidiary.
- Resolution approving the activity submitted by the board of directors of the subsidiary or institution.
- A statement by the institution's attorney that the subsidiary is permitted to engage in the proposed activity, pursuant to applicable state laws.
- A statement that the proposed activity is a preapproved activity listed in § 599.4. If the activity is not preapproved, how is it related to the activities of financial institutions?
- A statement of qualifications and licensing requirements of personnel responsible for the proposed activity.
- A detailed description of the activity and the proposed operation.
- Income and expense projections of the activity for three years and the resulting effect on the institution's operations.
- The amount of investment in the proposed service corporation by the institution and whether the proposed activity will require the institution to increase its level of investment in the service corporation. If yes, include a discussion of the amount of proposed additional investment. Will the investment in a service corporation, when aggregated with existing investments in service corporations, comply with the percentage of assets limitation set forth in § 559.5?

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- For an operating subsidiary filing, provide a discussion of why the activity is permissible for a federal institution.
 - A well-supported statement that the insured institution and the subsidiary will have and maintain separate corporate existences.
 - Full disclosure of any interests and relationships, past, present, and proposed, of any affiliated person(s).
 - If the subsidiary will be engaged in insurance activities, has OTS consulted with the appropriate state insurance regulator as required by Section 307(c) of the Gramm-Leach-Bliley Act to obtain its views regarding the transaction?
 - If the subsidiary will be engaged in insurance activities, is the capital stock of the proposed insurance company nonassessable?
 - Can the proposed activity be conducted in a safe and sound manner?
 - Will the institution continue to comply with its investment limitations under 5(c) of HOLA and 12 C.F.R. Part 560 for the proposed operating subsidiary activity?
 - If a subsidiary will engage in activities outside of the United States, have the following items been addressed?
 - * What is the statutory or regulatory framework in the foreign country that would apply to the proposed foreign operations?
 - * Would the laws of the foreign country restrict OTS's access to, or enforcement authority over, the subsidiary?
 - * To what degree, if any, are the assets held by the subsidiary at greater risk of being subject to attachment in connection with claims that might arise from the subsidiary's foreign operations?
 - * How will the subsidiary make its books and records accessible to OTS examiners?
 - * If applicable, did the institution provide a private letter ruling or an opinion of an independent accountant confirming that the proposed activity would generate tax benefits to the institution?

Conditions

There are no standard conditions for these filings. OTS may condition its approval of subordinate organization applications to include 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 records for the application.

Specifically, OTS may impose nonstandard conditions for applications involving foreign operations and reinsurance activities by subsidiaries. For applications involving foreign operations, OTS may impose the following conditions:

- The Operating Subsidiary must make available to the OTS such information as the OTS deems necessary from time to time to monitor the Operating Subsidiary's activities and the effect of those activities on the safe and sound operation of the Savings Bank. The Operating Subsidiary must maintain a duplicate set of records in the United States at the Savings Bank's home office, or, if satisfactory to the Regional Director, elsewhere in the United States.
- The Operating Subsidiary must maintain a registered agent in the Savings Bank's home office or, if satisfactory to the Regional Director, elsewhere in the United States to receive service of process on the subsidiary's behalf.
- The Operating Subsidiary must provide all financial statements in U.S. dollars in accordance with generally accepted accounting principles, including financial information required to be submitted quarterly in the Thrift Financial Report.
- The Savings Bank must promptly inform the Regional Director in writing of all changes in the directors, officers, and employees or managers of the Operating Subsidiary.
- The documents required by the following bullet items must be submitted to the Regional Director. Once these documents are submitted and the Regional Director indicates in writing that the documents are in acceptable form, the Operating Subsidiary may commence operations, subject to the foregoing conditions.
 - * The Savings Bank must establish and document internal controls that demonstrate adequate oversight of the Operating Subsidiary, and provide materials documenting the institution of such internal controls to the Regional Director.
 - * The Operating Subsidiary and any institution-affiliated party associated with the Operating Subsidiary must consent in writing to the jurisdiction of the U.S. over, and the applicability of U.S. law to, the Operating Subsidiary and its institution-affiliated parties for purposes of all claims made by, proceedings initiated by, or obligations to, the U.S., the OTS, and any U.S. governmental agency, department or division, and must consent in writing to the jurisdiction of the OTS over the Operating Subsidiary and its institution-affiliated parties for purposes of examination, supervision and enforcement. The Operating Subsidiary and its institution-affiliated parties must further agree in writing not to challenge the authority of any conservator/receiver appointed for the Savings Bank to control the Savings Bank and the Savings Bank's interests in the Operating Subsidiary.
 - * The Operating Subsidiary must submit a reasoned opinion of counsel in a form acceptable to the OTS indicating that there are no laws of _____ that would restrict OTS access to, or enforcement authority over, the Operating Subsidiary or its institution-affiliated parties.
 - * The Operating Subsidiary must consent in writing to the disclosure by the _____ governmental authorities to the OTS of such information on its operations and its

affiliates that the OTS deems necessary from time to time to determine and enforce compliance with applicable U.S. law.

- * The Operating Subsidiary and the Savings Bank must agree in writing to terminate operations of the Operating Subsidiary as soon as possible (but no later than 30 days) after being advised in writing that the OTS, in its sole discretion, has determined that such operations present undue risk.

For applications involving the formation of reinsurance subsidiaries, OTS may impose the following conditions:

- While the Service Corporation is a subsidiary of the Savings Bank, the portion of reinsurance risk assumed by the Service Corporation must be considered: (i) in determining the loan-to-value ratio for loans on the Savings Bank's books for purposes of determining whether such loans exceed the Supervisory Loan-to-Value Limits set forth in the Appendix to 12 C.F.R. § 560.101, and (ii) in determining whether such loans are "Qualifying Mortgage Loans" for risk-weighting purposes set forth in 12 C.F.R. Part 567.
- While the Service Corporation is a subsidiary of the Savings Bank, the Savings Bank, for purposes of calculating its regulatory capital as provided in 12 C.F.R. § 567.6(a)(2)(i)(C), must treat the amount of the Service Corporation's maximum reinsurance obligation on loans that the Savings Bank has sold as loans sold with recourse.

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.

MONITORING AND CONTROL

The approval order or letter may include conditions of approval. 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 Office, including a review of the documentation maintained in the application file.

INFORMATION SOURCES

Statutes

12 USC § 1464(c)(4)(B)
12 USC § 1828(m)

Regulations

12 C.F.R. § 303.141
12 C.F.R. § 303.142
12 C.F.R. § 362.15
12 C.F.R. Part 516
12 C.F.R. § 545.74
12 C.F.R. Part 559
12 C.F.R. Part 560
12 C.F.R. § 567.1

OTS Bulletins

Thrift Bulletin 23-2
Thrift Bulletin 48

Thrift Activities Handbook Section 600
Thrift Activities Handbook Section 230

OTS Forms

Form 1466
Form 1562
Form 1579

12 C.F.R. § 563.81 governs the issuance by savings institutions of qualifying subordinated debt securities and mandatorily redeemable preferred stock (MRPS), collectively referred to as qualifying debt securities. The regulation provides a mechanism for institutions to increase their regulatory capital under certain circumstances in view of OTS's capital rules at 12 C.F.R. Part 567 by including the proceeds from the sale of qualifying debt securities in their supplementary capital. 12 C.F.R. § 563.81 sets numerous requirements for the securities (e.g., debt security period to maturity of at least seven years) in order for the securities to be treated as "maturing capital instruments" that are includable in supplementary capital pursuant to 12 C.F.R. § 567.5(b)(2).

Qualifying debt securities reduce the risk to FDIC by transferring a portion of the risk to the holders of the qualifying debt securities. In the event of an involuntary liquidation of the institution, the holders of the qualifying securities are subordinate to the claims of FDIC.

Qualifying debt securities are a limited, short-term and often high cost source of capital. OTS will carefully analyze the financial condition of the applicant and the return on debt securities to determine whether the institution will benefit from the issuance of qualifying debt securities or create a greater risk to FDIC.

FILING REQUIREMENTS

Delegated Authority

Generally, applications and notices filed under this section may be processed by the Regional Office under delegated authority. However, certain situations may cause a filing to be nondelegated, including applications that raise a significant issue of law or policy. See Delegation Section 040 of the handbook for further information on the delegation process.

Expedited and Standard Processing Procedures

OTS processes applications using two procedures, expedited treatment and standard treatment. Applications filed under this section may qualify for either expedited or standard treatment, based on the criteria below.

Expedited Processing

The institution is eligible for expedited treatment if it satisfies all of the following criteria:

- Has a composite CAMELS rating of "1" or "2;"
- Has a CRA rating of "Satisfactory" or better;
- Has a Compliance rating of "1" or "2;"
- Meets or exceeds the minimum capital requirements set forth in 12 C.F.R. Part 567; and
- Has not been notified that it is in troubled condition.

If the institution qualifies for expedited processing, a notice is filed with the appropriate Regional Office. OTS considers a filing to be appropriately filed when sufficient information to evaluate the proposal is received from the applicant in its notice. Please refer to the “Processing Procedures and Time Frames” discussion of this section for more information on processing procedures and applicable time frames for notices.

Notices submitted by institutions eligible for expedited treatment are deemed “applications” for purposes of statutory and regulatory requirements referring to applications.

Standard Processing

If the applicant does not qualify for expedited processing, it must file an application subject to standard application processing time frames. Specifically, the institution is subject to standard processing if any of the following conditions exist regarding the institution:

- Has a composite CAMELS rating of “3,” “4” or “5;”
- Has a less than “Satisfactory” CRA rating;
- Has a Compliance rating of “3,” “4” or “5;”
- Has inadequate capital or fails at least one of its capital requirements;
- Has been notified that it is in troubled condition;
- The applicant is not a savings institution; or
- The applicant has not received a composite CAMELS rating, a CRA rating, or a compliance rating from any federal banking regulator.

Please refer to the “Processing Procedures and Time Frames” discussion of this section for more information on applicable time frames for applications.

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

All savings institutions must file either a notice or an application with OTS when issuing subordinated debt securities or mandatorily redeemable preferred stock to be included in regulatory capital. An institution may make the appropriate filing either before or after the securities are issued but may not include the securities in regulatory capital until after OTS issues an approval or nonobjection.

Section: Subordinated Debt and Mandatorily Redeemable Preferred Stock

Section 610

If delegated, all applications and notices should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant should file the original and two copies of the application or notice with 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. For applications that are not delegated to the Regional Office, an additional three copies of the application should be filed with the Applications Filing Room in OTS-Washington.

A savings institution eligible for expedited treatment should file OTS Form 1561 prior to including subordinated debt securities or mandatorily redeemable preferred stock in regulatory capital or prior to amending the terms of such securities. The institution must also comply with OTS securities offering rules at 12 C.F.R. Part 563g by filing an Offering Circular concerning the proposed issuance and sale of securities unless the securities offering qualifies for an exemption under 12 C.F.R. § 563g.3 (discussed further below). In addition to the notice, the institution should certify in writing to OTS that all regulatory requirements have been met.

OTS reserves the right to determine, after the 30 day notice period has expired, that the issuance does not comply with the requirements of 12 C.F.R. § 563.81 and Part 567. Refer to 12 C.F.R. § 563.81 for the eligibility requirements, limitation as to term, limitation on offering period and form of certificate, to determine whether an issuance of debt securities will be includable in the regulatory capital of an institution.

A savings institution required to file an application subject to standard processing procedures must file a completed OTS Form 1344 and receive OTS approval prior to including subordinated debt securities or mandatorily redeemable preferred stock in regulatory capital or prior to amending the terms of such securities. The institution should prepare the application in accordance with the instructions set forth in OTS Form 1344 and should provide meaningful and sufficient information in response to each of the items in the form. The institution must also comply with OTS securities offering rules at 12 C.F.R. Part 563g by filing an Offering Circular concerning the proposed issuance and sale of securities unless the securities offering qualifies for an exemption under 12 C.F.R. § 563g.3 (discussed further below). In addition to the application, the institution should certify in writing to OTS that all regulatory requirements have been met.

The information listed below will be required for all applications subject to standard processing procedures prior to including debt securities in regulatory capital:

- Charter. A copy of the applicant's charter, currently in effect, certified by the secretary of the applicant institution. However, if the applicant is a federal institution, the applicant need only specify its charter type, *e.g.*, federal mutual savings and loan institution, federal stock savings bank, etc.;
- Bylaws. A copy of the applicant's bylaws, currently in effect, certified by the secretary of the applicant institution;
- Resolutions. A certified copy of the resolutions duly adopted by the applicant's board of directors authorizing the issuance of the debt securities or the mandatorily redeemable preferred stock in accordance with the terms set forth in the application;

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- A cross-reference sheet specifying, by page number and section or paragraph, the location of the document provisions (form of the debt securities, related purchase agreement, or indenture) that are intended to satisfy the requirements-as-to-securities provisions of 12 C.F.R. § 563.81(d);
 - Form of debt securities. A copy of the form of the debt securities or the mandatorily redeemable preferred stock covered by the application and a copy of the related purchase agreement. (If the debt securities covered by the application are being issued pursuant to an indenture, the applicant's counsel must submit a letter stating whether the indenture would qualify under the Trust Indenture Act of 1939, and if not, indicate what provisions of the indenture would not qualify under the Trust Indenture Act of 1939.);
 - Any guarantee or insurance agreement;
 - Any distribution agreement, including any underwriting agreements;
 - Any compensating balance agreement or other arrangement;
 - Any state approval (when the institution is state-chartered);
 - Any offering circular or private placement memorandum to be furnished to prospective investors;
 - A copy of the applicant's most recent annual report;
 - An opinion from qualified independent counsel for the applicant opining as follows: (i) the issuance of the debt securities covered by the application is authorized by applicable law or regulation and is not inconsistent with any provision of the applicant's charter or bylaws (required only if the applicant is state chartered), or any other agreement known to such counsel to which the applicant, one of its service corporations, or holding company, is a party; (ii) the issuance of the debt securities has been duly authorized by the board of directors of the applicant, and upon issuance of the debt securities will be validly issued and constitute binding obligations of the applicant in accordance with their terms; (iii) the form of the debt securities and related purchase agreement comply with requirements as to debt securities set forth in 12 C.F.R. § 563.81(d)(1); (iv) with regard to any part of the offering circular or private placement memorandum, counsel has made reasonable investigation and on the basis of that investigation, believes the statements are true and not misleading. Such an opinion need not cover financial statements; and (v) the debt securities were offered and sold in compliance with 12 C.F.R. Part 563g;
 - Use of proceeds and reasons for issuance;
 - Capitalization plan;
 - Discussion of fees, commissions and other expenses;
 - Debt service requirements;
 - Statement of method used to amortize any debt discount and other expenses related to the issuance of the debt;
 - Written evidence of compliance with 12 C.F.R. § 563.81(b)(2);
 - Discussion of sinking-fund payments, other prepayments or reserve requirements; and

- Applicable financial statements as outlined in the last portion of the subordinated debt or mandatorily redeemable preferred stock application.

In some instances institutions do not seek to include the proceeds from otherwise qualifying debt securities in regulatory capital. Although 12 C.F.R. § 563.81 is inapplicable in such instances, the requirements of 12 C.F.R. § 563.80 apply in connection with the issuance of debt securities. For issuances of debt securities not involving a request for inclusion in regulatory capital and in excess of one year to maturity, no filings are necessary unless the institution does not meet its regulatory capital requirements under 12 C.F.R. § 567.2 or § 567.3. If the institution does not meet its regulatory capital requirements then, at least 10 business days prior to issuance, it must file with the Regional Director a notice of intent to issue debt securities containing the information required by 12 C.F.R. § 563.80(e)(1).

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 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 nondelegated will be transmitted from OTS-Washington. Correspondence on delegated applications will generally come 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. For nondelegated applications, the application will not be considered filed until received by both OTS-Washington and the Regional Office.

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 application being deemed complete, commencing the period for review.

OTS must review requests for a waiver of an application requirement that certain information be supplied, in a timely manner. 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 an 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 the 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 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.

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.

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.

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 OTS 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.

Notices under Expedited Treatment

Within five business days of receipt of the notice and fee, OTS must notify the applicant of the notice's receipt. The appropriate fee must accompany each notice in order for the filing to be considered filed.

The applicant may engage in the proposed activities upon the expiration of 30 calendar days after the filing date of its notice, unless OTS takes one of the following actions before expiration of that time period:

- Requests, in writing, any additional information necessary to supplement the notification;
- Notifies the applicant that the notice is subject to standard treatment as it raises a supervisory concern, raises a significant issue of law or policy, or requires significant additional information; or
- Disapproves of the notice.

Failure by OTS to act within 30 calendar days of receipt of the notice for processing shall result in the filed notice being accepted. If supplemental information is requested, the applicant will have 30 days

to provide such information. The 30-day time frame will begin anew upon receipt of such information.

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

Eligibility Requirements

12 C.F.R. § 563.81(b) sets out “eligibility requirements” that an institution must satisfy before OTS will approve an application for inclusion of the qualifying debt securities as regulatory capital. OTS may find that an institution has failed to satisfy the eligibility requirement of 12 C.F.R. § 563.81(b)(2) when OTS is of the opinion that “the overall policies, condition and operation” of the institution provide a basis for supervisory objection. The following are guidelines that OTS follows when evaluating whether there is a basis for supervisory objection:

- The institution's board of directors has not properly authorized the issuance of the securities;
- The institution is “undercapitalized” within the meaning of 12 C.F.R. § 565.4(b) (PCA) or otherwise fails to satisfy the regulatory capital requirements set out at 12 C.F.R. § 567.2;
- The institution has either a “4” or a “5” composite CAMELS rating;
- The institution has submitted a capital plan that is unrealistic or otherwise unacceptable;
- Information submitted in connection with the application or otherwise made available to the Regional Director indicates that the institution may be unable to service the proposed debt securities. Evaluation of the issuer's ability to service debt securities should be prospective, based upon the issuer's business plan;
- The institution has failed to comply with the terms and conditions imposed upon previous securities issuances included as regulatory capital;
- The institution’s proposed deployment of the proceeds from the securities issuance is contrary to the institution's business plan, is unrealistic in its assumptions or is inconsistent with principles of safety and soundness;
- The proposed issuance of debt securities fails to transfer risk from FDIC to the securities holders. An FDIC-insured institution's purchase of debt securities issued by another FDIC-insured institution would be one example of a transaction that fails to transfer risk from the deposit insurance fund; and
- The institution has failed to comply with any outstanding enforcement action or written agreement to the satisfaction of the Regional Director.

In addition, OTS should carefully review the securities-related covenants of the issuing institution to determine whether there are any provisions that are objectionable from a supervisory viewpoint.

General Criteria

- The institution should furnish evidence that the proposed issuance is authorized by applicable law and is not inconsistent with any provisions of the institution's charter or bylaws.
- The institution's actual and anticipated income from operations must be sufficient for payment of interest and amortization of debt, discount, and related expenses of the proposed issuance.
- The institution may not issue and sell the debt securities to another FDIC-insured institution or to a corporate affiliate (except the institution's holding company or a diversified savings and loan holding company of another institution).
- The institution may not sell its debt securities at its offices. See 12 C.F.R. § 563.76(a).

Inclusion in Capital

There are two inclusion-in-regulatory-capital issues: (1) Has the applicant demonstrated that it has satisfied the regulatory requirements of 12 C.F.R. § 563.81 (including the eligibility requirements thereof); and if so (2) What amount from the proceeds of the qualifying debt securities may the institution properly include in its regulatory capital? To address the second issue, refer to 12 C.F.R. § 567.5(b). Partial inclusions in regulatory capital are permissible. Section 567.5(b) refers to qualifying debt securities as "maturing capital instruments."

There are two tests for determining the amount the institution may include in the supplementary capital component of its regulatory capital. The first test is at 12 C.F.R. § 567.5(b)(3)(ii). The regulation provides that:

A savings institution issuing maturing capital instruments after November 7, 1989, may choose, subject to paragraph (b)(3)(ii)(C) of this section, to include such instruments pursuant to either paragraph (b)(3)(ii)(A) or (b)(3)(ii)(B) of this section:

- A. At the beginning of each of the last five years of the life of the maturing capital instrument, the amount that is eligible to be included as supplementary capital is reduced by 20% of the original amount of that instrument (net of redemption).
- B. Only the aggregate amount of maturing capital instruments that mature in any one year during the seven years immediately prior to an instrument's maturity that does not exceed 20% of an institution's capital will qualify as supplementary capital.

The institution's notice or application must include an election of either of the two methodologies contained in 12 C.F.R. § 567.5(b)(3)(ii)(A) or (B).

The second test, set out at the beginning of 12 C.F.R. § 567.5(b), limits the amount of supplementary capital to a maximum of 100 percent of the institution's core capital. The amount of the institution's core capital is determined by reference to 12 C.F.R. § 567.5(a), and the calculation is set out in the institution's Thrift Financial Report. The 100 percent-of-core test is continuous. If an institution's

core capital declines to zero at any time during the period in which the qualifying debt securities are outstanding, the amount of such securities permitted to count as regulatory capital immediately declines to zero. This exclusion from regulatory capital occurs notwithstanding the amount of qualifying debt securities includable at the time the application was approved or notice accepted.

Securities Offering Filings

The institution must comply with the securities offering regulations at 12 C.F.R. Part 563g in connection with its offer and sale of the qualifying debt securities. Each OTS-regulated savings institution is prohibited from offering or selling, directly or indirectly, any debt security issued by it unless the offer or sale is accompanied or preceded by an Offering Circular (OC) that has been filed, reviewed and declared effective by the Business Transactions Division of OTS's Chief Counsel's Office) (unless the offering qualifies for an exemption pursuant to 12 C.F.R. § 563g.3).

In addition, 12 C.F.R. § 563.81(g) sets out a limitation on the offering period for qualifying debt securities. OTS may extend the offering period if a written request is filed with the Regional Office no later than 30 days before the expiration of the offering period. The Regional Office has the authority to extend the offering period, provided the applicant complies with 12 C.F.R. § 563.81. If the applicant does not comply with the extension of time requirements, the Regional Office will notify the applicant that it must forward its request to OTS-Washington. The institution then must submit its request to the attention of the Applications Filing Room, OTS-Washington

Within five (5) days after the effective date of an OC or the commencement of a public offering (whichever occurs later), the institution must file three (3) copies of the OC with the appropriate Regional Office. Any OC, amendment, or consent filed should include an attached manually signed signature page that authorizes the filing and is signed by the appropriate representatives of the institution. See 12 C.F.R. § 563g.5(c).

Within 30 days of the first sale of securities, the institution issuing the securities must file a Form G-12 with the OTS securities filing desk in Washington, D.C. including the required information about the securities sold (See 12 C.F.R. § 563g.12 and § 563g.20)

Waivers

Debt securities issued pursuant to 12 C.F.R. § 563.81 must meet all the requirements set forth in 12 C.F.R. §§ 563.81(d)(1) – (4), unless OTS grants a written waiver request. OTS will not allow waiver of the requirements of paragraphs (d)(1)(i)(A) and (d)(1)(ii) of § 563.81.

Misc.

If securities involved in the issuance have terms providing for convertibility or warrants for voting stock, under certain circumstances, the purchaser of the qualifying debt securities may have to file a control related application or notice under 12 C.F.R. Part 574. See Sections 574.3 and 574.2(u)(3).

Decision Guidelines

The criteria for inclusion of debt securities in regulatory capital are intended to ensure, among other things, that the issuance of the securities is not detrimental to the interests of the institution's accountholders or to FDIC. A review of these filings should include an evaluation of present and future operations; the risk profile of the institution; an analysis of whether sufficient income will be generated to service the debt; and for what purpose the additional capital would be used. In conducting an evaluation, OTS should consider the following factors:

- Has the institution adequately addressed the eligibility requirements of § 563.81(b)?
- Did the institution submit a proper application or notice with required supporting information in conformity with § 563.81(c)?
- Did the institution satisfy all of the requirements-as-to-securities provisions of § 563.81(d), including the provisions concerning – (1) Form of Certificate; (2) Limitation as to Term; (3) Limitations on Sale to Certain Institutions; and (4) Indenture? Generally an institution must use an indenture for subordinated debt securities.
- Is the income from operations sufficient to service the debt securities?
- If the purchase price or interest rate has not been determined, did the applicant provide a minimum and maximum purchase price and interest rate?
- What is the current financial condition of the institution? What is the applicant's interest rate exposure and trend?
- Are the institution's lending and investment practices prudent?
- Does the institution have a high-risk profile such as a subprime lending or speculative construction lending?
- What are the economic benefits of the proposed debt securities issuance (other than inclusion as regulatory capital) that make this proposal attractive?
- Will the payment of interest or dividends on the proposed issuance jeopardize the institution's financial condition? Do the interest or dividend costs of the debt securities exceed the market rate and the institution's cost of money?
- Are the applicant's assumptions about the spread between the investment yield on assets and the interest or dividend costs of the debt securities reasonable?
- Are the projected yields on the proposed investment portfolio unreasonably high?
- What will the proceeds be invested in and could this investment have a detrimental effect on the institution's overall financial condition and operations?
- What risk is inherent in the proposed reinvestment of the proceeds? Is that risk acceptable? Does the institution have the necessary expertise to manage the investment?
- How does the maturity of the liability portfolio compare with the asset portfolio after the proceeds have been invested and after proposed liability growth has been incorporated?

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- Has the institution considered how it will replace capital over the last seven years of the term of the debt securities as its percentage of inclusion in regulatory capital percentage decreases?
 - Will the earnings generated from leveraging this temporary source of capital be sufficient to sustain the institution's increased growth upon the phase-out of the debt securities?
 - Will the institution issue its debt securities to its holding company?
 - If a holding company is purchasing debt from its insured subsidiary, what is the company's source of funds? Is leveraging involved?
 - Does the institution have outstanding subordinated debt? Is the total amount of debt securities currently in excess of the amount allowable by current OTS regulation?
 - Does the applicant have other applications pending or recently processed that affect its capital base (e.g., dividend notice, branch purchase)?
 - If a guarantee of the debt securities is by a third party or a stockholder, does any related agreement between the issuing institution (or its affiliate) and the third party guarantor involve a pledge of the institution's assets in consideration of that guarantee?
 - If the issuing institution purchases insurance for repayment of part or all of the debt securities, has the cost of this insurance been considered as an increase in the effective yield or cost of the debt securities?
 - Are there any outstanding conditions and/or agreements that the OTS may have with the institution that might limit the institution's ability to issue the debt securities?

Conditions

Listed below are the standard conditions of approval for this application type as set forth in 12 C.F.R. § 563.81:

- Where securities are to be sold pursuant to an offering circular required to be filed with OTS pursuant to 12 C.F.R. § 563g.2, and where such offering circular has not yet been declared effective prior to the date of approval or nonobjection to the subordinated debt or preferred stock application or notice, the offering circular in the form declared effective shall not disclose any material adverse information concerning the savings institution's business, operations, prospects, or financial condition not disclosed in the latest form of offering circular filed as an exhibit to the application or notice.
- The savings institution shall submit to OTS no later than 30 days from the completion of the sale of the securities, certification of compliance with all applicable laws and regulations in connection with the offering, issuance, and sale of the securities.
- The savings institution shall submit to OTS no later than 30 days from the completion of the sale of the securities, the report(s) required by 12 C.F.R. § 563.81(h) and the following additional items: (i) three copies of an executed form of the securities issued pursuant to the subject application or notice and a copy of any related agreement or indenture governing the issuance of securities; and (ii) a certificate from the principal executive officer of the savings institution that states that to the best of his or her knowledge, none of the securities issued

pursuant to the subject application or notice were sold to any institution whose accounts are insured by the SAIF or a corporate affiliate thereof, except as permitted by 12 C.F.R. § 563.81.

- That, as of the date of approval or nonobjection, there have been no material changes with respect to the information disclosed in the application or notice as submitted to OTS.
- The savings institution receives prior written approval or nonobjection from OTS for any post-approval amendment to the securities or any related indenture if: (i) the proposed amendment modifies or is inconsistent with any provision of the securities, or the indenture that is required to be included therein by OTS's regulations as may then be in effect or would result in a transfer of risk to the savings institution or the SAIF or the BIF, as appropriate; and (ii) all or a portion of the proceeds from the issuance and sale of the securities would continue to be included in the regulatory capital of the savings institution following adoption of the amendment.
- The savings institution shall submit to OTS promptly after execution, one copy of each amendment to the securities or the related indenture, made after approval or nonobjection, and if prior approval of or nonobjection to such amendment was not obtained, shall also state the reason(s) such prior approval or nonobjection was not required;
- The savings institution shall not offer or sell the securities at any of its offices.

OTS may impose certain nonstandard conditions in connection with these filings. Any nonstandard conditions imposed will be based on the individual circumstances surrounding the application. In circumstances where nonstandard conditions will be imposed, they must be supported with justification in the recommendation memorandum related to approval of the application. Any nonstandard conditions incorporated into the approval letter or order 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.

MONITORING AND CONTROL

The approval order or letter may include conditions of approval. 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 Office, including a review of the documentation maintained in the application file.

INFORMATION SOURCES

Statutes

12 USC § 1463(h)

Regulations & Other Guidance – Specific to Qualifying Debt Securities

12 C.F.R. § 563.81	Issuance of Subordinated Debt Securities and Mandatorily Redeemable Preferred Stock
12 C.F.R. § 563.76	Offers and Sales of Securities at an Office of a Savings Institution
12 C.F.R. § 567.5 Thrift Activities Handbook Section 110.5	Regulatory Capital Capital Stock and Ownership

Regulations Concerning Securities and Securities Offerings

12 C.F.R. § 561.44	Definition of the term “Security”
12 C.F.R. § 563.5	Securities: Statements of Noninsurance
12 C.F.R. Part 563d	Securities of Savings Institutions
12 C.F.R. Part 563g	Securities Offerings

OTS Forms

Form 1344
Form 1561

The purpose of 12 C.F.R. § 563.80 is to provide the requirements under which institutions, that do not meet their regulatory capital requirements (12 C.F.R. Part 567), are to notify the Regional Director, or their designee, of their intent to issue securities as evidence of outside borrowings with terms in excess of one year.

Special Considerations

Outside borrowings are borrowings other than from a Federal Home Loan Bank or state-chartered central reserve institution, and include debt that is not evidenced by the issuance of a security or subordinated debt. The notice requirement in 12 C.F.R. § 563.80(e) does not pertain to mandatorily redeemable preferred stock or subordinated debt. Mandatorily redeemable preferred stock and subordinated debt are issued pursuant to 12 C.F.R. § 563.81.

Collateralized borrowings should be closely scrutinized because if the financial stability of the institution deteriorates, the extent of the protection demanded by the lender will increase.

FILING REQUIREMENTS

Delegated Authority

The Regional Director, or their designee, is authorized to approve or disapprove any proposed outside borrowings with maturities in excess of one year, subject to the conditions provided in these Guidelines.

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

An institution that meets its regulatory capital requirements does not need to make a filing.

If the institution does not meet its regulatory capital requirements, it must file a notice of intent to issue debt securities with the appropriate Regional office at least 10 business days prior to the issuance of the securities. There is no form for this filing, but certain information must be provided. The notice should contain a summary of the terms of the securities and the following information as required under 12 C.F.R. § 563.80(e)(1):

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- The principal amount and minimum denomination of the securities;
 - The expected interest rate range and price range at which the securities are to be sold;
 - The stated and average effective maturity;
 - Any mandatory or optional prepayment provisions;
 - A description, the amount, and the maintenance of the collateral, if any;
 - Any trustee provisions;
 - The events of default and remedies of default; and
 - Any provisions that would restrict, conditionally or otherwise, the operations of the institution.

If all information required is not included in the notice, the applicant should be promptly advised that the notice is deficient and not accepted for filing. The filing must include an original and two copies to the appropriate Regional Office.

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

The Regional Director, or their designee, has 10 business days after receipt of the filing to approve or disapprove the issuance. If all information required by 12 C.F.R. § 563.80(e)(1) is not included in the notice, the applicant should be promptly advised that the notice is deficient and not accepted for filing. If the issuance is approved, the institution will have 120 calendar days to issue the debt securities.

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 Regional Director, or their designee, will object to the proposed issue if the terms or conditions of the proposed issue:

- Place unreasonable burdens on the institution, or
- Convey undue control of the operations of the institution to the security purchasers.

Each security must bear on its face, in a prominent place, the following legend: “This security is not a savings account nor a deposit and it is not insured by the United States or any agency or fund of the United States.”

Decision Guidelines

The analysis should conclude that the issuance of the debt securities will not compromise the safe and sound operation of the institution. In conducting the review, consideration should be given to the following:

- Will the cost of the debt adversely affect the institution's earnings or capital?
- Do the purchasers have a prepayment option?
- Is the debt to be secured? (As a general rule, the aggregate book value of all collateral securing outside borrowings should be limited to twenty-five percent of assets.)
- Will collateralization increase the institution's interest rate risk exposure?
- Is the percentage of borrowings in relation to asset size excessive in light of the institution's future prospects? (As a general rule, debt should not exceed fifty percent of assets.)
- Will the borrowings reduce maturity imbalances in the institution's portfolio?
- Has the institution adequately planned its future cash flows?
- Is the debt convertible to voting stock? If so, what is the likelihood of a change of control?
- Does the projected use of funds appear reasonable in light of the institution's operations and business plan?
- Could the covenants of the debt instruments, collateral requirements, or restrictions in the indenture agreement have a detrimental effect on the institution's operations or management or compromise the SAIF's claims to the institution's assets in the event of a liquidation?
- What will the proceeds of the borrowings be invested in, and what are the expected risks and returns associated with these investments?
- Can the institution service the proposed debt and pay its other fixed cash obligations?

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- For state-chartered institutions, is the amount to be borrowed in accordance with applicable state laws and regulations?
 - Does the institution operate under any conditions relating to previous applications, or other agreements with OTS or SAIF, which might limit the institution's ability to issue outside debt?

Conditions

Outside Borrowings are not subject to standard approval conditions; however, the institution must issue the securities evidencing the indebtedness within 120 days after the expiration of the 10-day notice period.

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.

MONITORING AND CONTROL

OTS should ascertain that the institution issued the securities within the 120-day period after the approval.

Outside borrowings in excess of one year that are not denied should be continually monitored to determine their effect on the capital and earnings of the issuing institution, because institutions that must file notices present supervisory concerns due to their low regulatory capital. Therefore, the appropriate supervision and examination staff should be notified of the filing and provided with copies of the notice and the Regional Director's, or their designee's, decision.

A review of the application file should be made 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

Regulations

12 C.F.R. § 563.80

12 C.F.R. § 563.81

12 C.F.R. Part 567

Borrowing Limitations

Issuance of Subordinated Debt Securities and
Mandatorily Redeemable Preferred Stock

Regulatory Capital Requirement

This handbook section provides guidance on applications filed by institutions that wish to engage in trust and asset management activities, pursuant to Section 5(n) of the Home Owners' Loan Act of 1933 (HOLA) (12 U.S.C. § 1464(n)). Section 5(n) provides that the Director of the Office of Thrift Supervision (OTS) has the authority to grant Federal savings institutions the right to act as trustee, executor, administrator, guardian, or in any other similar fiduciary capacity in which state banks, trust companies or other financial institutions that compete with institutions are permitted to act. OTS regulations (12 C.F.R. Part 550) implement these and other provisions of Section 5(n) that relate to requirements for the proper exercise of trust powers and the surrender and revocation of those powers.

Pursuant to 12 C.F.R. § 550.70, Federal savings institutions and any majority-owned subsidiary must apply for and receive OTS approval in order to act in a fiduciary capacity, unless exempted under 12 C.F.R. § 550.580. State-chartered institutions and their subsidiaries do not need OTS prior approval, but must conduct fiduciary operations in accordance with applicable State law and exercise fiduciary powers in a safe and sound manner.

State-chartered institutions should follow the standards for the exercise of fiduciary powers outlined in 12 C.F.R. Part 550.10(b).

An institution may terminate its trust powers by filing a certified copy of its board of directors' resolution signifying this change and must file the resolution with OTS under 12 C.F.R. § 516.1. See 12 C.F.R. §§ 550.530-50.

FILING REQUIREMENTS

Delegated Authority

Generally, applications filed under this section may be processed by the Regional Office under delegated authority. Applications that are not delegated to the Regional Office are those that raise a significant issue of law or policy or request approval of waivers of statutes, regulations, OTS policy or significant application requirements. See Delegation Section 040 of the handbook for information on the delegation process.

Expedited and Standard Processing Procedures

This application is not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. Accordingly, the request for trust powers 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

If delegated, all applications should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant is required to file the original and two conformed copies of each application and the appropriate application fee. All copies are to be clearly marked as to the type of filing, and should contain all exhibits and other pertinent documents. One copy must contain original signatures on all executed documents. For applications that are not delegated to the Regional Office, an additional three copies of the application should be filed with the Applications Filing Room in OTS-Washington.

The applicant is required to submit all documents and information set forth in OTS Form 1240. The application form addresses seven categories of information requirements:

- General
- Legal Requirements
- Management
- Policies and Procedures
- Affiliated Transactions
- Marketing
- Trust and Asset Management Business Plan

The applicant may exercise only those trust powers specified in the OTS approval, and unless otherwise provided in the OTS approval, may perform core fiduciary functions only from those offices listed in the application.

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.

Special Considerations

Institutions do not need OTS approval for trust powers to engage in one of the following fiduciary capacities:

- Trustee of a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan qualifying for specific tax treatment under Section 401(d) of the Internal Revenue Code of 1954 (IRC).
- Trustee or custodian of an Individual Retirement Account within the meaning of Section 408(a) of the IRC.
- Trustee of a fiduciary account that involves no active fiduciary duties provided that the applicable law authorizes the institution to act in this capacity.

Eligibility Examinations

If the application includes the acquisition of all or part of an ongoing trust operation, OTS should request the most recent examinations conducted by the federal or state banking or trust regulator. If a significant amount of time has passed since the last examination, i.e. six months or more, OTS may require an eligibility examination to be conducted. An examination may also be warranted if there were significant areas of supervisory concern noted in the last examination, and a review of the institution's operations is necessary to determine if action had been taken to correct the deficiencies.

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 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.

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 nondelegated will be transmitted from OTS-Washington. Correspondence on delegated applications will generally come 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. For nondelegated applications, the application will not be considered filed until received by both OTS-Washington and the Regional Office.

For nondelegated applications, a copy of the application must be provided to the OTS-Washington trust 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 review requests for a waiver of an application requirement that certain information be supplied, in a timely manner. 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 any additional information in response to an 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.

If OTS decides to conduct an eligibility examination, it 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 that must be submitted 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 before 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.

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.

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 OTS 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.

Regulatory Criteria

In determining whether to approve, conditionally approve or disapprove an application under delegated authority, OTS must take into consideration the factors set forth in 12 C.F.R. § 550.100.

- The institution's financial condition: If it does not meet the standards prescribed by state law, and OTS has determined that such condition is not sufficient to support the proposed trust operations, trust powers shall not be granted.
- The institution's capital and whether it is sufficient under the circumstances.

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- The institution's overall performance.
 - The trust powers the institution proposes to exercise.
 - The nature of the supervision to be given trust and asset management activities, including the qualifications, experience and character of the officers of the proposed trust department.
 - The availability of legal counsel to provide advice on trust and asset management matters.
 - The needs of the community for the fiduciary services and the probably volume of such fiduciary business available to the institution.

Decision Guidelines

The statutory and regulatory requirements are designed to ensure the viability and safe and sound operation of the institution. In general, the analysis should conclude that capital is sufficient to engage in the trust activities and management has the necessary expertise and controls to implement the trust activities. In addition, OTS should conclude that the needs of the community for fiduciary services will be served and that the trust activities will be done in compliance with applicable rules and regulations. If, based upon the review, OTS has determined that the fiduciary activities will adversely effect or jeopardize the financial well being of the institution or be detrimental to the community; a denial recommendation may be the course of action. OTS should consider the following factors 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 1240.
 - * Apply for only those trust powers that the applicant intends to engage in during the first three years of trust operations.
 - * Detailed information regarding each trust officer and manager.
 - * Information on each member of the Trust, Audit and Investment Committees
 - * Three-year trust and asset management business plan.
 - * Legal opinion of independent counsel stating that the proposed trust powers are authorized for state-chartered trust companies by the law of each state where the institution will conduct core fiduciary activities, pursuant to 12 U.S.C. § 1464(n)(1).
 - * Certification that the institution's financial condition, including net worth and statutory reserves, satisfy the requirements of state law for state-chartered trust companies.
 - * Board of Director resolution approving the exercise of trust powers by the institution, subordinate organization, or affiliate, that adopts the Statement of Principles of Trust Department Management.

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- * Submit written policies and procedures for ensuring compliance with 12 C.F.R. § 550.140.
 - * Copies of all proposed contracts with affiliates.
- Will the institution meet capital requirements and make deposits consistent with state law requirements for state-chartered corporate trust companies in each state in which the institution performs core trust activities, pursuant to 12 U.S.C. § 1464(n)(5) and (8)?
 - Do the board of directors and senior management have the qualifications and experience to properly oversee and administer the proposed trust activities?
 - Do the trust officers have the necessary expertise and experience to conduct the trust and asset management activities in a safe and sound manner?
 - Will the trust department have adequate staffing, given the level of activities? If dual employees are to be utilized, will these individuals allocate sufficient time to meet their responsibilities to the institution and to its trust customers?
 - Will the institution have adequate legal representation with respect to its trust operations? Does counsel have adequate experience in trust activities?
 - If the institution will exercise investment discretion, are there personnel with the necessary investment expertise to make such decisions? How will the institution monitor the investment decisions? Will the institution outsource some or a portion of these investment decisions? If so, are the personnel at the institution able to monitor these investment service providers? If required to do so, will the institution register as an investment adviser under the Investment Adviser Act of 1940?
 - Does the institution have sufficient capital relative to the risks associated with the proposed trust and asset management activities? Will losses adversely impact the financial well being of the institution?
 - Are the institution's trust and asset management business plan and its underlying assumptions reasonable?
 - Will the recordkeeping requirements for fiduciary accounts meet the requirements of 12 C.F.R. §§ 550.410 – 430?
 - Will the audit program for the trust department comply with the requirements of 12 C.F.R. §§ 550.440 - 480? Do the internal and external auditors have the necessary expertise and independence to conduct their reviews in an objective manner?
 - Has the institution developed a compliance management program that ensures compliance with applicable laws, regulations and sound fiduciary principles? Does the program provide for the assignment of specific responsibilities to staff, training of staff, routine self-evaluations, periodic compliance audits and written policies and procedures?
 - Has management developed a risk management program to identify, measure, monitor and control risks in the proposed trust and asset management activities?

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- Will the trust activities result in a transaction with an affiliate? If so, will the arrangements comply with 23A and 23B of the Federal Reserve Act, 12 U.S.C. §§ 5 and 1468 of the HOLA and 12 C.F.R. §§ 563.41 and 563.42?
 - If the institution or its affiliates have proprietary mutual funds or propose to use an affiliated broker-dealer, has the applicant developed procedures to ensure compliance with 12 C.F.R. § 563.42(b)?
 - Does applicable state law allow discretionary assets to be invested in proprietary mutual funds or other products offered or provided by an affiliate? If so, will the fees for trust accounts invested in proprietary products be adjusted? Are the fees received by the institution and/or its affiliates reasonable?
 - Will the proposed trust and asset management activities be available to the general public?
 - Will the institution and its affiliates comply with the anti-tying restrictions of 12 U.S.C. §§ 1464(q) and 1467a(n)?
 - Will the institution pay referral or finders' fees for the referral of trust business? If so, will these fees comply with Thrift Bulletin 76-1?
 - Will the institution or its affiliates receive any fees from third-party mutual funds that will be offered as an investment choice for employee benefit plans and/or participants?

Conditions

Applications for trust powers are not subject to standard approval conditions. However, it is not unusual for the approval of an application for trust powers to contain nonstandard conditions of approval. Additional conditions may be warranted in circumstances where the proposed trust operations are integrated with services or activities involving affiliates, where securities affiliates exist, where anti-tying issues are present, or due to unique characteristics or the risk profile of the proposed fiduciary activities. All nonstandard conditions of approval must be supported with justification in the recommendation memorandum related to approval of the application. Listed below are examples of frequently seen nonstandard conditions:

- At least 50 percent of the institution's audit, trust and investment committees must be directors who are not officers or employees of the institution, the holding company 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 Office;
- The institution must operate within the parameters of its business plan. The holding company and the institution must submit any proposed major deviations or material changes from the plan (including changes resulting from decisions made by the holding company), and in particular, those pertaining to cross-marketing by the institution and its affiliates, 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 sent to the FDIC Regional Office;
- Within 30 calendar days after each calendar quarter, the institution must submit to the Regional Office quarterly activity reports on the number and type of trust accounts serviced,

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- the total asset values of these accounts, and the minutes of the meetings of the institution's Trust Committee;
- Prior to engaging in any fiduciary activity, the institution must develop and submit to the Regional Office for review a functioning oversight program, consisting of a comprehensive audit program, a compliance management program, and a risk management program. The audit program must be fully implemented prior to the commencement of operations. The compliance management program must be fully implemented within 90 days of commencement of operations. The risk management program must be fully implemented within 180 days of commencement of operations;
 - * The audit program should address auditor qualifications, audit scope and method, committee involvement, reporting, and the process for effectuating corrective action.
 - * The compliance management program should ensure compliance with applicable laws, regulations, and sound fiduciary principles. It should include, at a minimum: (a) the assignment of specific compliance responsibilities to experienced staff; (b) training for affected staff; (c) routine self-evaluations; (d) periodic compliance audits; and (e) appropriate written policies and procedures.
 - * The risk management program should establish criteria to identify, measure, monitor, and control risks within the fiduciary activities.
 - **(For limited purpose, trust-only applicants.)** Prior to engaging in any business activity other than that authorized pursuant to section 5(n) of the HOLA, the institution must apply to the OTS and receive approval of its application to engage in such business activity. The OTS will consider any such application under the standards required of a new federal thrift charter which are set forth at section 5(e) of the HOLA and OTS regulations thereunder, and under the Community Reinvestment Act and OTS regulations thereunder at 12 C.F.R. § 563e.29. Any such application may be subject to the public notice and comment procedures set forth at 12 C.F.R. Part 516, Subparts B and C;
 - **(For institutions that will market its products through its affiliates or cross-market products.)** The holding company, its affiliates and the 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 nonobjection of the Regional Office prior to establishing the trust operations (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);
 - **(For institutions that use affiliate mutual funds in instruments governed by ERISA.)** The institution must submit a reasoned opinion of counsel to the Regional Director, within 90 days following the commencement of operations, that the institution has included in its planned investment decision process measures that address the inherent conflicts associated with investing in proprietary or affiliated mutual funds. Such measures should ensure that the investments are authorized under applicable law (including the Employee Retirement Income Security Act of 1974), subject to written policies and procedures, and appropriate for each individual account. The institution must also document its decision-making process and provide disclosures regarding the fee arrangements;

- **(If the institution proposes to conduct discretionary activities or will provide any investment advice, the following condition must be included.)** The institution must comply with all applicable state and federal securities laws, relating to any requirements for registration as an investment advisor and submit evidence of such compliance acceptable to the Regional Director;
- **(For institutions that have “securities affiliate(s)”, as defined below, the following two conditions must be included.)** A majority of the institution’s board of directors must not be comprised of individuals who are directors or employees of any affiliate of the institution that engages in securities brokerage, securities dealing, investment company, or investment advisor activities (Securities Affiliate(s));
- The 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.

Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application. This requirement helps OTS to provide the public a complete listing of all applications approved with nonstandard conditions of approval.

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.

MONITORING AND CONTROL

The approval order or letter will generally include conditions of approval. 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 or letter to the Regional Office within the stated time frames.

OTS should notify the appropriate staff responsible for the supervision and examination of the institution regarding the action taken on an application. In addition, OTS 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 Office, including a review of the documentation maintained in the application file.

INFORMATION SOURCES

Statutes

12 U.S.C. § 1464(l)	HOLA Section 5(l); Retirement Accounts
12 U.S.C. § 1464(n)	HOLA Section 5(n); Trusts
12 U.S.C. § 1464(q)	HOLA Section 5(n); Tying Arrangements
12 U.S.C. § 1468	HOLA Section 11; Transactions with Affiliates

Regulations

12 C.F.R. Part 516	Applications Processing Guidelines
12 C.F.R. Part 550	Trust Powers of Federal Associations
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
12 C.F.R. § 563.43	Restrictions on Loans and Other Investments Involving Affiliated Persons
12 C.F.R. Part 565	Prompt Correct Action
12 C.F.R. Part 567	Capital

Other

OTS Regulatory Handbook	Trust Activities
Thrift Bulletin 76-1	Paying Finders' or Referral Fees
23A and 23 B of the Federal Reserve Act	Transactions with Affiliates
Thrift Bulletin 48-17	Fees and Assessments
New Directions 99-7	Eligibility Exam Procedures

Forms

OTS Form 1240	Application for Trust Powers
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Preparation and Use

The business plan should be an integral part of the management and oversight of a financial institution (institution). It should establish the institution's goals and objectives. It is a written summary of how the business will organize its resources to meet its goals and how the institution will measure progress.

The business plan should be a comprehensive plan, which is the result of in-depth planning by the institution's organizers and management. The forecasts of market demand, customer base, competition, and economic conditions should be realistic. The plan must reflect sound banking principles and demonstrate realistic assessment of risk in light of economic and competitive conditions in the market to be served. An institution with a special purpose or focus (i.e., trust only and credit card) should address this special or unique feature in detail in the appropriate sections of the plan.

The business plan should be at least a three-year plan, which provides detailed explanations of actions that are proposed to accomplish the primary functions of the institution. The description should provide enough detail to demonstrate that the institution has a reasonable chance for success, will operate in a safe and sound manner, and will have adequate capital to support the risk profile.

For an institution with an Internet or alternative delivery channel, the plan should contain a clear and detailed definition of the market the institution will serve and the products and services it will provide. An Internet operation has a potential global market of anyone with Internet access. The selected population information is essential to understand the risks associated with a global market. The marketing plan should explain how the institution would achieve brand recognition.

Confidentiality

In general, requests for confidential treatment of specific portions of the plan and exhibits must be submitted in writing and must discuss the justification for the requested treatment. The request for confidentiality should specifically demonstrate the harm (e.g., to its competitive position, invasion of privacy) that would result from public release of information (5 USC 552). Information for which confidential treatment is requested should be: (1) specifically identified in the public portion of the application (by reference to the confidential section); (2) separately bound; and (3) labeled "Confidential." An Applicant should follow the same procedure regarding a request for confidential treatment with regard to the subsequent filing of supplemental information to the application.

An Applicant should contact the appropriate regional office for specific instructions regarding requests for confidential treatment. The OTS will determine whether the information submitted as confidential will be so regarded and will advise the Applicant of any decision to make available to the public information labeled as "Confidential." OTS will not treat as confidential the portion of the business plan that describes how the institution will meet the Community Reinvestment Act objectives.

BUSINESS PLAN**I. Table of Contents****II. Executive Summary**

Describe the highlights of the plan. If part of a holding company structure, the summary should also discuss the operations of the organization, including a brief detail of the organizational structure and the interaction (synergies) between the institution and its affiliates.

III. Description of Business

- A. Provide a description of your business, including the products, market, and services as well as a thorough description of the market niche (what makes your business unique).
- B. Discuss the legal form and stock ownership, and any investment in subsidiaries or service corporations.
- C. If applicable, describe the institution's present financial condition and current resources, such as, branch network, staff, and customer base. Specifically include a discussion of the institution's strengths and weaknesses.
- D. Describe the location, office quarters, and any branch structure. Discuss any expansion plans, including additional branches or other offices.

IV. Marketing Plan

Note: A marketing plan should contain a detailed discussion that provides factual support that the institution has reasonable prospects to achieve the revenue projections, customer volume, and key marketing and income targets. The analysis should be based on the most current data available and the sources of information should be referenced. This section should contain a detailed, in-depth discussion of the major planning assumptions for the market analysis, economic, and competitive components that were used to develop the plans and objectives and the basis for the assumptions.

- A. Product Strategy
 - 1. List all planned products and services (include activities of any subsidiaries). Include a description of the general terms of the products and services. Discuss any plans to engage in any sub-prime or speculative lending, including plans to originate loans with high loan-to-value ratios.
 - 2. Generally discuss how the institution will offer products and services over the three years, indicating any variation in the different market areas, and include the time frame for introduction and the anticipated cost associated with each.
 - 3. Please describe the institution's plans to engage in any secondary market/mortgage banking activity, including loan participations. Discuss plans to utilize forward

take-out commitment or engage in loan securitization. Describe any plans to engage in hedging activity to mitigate the risks of this activity. Also, discuss plans for the retention of recourse and servicing.

4. Briefly describe the primary sources of loans and deposits and the major methods used to solicit them. If using brokers or agents, provide full details as to the nature and extent of all such activities including sources, amounts, fees, and any intended tie-in of compensatory arrangements with the broker or agent.
5. Outline in detail what functions will be outsourced and what the institution will do in-house. For functions that will be conducted by a third party, discuss how management will monitor the party's adherence to its arrangements.
6. Describe any arrangements with other E-commerce businesses.

B. Market Analysis

1. Describe the intended target market and the geographical market area(s). Provide a map that specifically identifies each market area. Collectively, the maps should delineate areas from which the organizing group expects the proposed bank to draw approximately 75 percent of its business.
2. Describe the demographics of the target market population (age, education, and occupation).
3. Discuss in detail any current and/or proposed actions to accomplish the institution's commitment to promote home financing.

C. Economic Component¹

1. Describe the economic forecast for the three years of the plan. The plan should cover the most likely and worse case scenarios.
2. Indicate any national, regional, or local economic factors that may affect the operations of the institution. Include an analysis of any anticipated changes in the market, the factors influencing those changes, and the effect they will have on the institution.
3. Describe the current economic characteristics of the proposed market(s), for example, size, income, and industry and housing patterns.
4. Discuss the economic factors that influence the products and services to be offered. A more in-depth discussion is warranted where different types of services are identified for different market areas in the Description of Business section.

D. Competitive Analysis

¹ If obtained, discuss any independent economic survey or market feasibility study.

1. List any and all potential competitors.
2. Compare the institution's product strategy with its competitors. Include expected results in terms of relative strength, market share, and pricing.
3. Discuss the overall marketing/advertising strategy, including approaches to reach target market through marketing of brand, products, services, etc. Outline the specific medium that will be used, including timing and level of advertising efforts.

V. Management Plan

A. Directors and Officers

1. Provide the number of organizers and/or directors. Identify director committees and provide a brief explanation of the responsibilities of each committee.
2. Describe the organizational structure and provide an organizational chart, indicating the number of officers and employees. Describe the duties and responsibilities of the senior executive officers. Describe any management committees that are or will be established.
3. Discuss the institution's plans to address management succession, including any management training program or other available resources.

B. Transactions with Affiliates

1. Describe the extent, if any, that there are or will be transactions with affiliated entities or individuals.

VI. Records, Systems, and Controls

- A. Describe the institution's current and/or proposed accounting and internal control systems, indicating any use of electronic processing systems.
- B. Discuss the institution's internal audit function, including loan review and compliance management programs. This discussion should set forth the independence and scope of the department and the frequency of audits. Discuss the experience and education of the audit staff. If external auditors will be used for internal audit, provide similar information for the external auditors.
- C. State plans for an annual audit by independent public accountants.
- D. Discuss the Internet systems and security.
 1. Outline the proposed or existing systems architecture and any proposed changes or upgrades. This plan need not include a description of the institution's entire data architecture, but it should include a detailed outline of the systems to be employed. The information should be sufficient to convince the primary regulator that:

- The operation will work within existing technology.
- The operation is suitable to the type of business in which the institution will engage.
- The security software and procedures will be sufficient to protect the institution from unauthorized tampering or access.
- The organizers and directors have given sufficient thought to the entire technology plan.

Note: The examiners will need a more detailed description of the institution's information system architecture when the exam team reviews its implementation. The review will include an evaluation of internal system policies and procedures as well as a review of any testing conducted on the system, e.g., "hacker" tests or other such tests of system vulnerability to unauthorized access. Independent tests should cover general and environmental controls as well as audit, monitoring, and balancing controls. Independent testing will provide an objective opinion on the adequacy of these controls.

2. Provide lists or descriptions of the primary systems and flowcharts of the general processes. The level of detail in these system descriptions should be sufficient to enable verification of the cost projections in the pro formas with respect to reasonable practices and market prices.
3. Security - physical and logical components. Describe the system and discuss the technologies used and key elements for the security controls, internal controls, and audit procedures.
4. Describe the process and controls that will be followed to verify and authenticate electronic banking customers.

Note: De Novo institutions must submit the final internet system and operation architecture plans for the regulatory review and approval. In addition, prior to opening and before implementation, the institution's computer system must undergo successfully a comprehensive security review by an objective and qualified source, including adequacy of protection against unauthorized external access.

VII. Financial Management Plan

A. Capital Adequacy

1. Discuss the capital goals and the means to achieve these goals.
2. Discuss the plan for raising capital initially and for financing growth, with particular emphasis on conformance with regulatory capital requirements.
3. Describe any plans for the payment of dividends.

B. Liquidity (Funds Management)

Discuss the institution's plan to manage its liquidity risk, including

funding sources (deposits, borrowings, securitizations). Include holding company support, if any.

C. Interest Rate Risk Management

1. Discuss the advantages and disadvantages of the proposed asset/liability mix, including a net interest margin analysis and any actions that will be taken to reduce major exposures through appropriate risk management techniques and systems.
2. Discuss the institution's current and/or proposed asset and liability portfolio in terms of sensitivity to interest rate changes and the impact of earnings and capital and net portfolio value.² When available, compare this with the exposure limits established by management.
3. Describe any plans to use hedging activities (futures, options, interest rate swaps, and derivative instruments).

D. Borrowings

1. Describe any plans to borrow funds from any financial institutions or other sources, including the amount, composition, interest rate, maturity, and purpose.
2. Describe the debt service requirements for any debt that will be issued at the holding company level to capitalize the institution.

E. Other

1. Discuss the use of options, warrants, and/or other benefits associated with the institution's capital.
2. If applicable, discuss any plans to grow through merger or acquisition activity, including, at a minimum, the effect on staffing, physical space needs, capital, operating systems capability and compatibility, and management.
3. Discuss the institution's plans to acquire investment securities.

VIII. Monitoring and Revising the Plan

- A. Describe how the board of directors will monitor adherence to business plan.
- B. Describe how the board of directors will adjust and amend the Plan to accommodate significant or material economic changes.

IX. Alternative Business Strategy

The institution must develop a comprehensive alternative business strategy detailing how it

² see Thrift Bulletin 13a.

will operate under scenarios in which market conditions differ significantly from those projected in this business plan. This alternative business strategy should be realistic about the business risks and incorporate sound management of such risks. This alternative strategy must consider potential adverse scenarios relating to the asset or liability mixes, interest rates, operating expenses, marketing costs, and growth rates. This discussion should include realistic plans for how the bank would access additional capital, if needed, in the future and, if applicable, contingency funding plans that address strategies for managing potential liquidity fluctuations. This plan also should discuss any financial safeguards to offset unexpected costs and to remain well capitalized.

X. Financial Projections

- A. Provide financial information for opening day pro forma and quarterly projections for the three years of operations. The line items in the financial statements should be consistent with the Thrift Financial Report (Report) so that projected items may be conveniently compared with actual performance. The following reports should be used:

Projected Balance Sheet (Schedule RC or SC)

Projected Income Statement (Schedule RI or SO)

Regulatory Capital Schedule (Schedule RI-A or CCR)

However, Report items may be grouped into the major Report categories. The financial statements should be presented in two ways: (1) showing the dollar amounts, and (2) as a percentage of total assets.

1. Describe in detail all the assumptions used to prepare the projected statements, including the assumed interest rate scenario for each interest earning asset and interest costing liability over the term of the business plan.
 2. Provide the basis for the assumptions used for noninterest income and noninterest expense. Indicate the amount of lease expense, capital improvements, and furniture, fixtures, and equipment, including systems and equipment upgrades.
 3. Describe the assumptions for the start-up costs, volumes, expected returns, and expected time frame to introduce each new product and service.
 4. Describe the methodology used to determine allowance for loan and lease losses.
- B. Discuss how marketing studies or surveys were used to support the projected growth of the institution. In addition, discuss the level of marketing expenses necessary to achieve the level of projected market share for both loan and deposit products. Assumptions should be consistent with those experienced by other institutions in the target market. Significant variances between the assumptions in the target market should be explained.

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- C. Using the Alternative Business Strategy, provide a sensitivity analysis on the financial projections. For example, adjust the financials to reflect the effects of adverse changes in the interest rate environment or asset/liability mix would have.

Form 1 – Balance Sheet

The Balance Sheet should be prepared showing each quarter end starting with the most current actual quarter end and projecting each quarter for years 1, 2, and 3. The balance sheet should be presented in two ways: (1) showing dollar amounts, and (2) as a percentage of total assets.

This balance sheet format is consistent with the TFR, but may show less detail if certain line items are not significant. Additional detail may be included, but these items at a minimum, should be shown.

ASSETS	TFR Item SC	COMMENTS
		<i>This column provides brief reference information. Additional information on individual line items is available in the TFR manual.</i>
Cash and NonInterest-Earning Deposits	110	
Total cash, noninterest earning deposits, and investment securities	10	<p>Use one or more line items to show the amounts and types of investment securities. The line items should provide sufficient detail so that one can conclude that the institution's investment policy objectives are being met. State the amount of securities designated as "held-to-maturity," "available-for-sale," and "trading." Separately state the categories in the balance sheet, or provide a separate schedule or narrative description.</p> <p>The TFR has separate line items for accrued interest receivable -SC 190 and GVAs SC199. These line items are optional for the plan. State whether you will have GVAs for your investment portfolio. If so, provide an explanation.</p>
Mortgage Pool Securities	20	<p>Provide sufficient detail so that one may review and conclude that the institution's investment policy objectives are being met. State the amount of securities designated as "held-to-maturity," "available-for-sale," and "trading." Separately state the categories in the balance sheet, or provide a separate schedule or narrative description.</p> <p>The TFR has separate line items for accrued interest receivable - SC 220 and GVAs SC 227. These line items are optional for the plan. State whether you have GVAs for your mortgage pool securities portfolio. If so, provide an explanation.</p>
Construction 1-4s	230	Construction loans should be reported net of loans in process.
Construction 5+, and NonResidential	235 240	Construction loans should be reported net of loans in process. If the level for each activity is significant, report these line items separately, otherwise combine them.
Permanent 1-4 unit residential loans.	250 253	SC 250 is "closed-end first mortgages and junior liens" and SC 253 is "revolving, open-end loans." These two items may be combined, but report them separately if the level of SC 253 is significant.

Form 1 – Balance Sheet

ASSETS <i>(continued)</i>	TFR Item SC	COMMENTS <i>This column provides brief reference information. Additional information on individual line items is available in the TFR manual.</i>
Permanent 5+, nonresidential, and land loans	256 260 265	If the level of each activity is significant, report these line items separately, otherwise combine them.
Accrued Interest Receivable, and Advances for Taxes and Insurance	272 275	
Allowance for Loan and Leases Losses on Mortgage Loans	283	
Total Mortgage Loans	23	
Commercial Loans	32	(Non-real estate) Provide detail by type of loan if portfolios are significant.
Consumer Loans	34	Provide detail by type of loan if portfolios are significant.
Accrued Interest Receivable	348	
Allowance for Loan and Lease Losses on NonMortgage Loans	357	
Total NonMortgage Loans	30	
REO	40	Report REO net of GVAs
REI	45	Report REI net of GVAs
Office Premises & Equipment	55	
Goodwill and Other Intangible Assets	660	

Form 1 – Balance Sheet

ASSETS <i>(continued)</i>	TFR Item SC	COMMENTS <i>This column provides brief reference information. Additional information on individual line items is available in the TFR manual.</i>
All Other assets		Use <u>one or more line items</u> to show the amounts and types of “other assets.” The total amount of “other assets” should tie to the sum of TFR items 50, 642, 644, 655, 690, and 699 if those items were reported separately.
Total Assets	SC 60	

LIABILITIES	TFR Item SC	COMMENTS <i>This column provides brief reference information. Additional information on individual line items is available in the TFR manual.</i>
Net deposits	710	
Advances from FHLB	720	
Federal Funds Purchased and Securities Sold Under Agreement to Repurchase	730	
Subordinated Debt (including mandatory convertible securities)	735	
CMOs (including REMICs) issued	740	
Other Mortgage Collateralized Securities Issued	745	
Other Borrowings	760	
Total Borrowings	72	
Other Liabilities		The sum should tie to the sum of TFR line items 75 “other liabilities,” 783 “escrows,” and 715 “unamortized yield adjustments on deposits,” if those items were reported separately

Form 1 – Balance Sheet

LIABILITIES <i>(continued)</i>	TFR Item SC	COMMENTS <i>This column provides brief reference information. Additional information on individual line items is available in the TFR manual.</i>
Total Liabilities	70	
Redeemable Preferred Stock/Minority Interest	799	

CAPITAL	TFR Item SC	COMMENTS <i>This column provides brief reference information. Additional information on individual line items is available in the TFR manual.</i>
Perpetual Preferred Stock	812 814	812 is Cumulative, 814 is Noncumulative. Report these items separately if amount is greater than zero.
Common Stock - Par Value	820	
Paid in Excess of par	830	
Unrealized Losses on Available for Sale Securities	860	
Retained Earnings	880	
Other Components of Equity Capital	890	Describe if amount is different than 0.
Subtotal Equity Capital	80	
Total Liabilities, Redeemable Preferred Stock/Minority Interest, and Equity Capital	90	

Form 2 – Income Statement

The Income Statement should be prepared beginning with the most current actual quarter, and projected for each quarter for Years 1, 2, and 3. The income statement should be presented in two ways: (1) showing dollar amounts, and (2) as a percentage of average total assets.

INCOME STATEMENT Show these items at a minimum.	TFR Item SO	COMMENTS Format is consistent with the TFR
Interest Income		
Deposits/Investment	110	
Mortgage Pool Securities	120	
Mortgage Loans	140	
Commercial Loans	160	
Consumer Loans	170	
Amortization of Deferred Gain/Losses on Asset Hedges	180	
Subtotal: Interest Income	11	
Interest Expense		
Deposits	215	
Advances from FHLB	266	
Subordinated Debentures	230	
Mortgage Collateralized Securities Issued	240	
Other Borrowed Money	260	
Other Interest Expense		Should tie to sum of TFR items SO 215, SO 280, SO 290, minus SO271, if those items were reported separately.
Subtotal Interest Expense	21	
Net Interest Income Before Provision for Losses on IBA	311	
Provision for Losses on IBA	321	
Net Income After Provision for Losses on IBA	331	
NonInterest Income		
Mortgage Loan Servicing Fees	410	
Other Fees and Charges	420	
Other NonInterest Income		Should tie to sum of TFR items SO 430, 461, 465, 467, 475, 477, 485, and 491, if those items were reported separately.
Subtotal NonInterest Income	40	

Form 2 – Income Statement

INCOME STATEMENT Show these items at a minimum <i>(continued)</i>	TFR Item SO	COMMENTS Format is consistent with the TFR
NonInterest Expense		
All Personnel Expense	510	
Office Occupancy Expense	530	
Amortization of Goodwill	560	
Other NonInterest Expense		Should tie to sum of TFR items SO 510, 540, 550, 570, and 580, if those items were reported separately.
Subtotal NonInterest Expense	51	
Income (Loss) Before Income Tax	60	
Federal Taxes	710	
State /Local/Other Taxes	720	
Extraordinary Items	811	Net of tax, and cumulative effect of Changes in Acctg Principles
Net Income (Loss)	91	

Form 3 – Statement of Changes in Stockholder's Equity

A forecast of the changes in stockholders' equity should be prepared in a format substantially similar to the format shown here:

Beginning Stockholders Equity Year 1	
Net Income – Year 1	
Cash Dividends Declared	
Repurchase of Stock	
Other Comprehensive Income	
Other Changes	
Ending Stockholders Equity Year 1	
Net Income – Year 2	
Cash Dividends	
Repurchase of Stock	
Other Comprehensive Income	
Other Changes	
Ending Stockholders Equity Year 2	
Net Income – Year 3	
Cash Dividends	
Repurchase of Stock	
Other Comprehensive Income	
Other Changes	
Ending Stockholders Equity Year 3	

Form 4 – Table of Regulatory Capital Levels

This schedule should be prepared beginning with the most current quarter, and projected for each quarter for Years 1, 2, and 3. Provide supporting schedules for each capital level.

STOCKHOLDER'S EQUITY	Dollar Amount	Percent %
Tangible Capital		
Core Capital		
Risk-Based Capital		

Form 5 – Table of Loan Origination Levels

A forecast of loan origination levels should be prepared in a format substantially similar to the format here:

	TFR Item	Year 1	Year 2	Year 3
Construction 1-4s	230			
Construction 5+	235			
NonResidential	240			
Permanent 1-4 unit Residential loans.	250 253			
Permanent 5+,	256			
Permanent Nonresidential	260			
Land Loans	265			
Total Mortgage Loans	23			
Commercial Loans (non-real estate)	32			
Consumer Loans	34			

Form 6 – Interest Rate Assumptions for New Production

A forecast of interest rate assumptions should be prepared in a similar format as presented here:

		Year 1				Year 2				Year 3			
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Construction 1-4s	230												
Construction 5+	235												
NonResidential	240												
Permanent 1-4 unit Residential loans.	250 253												
Permanent 5+,	256												
Permanent Nonresidential	260												
Land Loans	265												
Total Mortgage Loans	23												
Commercial Loans (non-real estate)	32												
Consumer Loans	34												

The Office of Thrift Supervision (OTS) requires that applicants file a three-year business plan in connection with certain applications. Applications that require business plans include change of control, holding company, and permission to organize applications. OTS may also require business plans to be submitted with other applications on a case-by-case basis. The business plan should be an integral part of the management and oversight of the savings institution. It should be kept current and establish the institution's goals and objectives. It is a written summary of how an institution will organize its resources to meet its goals and how it will measure progress. General requirements for the business plan are contained in the Business Plan Guidelines Section 625 of the handbook.

In many cases, application business plans may contain assumptions that over time become unrealistic or irrelevant due to changes in the management philosophy, economic environment, interest rates, or some other variable. When OTS approves applications requiring a business plan, it generally imposes a standard condition that requires an institution to obtain prior approval from the Regional Director, or his/her designee, for any material changes in the business plan during the first three years. This section provides guidance for reviewing business plan modifications required to be submitted for approval.

FILING REQUIREMENTS

Delegated Authority

The decision to approve or deny the business plan modification application is delegated to the Regional Office, unless the proposal is found to contain an issue of law or policy that requires OTS Washington action. See Delegation Section 040 of the handbook for information on the delegation process.

Applications for significant business plan modifications may require submission to the OTS-Washington Examination Policy Department (EPD) for a concurrent review. In most cases, the concurrent review will not result in the non-delegation of the modification, but instead will provide OTS-Washington with the ability to provide input on the proposed business plan modification. This determination will be made on a case-by-case basis. The Regional Office should contact the appropriate EPD personnel upon receipt of all modification applications during the first 18 months of operations to determine if a concurrent review is warranted. Modification applications filed subsequent to the first 18 months of operations may be processed by the Regional Office without notification to EPD, unless said modification includes a unique or novel proposal.

Expedited and Standard Processing Procedures

This application is not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. Accordingly, the request for OTS approval to modify a business plan will be processed utilizing the procedures set forth in 12 C.F.R. §§ 516.210 – 516.290.

Prefiling Meeting Requirements

Pre-filing meetings are not required unless specifically requested by the Regional Office. It is the applicant's responsibility to contact the Regional Office in a reasonable period of time in advance of filing the application, to discuss whether a pre-filing meeting will be necessary. 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. 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 pre-filing meeting requirements in 12 C.F.R. Part 516 are met, leading to significant delays in processing the application.

When a meeting is necessary, the applicant should contact the Regional Office to determine which individuals should be present at the meeting. These individuals will be expected to discuss the salient aspects of the proposed transaction. The institution must also describe the associated risks of the proposal, discuss the qualifications and experience to prudently oversee operations and demonstrate how the institution will continue to serve the credit and lending needs in its target market.

Information and Form Requirements

The institution may not be required to file a formal business plan modification application if it can sufficiently justify to the Regional Director or his/her designee that:

- The proposed deviation from the business plan is of a minor nature and will not significantly alter the financial projections submitted with the previously approved business plan;
- The deviation from the business plan is the result of sudden, drastic or unforeseen changes in the market conditions beyond the institution's control, and will not delay the institution more than six months from achieving the original projections in its plan;
- The deviation from the approved business plan results in a positive effect on the institution and represents an improvement over its initial plan without significantly invalidating the plan's assumptions; or
- The proposal includes only a limited expansion of activities, with no significant growth or increase in its risk profile, and the institution demonstrates that it has the expertise to manage such expanded activities.

The institution must contact the Regional Office well in advance of any planned deviations from the plan if it believes a formal application may not be required. It is at the discretion of the Regional Director, or his/her designee, whether to accept the institution's justification that the deviation from the approved business plan is not material or requires a formal application.

Applications for business plan modifications should be filed in letter format, accompanied by all relevant schedules, exhibits or other supporting documentation. All applications are to be filed with

the Regional Office. The institution is required to file the original and two copies of all application documentation, clearly identifying the type of filing.

The application must include, at the minimum, the following information:

- Name of the institution, OTS docket number, date the original business plan was submitted, and a brief description of the original application;
- Duration of the original plan;
- A discussion of the major areas of the business plan that will be modified;
- Background or executive summary of the major circumstances that led to the proposed modification of the plan, reasons for the modification and a brief explanation as to how the modification is likely to affect the major areas addressed in the original plan. The major areas should include, but not be limited to: (1) lending, leasing and investment activity; (2) deposit, savings and borrowing activity; (3) interest-rate-risk management; (4) operations; (5) Community Reinvestment Act; (6) projected statement of condition; and (7) projected statement of operations;
- If the modification involves engaging in a new activity or line of business, include information to support the business decision to commence such activity, the relevant market demand for the proposed service or product (also submit a copy or summary of any feasibility study that may have been conducted), the availability of appropriately trained staff or plans to staff the new activity, and justification for the additional expenses to be incurred;
- A copy of the revised business plan, as approved by the board of directors. The revised business plan should include all financial projections, with all assumptions clearly disclosed;
- A copy of the previously approved business plan; and
- A certified resolution of the board adopting the new business plan, which authorizes the filing of an application to modify the plan

NOTE: Applications to modify a business plan typically are not subject to payment of an application fee. However, application fees may be required on a case-by-case basis. Special purpose thrift institutions (e.g. trust, only, or credit card, only) that request full-service powers must file a more extensive application. See Expansion of Business Activities Guidelines Section 645 of the Handbook for further information.

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.

REGULATORY 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 nondelegated will be transmitted from OTS-Washington. Correspondence on delegated applications will generally come from the Regional Office.

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

If new individuals are appointed to implement the new business plan, the Regional Office should conduct background investigations on individuals who were required to submit such information in connection with the application. At a minimum, individuals must submit an 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 will conduct a background investigation in compliance with RB-20. If appropriate, the review may also require OTS to contact other regulatory agencies to seek additional comments on the applicants. 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.

For nondelegated applications that involve specialty areas, such as trust activities or CRA issues, a copy of the application must be provided 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;

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- 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 review requests for a waiver of an application requirement that certain information be supplied, in a timely manner. 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 any additional information in response to an 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.

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.

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 OTS 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.

Regulatory Criteria and Decision Guidelines

The Regional Director, or his/her designee, should conclude that the institution has adequate capital, expertise, management and controls to implement the proposed business plan modification and continue to operate the institution in a safe and sound manner. OTS should consider the following factors in analyzing the application to determine if the transaction satisfies the applicable criteria for approval:

- Does the business plan satisfy OTS business plan requirements?
- Are the revised business plan and its underlying assumptions reasonable and attainable?
- Does the institution have sufficient capital resources to fund the revised business plan?
- Do the new activities present unusually high elements of risk, such as a significant volume or concentration of sub-prime loans, speculative lending, or credit card activity?
- Will the institution comply with the lending and investment limitations of Section 5(c) of the HOLA and 12 C.F.R. Part 560, as well as the QTL test?
- Does the proposed business plan contemplate entering into new or novel lines of business with which the institution has had little or no experience?
- Does management have the expertise to engage in the additional operations and operate the institution in a safe and sound manner?

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- Has management established strong internal controls to ensure the overall adequacy and adherence to policies and procedures?
 - Does the revised business plan rely on the excessive use of brokered deposits?
 - How has management operated under its existing business plan? Is there a propensity on the part of management and/or the board of directors to forego long-term stability in favor of short-term profits?
 - Has the board of directors properly monitored and controlled management's adherence to previous business plan?
 - Will the institution continue to meet its obligations under the CRA?

Conditions

Business plan modification applications are not subject to standard approval conditions. OTS may condition its approval of the business plan modification to include nonstandard conditions. If such nonstandard conditions are utilized, the Regional Office's digest must include appropriate justification for imposing such condition.

Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application. This requirement helps OTS to provide the public a complete listing of all applications approved with nonstandard conditions of approval.

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.

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.

OTS should notify the appropriate staff responsible for the supervision and examination of the institution regarding the action taken on an application. In addition, OTS 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 Office, including a review of the documentation maintained in the application file.

INFORMATION SOURCES

Statutes

12 USC § 1464	HOLA Section 5(b); Deposits and Related Powers
12 USC § 1464	HOLA Section 5(c); Loans and Investments
12 USC § 1467a	HOLA Section 10(m); Qualified Thrift Lender Test
12 USC § 1468	HOLA Section 11; Transactions with Affiliates
12 USC §§ 2901 et seq.	Community Reinvestment Act

Regulations

12 C.F.R. Part 516	Applications Processing Guidelines
12 C.F.R. Part 560	Lending and Investment Limitations
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
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 565	Prompt Correct Action
12 C.F.R. Part 567	Capital

Other

Regulatory Bulletin 32-5 23A and 23B of the Federal Reserve Act	Qualified Thrift Lender Test Transactions with Affiliates
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Forms

OTS Business Plan Guidelines OTS Form 1623	Interagency Biographical and Financial Report
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12 C.F.R. §§ 563.140 through 563.146 provide the requirements governing capital distributions by savings institutions, including provisions for applications and notifications, when applicable. These provisions also describe the circumstances under which a savings institution may declare a capital distribution without filing an application or prior notice. The instructions for filing notices and applications, and the criteria used by OTS to process these filings are provided in 12 C.F.R. §§ 563.144 and 563.146.

The regulation allows OTS to monitor and supervise savings institutions' capital distributions, particularly those by institutions that are not well capitalized, in a uniform manner based on an assessment of risk and statutory requirements. Capital distributions reduce an institution's capital and its ability to absorb losses. Capital distributions include cash dividends, stock repurchases, cash-out mergers, the capitalization of holding companies in a reorganization, and any other distribution that reduces the institution's regulatory capital. Capital distributions may also be defined as any transaction that OTS determines, by order or regulation, to be in substance a distribution of capital.

Special Considerations

Employee Stock Option Plans (ESOP)

Distributions by a savings institution to an ESOP, to enable an ESOP to purchase new shares for the ESOP, are generally considered capital distributions. However, payments to an ESOP to enable the ESOP to make payments on a loan previously contracted by the ESOP to purchase shares of the savings institution's common stock are not considered to be capital distributions. Instead, the payments would be considered to be compensation by the savings institution to its employees.

Subchapter S Distributions

Distributions by an institution in a Subchapter S structure are capital distributions for regulatory purposes. This includes distributions intended to cover a shareholder's personal tax liability for the shareholder's proportionate share of the taxable income of the institution. There may be some cases where the amount of dividends that shareholders would need to receive to pay their personal income taxes would exceed the amount of dividends allowable under the capital distribution regulations. It is also possible for an institution to be generating taxable income in a period when the institution is reporting a loss or nominal income for financial reporting purposes. This situation can arise, for example, when an institution takes a large provision for loan losses because of credit quality problems but has not yet charged off specific loans. In Subchapter S structures, OTS may restrict or prohibit the payment of dividends, even though they may be needed for tax payments, if OTS determines that such payment would constitute an unsafe and unsound practice.

Institutions Subject to Prompt Correction Action Provisions

If the institution is not prohibited from making a capital distribution under the prompt corrective action regulations, then it may do so in accordance with 12 C.F.R. Part 563, Subpart E - Capital Distributions.

FILING REQUIREMENTS

Delegated Authority

Capital distribution notices and applications are delegated to the Regional Offices unless a proposal raises a significant issue of law or policy. See Delegation Section 040 of the handbook for discussion of the delegation process.

Expedited and Standard Processing Procedures

Savings institutions that are eligible for expedited processing under 12 C.F.R. § 516.5 may be able to make a capital distribution without prior notice to OTS if none of the criteria set forth in 12 C.F.R. § 563.143(a) and (b) are applicable. If one or more of the criteria in 12 C.F.R. § 563.143(b) are applicable, such an institution may provide OTS a notice rather than an application, if none of the criteria in 12 C.F.R. § 563.143(a) are applicable.

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

Savings institutions must submit one original and two copies of all applications or notices for capital distributions, with the filing fee if applicable, to the appropriate Regional office at least 30 calendar days in advance of a binding declaration of the proposed distribution. An advance schedule of capital distributions may be submitted for prior approval or nonobjection in order to avoid the need for individual approval or nonobjection of multiple capital distributions. Any such schedule should not exceed twelve months.

Notice and application requirements vary according to the capital position of the savings institution, and whether or not it is a subsidiary of a savings and loan holding company. Under certain circumstances, an institution is not required to file an application or notice. An application or notice is required under the following:

Application Required

A savings institution is required to file an application with OTS and receive approval before it may declare a capital distribution if the total of all capital distributions, including the proposed capital distribution, declared by the institution in the calendar year will exceed its calendar year-to-date net income plus the retained net income of the preceding two years. Retained net income is defined as net income for a specified period less total capital distributions declared in that period. If the savings institution plans to declare a capital distribution in excess of its current year's net income, it may attribute capital distributions in excess of the current year's net income to each of the prior two years,

to the extent that there is sufficient retained net income in those years. A savings institution is also required to file an application with OTS prior to making a capital distribution if:

- The institution is not eligible for expedited treatment under 12 C.F.R. § 516.5. An institution is eligible for expedited treatment only if it satisfies all of the following criteria:
 1. Has a composite CAMELS rating of “1” or “2” ;
 2. Has a CRA rating of “Satisfactory” or better;
 3. Has a Compliance rating of “1” or “2”;
 4. Meets or exceeds the minimum capital requirements provided under 12 C.F.R. Part 567; and,
 5. Has not been notified that it is in troubled condition.
- The institution would not be at least adequately capitalized, as defined in 12 C.F.R § 565.4(b)(2), following the distribution; or
- The institution’s proposed capital distribution would violate a prohibition contained in any applicable statute, regulation, or agreement between the institution and OTS (or the FDIC), or violate a condition imposed on the institution in an OTS-approved application or notice.

An institution’s capital distribution application should include the following:

- Amount of proposed dividend,
- Proposed payment date, and
- Pro forma capital ratios, giving effect to the capital distribution.

Prior Notice Required

If a savings institution is not required to file an application with OTS in order to declare a capital distribution, then it may be required to notify OTS at least 30 calendar days before making a capital distribution. Such a notice is required if:

- The institution would not be well capitalized, as defined in 12 C.F.R. § 565.4(b)(1), following the distribution;
- The institution’s proposed capital distribution would reduce the amount of, or retire any part of, the institution’s common or preferred stock or retire any part of its debt instruments such as notes or debentures included in capital under 12 C.F.R. Part 567 (other than regular payments required under a debt instrument approved under 12 C.F.R. § 563.81); or
- The institution is a subsidiary of a savings and loan holding company.

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 Timeframes

All Filings

Within five business days of receipt of the filing and the filing fee if applicable, the Regional Office must notify the applicant of the application or notice’s receipt. The appropriate fee must accompany each filing in order for it to be considered filed. If it is determined that the submission will require concurrent processing with OTS-Washington, the filing will not be considered filed until it is received by both the Washington and Regional Offices.

For purposes of calculating processing timeframes, 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.

Applications

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.

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.

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.

Notices

The applicant may engage in the proposed activities upon the expiration of 30 calendar days after the filing date of its notice, unless OTS takes one of the following actions before expiration of that time period:

- Request, in writing, any additional information necessary to supplement the notification;
- Notifies the applicant that the notice is subject to standard treatment as it raises a supervisory concern, raises a significant issue of law or policy, or required significant additional information; or
- Disapproves of the notice.

Failure by OTS to act within 30 calendar days of receipt of the notice for processing shall result in the filed notice's being accepted. If supplemental information is requested, the applicant will have 30 days to provide such information. The 30-day time frame will begin anew upon receipt of such information.

Regulatory Criteria

OTS may deny a savings institution's application or notice for a capital distribution, in whole or in part, if it is determined that:

- The institution will be undercapitalized, significantly undercapitalized, or critically undercapitalized as defined in 12 C.F.R. § 565.4(b), following the capital distribution. If so, OTS will determine if the capital distribution is permitted under 12 C.F.R. § 565.6(a)(2)(i), which provides OTS with mandatory and discretionary supervisory authority regarding the payment of capital distributions and management fees;
- The institution's proposed capital distribution raises safety or soundness concerns; or
- The institution's proposed capital distribution violates a prohibition contained in any statute, regulation, agreement between the institution and OTS (or the FDIC), or a condition imposed on the institution in an OTS-approved application or notice. If so, OTS will determine whether it may permit the capital distribution notwithstanding the prohibition or condition.

Decision Guidelines

In evaluating a capital distribution, the review should conclude that the institution will maintain sufficient capital to operate in a safe and sound manner. Consideration should be given to the pro forma level of capital given the institution's risk profile, and its historical and future operations. The analysis should include an assessment of the following:

- Does the institution have a history of stable earnings?
- Do earnings result from core operations, or do they represent nonrecurring transactions, i.e., loan sales, sales of deposits, etc.?
- Is the institution engaged in any high-risk activity that may warrant the maintenance of additional capital?
- Are any asset quality problems apparent that may require the establishment of additional loan loss reserves?
- What prompt corrective action category will the institution be classified subsequent to the distribution?
- Is the institution under any specific agreement regarding the payment of dividends?

Conditions

Capital distributions are not subject to standard approval conditions. However, OTS may condition its approval of the institution to declare a dividend to include nonstandard conditions. If such nonstandard conditions are utilized, the Regional Office's digest must include appropriate justification for imposing such conditions.

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.

MONITORING AND CONTROL

In the event that conditions of approval are imposed, the Regional Office should monitor compliance with all conditions. Specifically, the institution's Thrift Financial Reports and audit statements should

be reviewed periodically to confirm that all capital distributions are consistent with the regulations and representations of the savings institution. All future examinations should similarly review the institution's capital history related to capital distributions.

The appropriate staff responsible for the supervision and examination of the institution should be notified of the action taken on an application, and provided with copies of the approval order or letter. In addition, the Continuing Examination File should also be updated to include a copy of the decision with respect to the capital distribution filing to assist the examiners in reviewing this aspect of the institution's operations during the next examination of the institution following approval. The examiner review is to ensure compliance with all conditions of approval, and to note 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. § 1831(o)	Prompt corrective action
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Regulations

12 C.F.R. §§ 563.140 - 563.146	Capital distribution regulations
12 C.F.R. § 565.6(a)(2)(i)	Prompt corrective action
12 C.F.R. §§ 563b.510 and 563b.520	Restrictions on repurchase of stock and payment of dividends by savings institutions that convert from mutual to stock institutions
12 C.F.R. § 565.4(b)	Definitions of capital categories

Forms

OTS Form 1583	Notice for Capital Distribution
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This section provides general information and guidance concerning the filing and processing of requests to the Office of Thrift Supervision (OTS) to remove or modify, in whole or in part, the conditions of approval of an application.

FILING REQUIREMENTS

Delegated Authority

When given specific authority to approve certain applications, or to impose conditions by the applicable regulation, delegation, or Director's Order, the Regional Director, or their designee, may also modify those conditions. If, however, the condition was imposed in connection with an OTS-Washington action and no specific delegation to the Regional Director, or their designee is contained in the Order, or the request involves a significant issue of law or policy, it must be forwarded to OTS-Washington for concurrent processing.

Expedited and Standard Processing Procedures

This application is not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. Accordingly, requests for modification of conditions of approval 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 savings institution must submit the original and two copies of its request to modify a condition of approval, along with the filing fee, to the appropriate Regional Office. All copies should be clearly marked as to the type of filing and should contain all exhibits and other pertinent documents.

If the request involves the removal or modification of a condition that was imposed in connection with approval of a nondelegated application, or is considered a policy issue, the institution must also file three copies of its request with the Applications Filing Room in Washington, D.C. in addition to the copies filed with the Regional Office. All copies should be clearly marked as to the type of filing and should contain all exhibits and other pertinent documents.

The following information must be included in a request to remove or modify a condition of approval:

- The identity of the original application, the approval of which imposed the condition; the OTS application tracking number, if known; the date OTS approved the application; the OTS approval order number (if applicable); a copy of the approval; a description of the condition

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- or conditions that the institution wishes to have modified; and the proposed language of any modified condition requested;
- A certified copy of the board of directors' resolution authorizing filing the application for modification;
 - The reason(s) for requesting the modification, including the advantage to the institution and any apparent regulatory or policy considerations; and
 - If the requested modification will have any impact upon the savings institution's financial condition and operations, the effect should be described and appropriate pro forma financial information and projections provided for a three-year period.

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, if this application does not qualify for processing under delegated authority, then it 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. If appropriate, the review

may also require OTS to contact other regulatory agencies to seek additional comments on the applicants. This review may also require OTS to request examination reports from another agency. For applications involving insurance companies, the Insurance Risk Management Specialist in OTS-Washington should be contacted 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 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.

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 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.

Decision Guidelines

The evaluation of a request to remove or modify a condition of approval should focus on the initial purpose of the condition, and whether approval of the request would affect the safe and sound operation of the institution, or significantly affect OTS's ability to monitor its operations. Consideration should also be given to OTS's current practice in imposing the condition in similar circumstances, and whether denial of the request would materially burden the institution. When acting upon a request for modification, OTS should consider the following factors:

- What was the intent of the condition as originally imposed? Was it a standard condition or a special purpose condition?
- If the condition was deemed to be a "standard" condition at the time it was imposed, has there been a subsequent change in the regulations or in OTS policy such that the condition is no longer routinely imposed?
- Is there a continuing need for the condition, and would modification or removal of the condition present any regulatory or policy implications?
- Can the activity that the condition was intended to control be sufficiently monitored through other means?
- How long has the condition been in effect and what has been the applicant's record of compliance?
- Does continued compliance with the condition impose an undue burden on the applicant or otherwise unnecessarily restrict operations in the current environment?

Conditions

Requests for modification of conditions of approval are not subject to standard approval conditions. OTS may condition its approval of these requests to include nonstandard conditions. If such nonstandard conditions are utilized, the Regional Office's digest must include appropriate justification for imposing such conditions.

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.

MONITORING AND CONTROL

A copy of the approval letter and other supporting documentation, as applicable, regarding the condition that is the subject of the modification application should be made available to the appropriate regional supervisory or examination staff in order to ensure periodic follow-up and documentation of compliance, if necessary.

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**Regulations**

12 C.F.R. Part 516

Application Processing Guidelines and Procedures

This handbook section provides guidance on applications filed by institutions that have previously been approved as a limited purpose or wholesale institution, as defined in 12 C.F.R. Part 563e, to expand its business activities. In many instances, when Office of Thrift Supervision (OTS) approves an application for a limited purpose or a wholesale institution, said approval includes a condition that the institution must apply to OTS and receive approval of its application to engage in additional business activities. The basis for this condition is that when an applicant files an application for limited powers, it is often the case that the breadth of the review is also somewhat limited, given the lack of diversification of the operations.

When an institution proposes to engage in additional business activities, a greater review of the operations is warranted. OTS will consider an application for expanded powers under the standards required of a new federal thrift charter, which are set forth at section 5(e) of the HOLA and OTS regulations thereunder, as well as the Community Reinvestment Act and OTS regulations thereunder at 12 C.F.R. § 563e.29. This section provides guidance for reviewing applications filed by limited purpose or wholesale institutions to expand its business activities.

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 Processing Procedures

This application is not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. Accordingly, the application to convert from limited purpose or wholesale savings institution to a full service savings institution will be processed utilizing the procedures set forth in 12 C.F.R. §§ 516.210-516.290.

Prefiling Meeting Requirements

It is the applicant's responsibility to contact the Regional Office in a reasonable time period in advance of filing the application, to discuss whether a prefiling meeting will be required. Since this application is similar to the type that may necessitate a prefiling meeting, OTS anticipates that a meeting will be held in most cases. 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. The Regional Office has the discretion to require a prefiling meeting, and 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 until the prefiling meeting requirements in 12 C.F.R. Part 516 are met, leading to significant delays in processing the application.

When a meeting is required, the applicant should contact the Regional Office to determine which individuals should be present at 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 and the impact of the additional business activities on the institution;
- Identify any additional directors and/or senior executive officers that will be appointed as a result of the new activities, with documentation to support that these individuals have the required qualifications and experience to prudently oversee the resulting operations; and
- Demonstrate how the charter will serve the credit and lending needs in its target market.

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 with the appropriate Regional Office, and file three copies with the AFR. Four additional copies should be sent to the Regional Office for transactions subject to the Bank Merger Act. 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.

As the application will be reviewed under Section 5(e) of the HOLA and OTS regulations thereunder, as well as the Community Reinvestment Act and OTS regulations thereunder at 12 C.F.R. § 563e.29, it will be necessary to require a filing similar to those required for a de novo institution. However, unlike a de novo applicant, the institution will only have to address certain items required in a de novo application. Such information will vary depending on the circumstances present in the additional activities. The required items will be discussed in the prefiling meeting to ensure that the Regional Office will have sufficient information to accept the application.

The applicant is required to submit certain documents and information set forth in OTS Form 138, "Application for Permission to Organize." 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

Additional forms to supplement OTS Form 138 may be necessary, i.e., forms seeking approval for subsidiaries, holding companies, trust powers, biographical and financial reports complete with supporting documentation, and business plan. These forms and 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 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 engage in additional activities 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 savings institution is 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 holding company 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 the 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 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 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, 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 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.

Background Checks

OTS policy requires background investigations of all 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 institution's stock, if such information has not already been provided to OTS. At a minimum, individuals must submit an 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 will conduct a background investigation in compliance with RB-20. If appropriate, the review may also require OTS to contact other regulatory agencies to seek additional comments on the applicants. 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.

Holding Company Applications

In some cases, the institution's conversion to full service activities may result in a change in the holding company structure that may require the filing of the appropriate holding company acquisition application (typically, an H-(e)1) in addition to the proposed application. The Regional Office should review the proposed transaction to determine whether such an application is warranted.

Subsidiaries of bank holding companies are exempt from submitting a holding company application as a result of the passage of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPR). EGRPR adds Section 10(t) to the HOLA, which exempts bank holding companies from having to seek OTS' approval to acquire a thrift institution. The Federal Reserve has the regulatory authority over such a transaction.

National Historic Preservation Act

If the institution 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 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/THPO 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 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, and the analysis must address the requirements set forth in Section 106 of the NHPA.

National Environmental Policy Act

Similarly, with respect to the application, the institution should provide a statement on the impact of the proposal on the human environment, including information on changes in air and/or water quality, noise levels, energy consumption, congestion of population, solid waste disposal, or environmental integrity of private land within the meaning of the National Environmental Policy Act, 42 U.S.C. § 3421, et. seq.

REGULATORY GUIDELINES

Processing Procedures and Time Frames

As this application is nondelegated, correspondence from OTS regarding applications will generally be transmitted from OTS-Washington.

Within five business days of receipt of the application, by both OTS-Washington and the Regional Office, 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.

For nondelegated applications that involve specialty areas, such as trust activities or CRA issues, a copy of the application must be provided 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 application being deemed complete, commencing the period for review.

OTS must review requests for a waiver of an application requirement that certain information be supplied, in a timely manner. 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 any 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.

During the course of the review period, OTS may decide to conduct an eligibility examination. 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 that must be submitted 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 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.

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.

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 OTS 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.

Regulatory Criteria

Section 5(e) of the HOLA, as amended, sets forth the basic criteria that OTS must consider when granting a charter. Although OTS is not specifically granting a charter, the standards set forth in the statute and regulations must be considered when granting additional powers to an institution. Section 5(e) states that OTS may grant a Federal charter only if, in OTS' judgment:

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

In addition to the Section 5(e) factors noted above, 12 C.F.R. § 543.2(g) also required that OTS consider the following factor for approval:

- Whether the institution will perform a role of providing credit for housing consistent with safe and sound operation of a federal savings institution.

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

- Minimum Initial Capitalization

While not as applicable for this type of applicant, an institution should have at least two million dollars in capital stock or a greater amount to mitigate the risks the institution will incur as a result of the expanded operations. Applications proposing substantial internet-based operations will require additional capital consistent with current OTS policy.

- Business Plan

The applicant shall submit a business plan materially consistent with OTS requirements, describing the major areas of operations for the first three years of the expanded operations. 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 shall provide for the continuation or succession of competent management subject to the approval of the Regional Director, or his/her designee, and shall further provide that any material change in, or deviation from, the business plan must receive the prior approval of the Regional Director, or his/her designee. The business plan must also demonstrate the 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

As required by regulation, a majority of the institution's board of directors must be representative of the state in which the institution is 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 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 institution in a safe and sound manner.

- Policies Pertaining to Management Officials

In addition to new officers and directors, any stockholders that acquire ten percent or more of the stock of the institution as a result of the transaction will be considered management

officials of the institution for the purpose of OTS's evaluation of the character and qualifications of the institution's management. These individuals will be required to submit to the Regional Office an Interagency Biographical and Financial Report (OTS Form 1623), FBI Fingerprint Card and RB-20 Applicant Certification.

Pursuant to 12 C.F.R. § 563e.29, OTS must consider the 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.

Decision Guidelines

The statutory and regulatory requirements are designed to ensure the viability and safe and sound operation of the institution. In general, the analysis should conclude that capital is sufficient to engage in the additional activities and management has the necessary expertise and controls to implement the additional activities. In addition, OTS should conclude that the community will be served and that the proposed activities will be done in compliance with applicable rules and regulations. If, based upon the review, OTS have determined that the additional activities will adversely effect or jeopardize the financial well being of the institution or be detrimental to the community; a denial recommendation may be the course of action. OTS should consider the following factors 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;
 - * Each newly appointed director/trustee, senior officer and new controlling shareholder(s) must submit an OTS Form 1623 (Interagency Biographical and Financial Report), properly executed RB-20 Certification and FBI Fingerprint Card;
 - * Resume or description of the managing officer's qualifications and discussion of salary and benefits, if a change has occurred;
 - * Copies of proposed employment contracts and evidence of regulatory compliance;
 - * Description of any proposed stock option plans;
 - * Three-year business plan;
 - * Charter and bylaws;
 - * Sample Certificates and Passbook Accounts and a legal opinion that such forms of certificate comply with applicable laws, regulations, and the institution's 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;

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- * Map of Primary Market Area. The Map should be outlined with a heavy line to indicate the proposed market area; the proposed office location should be indicated by an encircled x; and home office locations and branch facilities of competing thrift institutions and commercial banks should be clearly identified. The Map must be legible and contain a distance scale;
 - * Description of the Proposed Market Area (value, type and number of existing and proposed residential units, shopping centers, office buildings, industries and major economic base, etc.); and
 - * The latest audit report and annual report to shareholders.
- Did the certification or background check (FBI, LEXIS/NEXIS and/or Westlaw, and CIIS) of the newly appointed director/trustee, senior officer and new controlling shareholder(s) 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? (i.e., prior employment with any type of financial institution must be checked.)
 - Do the board of directors and senior management, have the qualifications and experience necessary to engage in the additional operating powers in a safe and sound manner?
 - Will the board of directors have sufficient independence from its parent holding company to ensure that the institution will continue to operate without undue influence from its parent company and affiliates?
 - Will the board of directors continue to meet the composition requirements of 12 C.F.R. §§ 543.3(d) and 563.33(a)?
 - Has management established a strong system of internal controls to ensure the overall adequacy and adherence to policies and procedures?
 - How has management performed under its existing business plan? Is there a propensity on the part of management and/or the board of directors to forego long-term stability in favor of short-term profits?
 - Has the board of directors properly monitored and controlled management's adherence to the institution's business plan?
 - Do the proposed employment agreements comply with the requirements of 12 C.F.R. § 563.39 and Regulatory Bulletin 27-a?
 - Does the proposed business plan satisfy OTS requirements?
 - Are the institution's new business plan and its underlying assumptions reasonable?
 - Is there a need for the additional products and services in the institution's market area?
 - Can the additional operations be established without undue injury to other local thrift and home financing institutions?

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- Do the proposed savings and lending services appear reasonable?
 - Will the institution rely on the excessive use of brokered deposits?
 - Do the new activities present unusually high elements of risk, such as a significant volume of sub-prime loans, speculative lending, or credit card activity?
 - 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?
 - Does the proposed business plan demonstrate compliance with OTS capital requirements over the three-year projections?
 - Does the institution have sufficient capital resources necessary to fund the additional operations and offset potential adverse changes in market conditions or poor operating performance?
 - Is capital adequate based upon business philosophy or for institutions with specialized operations or higher risk profiles (i.e. internet based banking)?
 - If conducting Internet operations, will the Internet banking activities be conducted in compliance with OTS and Interagency policy?
 - Does the investment in fixed assets by the institution meet current OTS policy for limitations of initial capital invested in fixed assets?
 - 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?
 - Do the business plan projections indicate that QTL compliance will be maintained?
 - Does the description of the local community adequately demonstrate the community's credit needs?
 - Are the business plan assumptions reasonable and consistent with local community 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.?
 - 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 563.42?
 - Do the additional activities raise any cross marketing or tying issues?
 - Does the institution have a reasonable plan to meet its obligations under the CRA?

Conditions

Standard Conditions

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

- 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 applicant must consummate the proposed transaction within one hundred and twenty (120) calendar days from the date of the approval;
- On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the proposed holding company(s) and 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 proposed holding company(s) and 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 proposed holding company(s), 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;
- 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 the approval; and
- The applicant must operate within the parameters of its business plan. The proposed holding company(s) and the institution must submit any proposed major deviations or material changes from the plan (including changes resulting from decisions made by the holding company), 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.

OTS may condition its approval of applications filed by limited purpose or wholesale institutions to expand its business activities to additional nonstandard conditions. If such nonstandard conditions are utilized, the Regional Office's digest must include appropriate justification for imposing such condition.

Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application. This requirement helps OTS to provide the public a complete listing of all applications approved with nonstandard conditions of approval.

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.

MONITORING AND CONTROL

The approval order or letter will generally include conditions of approval. 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 or letter to the Regional Office within the stated time frames.

OTS should notify the appropriate staff responsible for the supervision and examination of the institution regarding the action taken on an application. In addition, OTS 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 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. § 1468	HOLA Section 11; Transactions with Affiliates
12 U.S.C. §§ 2901 et seq.	Community Reinvestment Act
12 U.S.C. §§ 3201 et seq	Depository Institution Management Interlocks Act

Regulations

12 C.F.R. Part 516	Applications Processing Guidelines
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. 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
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 Correct 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
Thrift Bulletin 48-(current)	Fees and Assessments
23A and 23B of the Federal Reserve Act	Transactions with Affiliates

Forms

OTS Form 138	Application for Permission to Organize
OTS Form 1623	Interagency Biographical and Financial Report
OTS Business Plan Guidelines	

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) Application to Establish and Merge an Interim 1639	Holding Company Acquisition Interagency Bank Merger Act Application
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Section 32 of the Federal Deposit Insurance Act and 12 C.F.R. § 563.550 require insured savings institutions and savings and loan holding companies to notify OTS at least 30 days before appointing or replacing any member of its board of directors, employing any person as a senior executive officer, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive position, if:

1. The savings institution:
 - (a) Does not comply with all minimum capital requirements under 12 C.F.R. § 567;
 - (b) Is in troubled condition; or
 - (c) Has been notified by OTS, in connection with its review of a capital restoration plan, that a notice is required
2. The savings and loan holding company is in troubled condition.

For purposes of this section, a director is an individual who serves on the board of directors of a savings institution or savings and loan holding company. This term does not include an advisory director who:

1. Is not elected by the shareholders;
2. Is not authorized to vote on any matters before the board of directors or any committee of the board of directors;
3. Provides only general policy advice to the board of directors or any committee of the board of directors; and,
4. Has not been identified by OTS in writing as an individual who performs the functions of a director, or who exercises significant influence over, or participates in, major policymaking decisions of the board of directors.

A senior executive officer is an individual who holds the title or performs the function of one or more of the following positions (without regard to title, salary, or compensation): president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer. A senior executive officer also includes any other person identified by OTS in writing as an individual who exercises significant influence over, or participates in, major policymaking decisions, whether or not hired as an employee.

The term troubled condition means:

1. A savings institution that has a composite rating of 4 or 5;
2. A savings and loan holding company that has an unsatisfactory rating under OTS's holding company rating system, or that is informed in writing by OTS that it has an adverse effect on its subsidiary savings institution;
3. A savings institution or savings and loan holding company that is subject to a capital directive, a cease-and-desist order, a consent order, a formal written agreement, or a prompt

corrective action directive relating to the safety and soundness or financial viability of the savings institution, unless otherwise informed in writing by OTS; or

4. A savings institution or savings and loan holding that is informed in writing by OTS that it is in troubled condition based on information available to OTS.

Waiver of Prior Notice Requirements

The Regional Office may waive the required notice period if it finds that: (1) a delay in the addition of a director or the employment of a senior executive officer would threaten the safety or soundness of the savings institution or savings and loan holding company; (2) a delay would not be in the public's interest; or (3) other extraordinary circumstances exist that justify waiver of prior notice. If a waiver is granted, a notice must be submitted within the time period specified by OTS.

In addition, an individual may serve as a director of a savings institution or savings and loan holding company before filing a notice if management did not nominate the individual and he/she submits a notice within seven days after election as a director.

FILING REQUIREMENTS

Delegated Authority

The Regional Director, or his/her designee, is authorized to approve or disapprove a notice of this type unless the notification raises significant issues of law or policy. See Delegation Section 040 of the handbook for discussion of the delegation process.

Expedited and Standard Processing Procedures

This notice is not subject to the expedited processing procedures set forth in 12 C.F.R. § 516.

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 original and two conformed copies of the notice and all supporting documents are to be filed with the appropriate Regional Office at least 30 days prior to the effective date of the addition, hiring or promotion. For notices that are not delegated to the Regional Office, an additional three copies should be filed with the Applications Filing Room in Washington-DC. The notice should describe the institution's intended action, and include the following information:

1. A copy of the Interagency Notice of Change in Director or Senior Executive Officer (OTS Form 1624) and the Interagency Biographical and Financial Report (OTS Form 1623);

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2. An executed Application Certification Form RB 20;
 3. Legible fingerprints of the proposed director or senior executive officer. This individual is not required to file fingerprints if, within three years prior to the date of submission of the Notice, he/she provided legible fingerprints as part of a filing with OTS; and,
 4. Such other information required by OTS.

Confidentiality

The applicant must submit in writing, concurrently with the submission of the notice, any requests to keep specific portions of the notice 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 notice 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 notice. 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**

Within five business days of receipt of the notice and fee, the Regional Office must notify the applicant of its receipt. The appropriate fee must accompany each notice in order for it to be considered filed. In addition, within such five business day period, the Regional Office will begin its background investigations on individuals who were required to submit such information in connection with the notice. Upon receipt, all FBI Fingerprint Cards must be submitted to OTS-Washington for processing. The background investigations should include, at a minimum, a search of the applicants in the Westlaw and CIIS databases. Further background investigations, as outlined in RB-20 should be conducted as appropriate. If appropriate, OTS should contact other regulatory agencies to seek additional comments on the applicants. This review may also require the OTS to request examination reports from another agency. 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.

Within 30 days after the filing date of the notice, OTS will take one of the following actions:

- Request, in writing, any additional information necessary to supplement the notice. OTS will provide a reasonable time to respond to the additional information request. The Applicant must respond within the specified time period or request OTS to suspend processing. The 30-day review period will not begin until all requested information is received. Failure to

provide the requested information within the specified time period may result in OTS treating the notice as withdrawn, or it may choose to review the notice on the information requested.

- Approve the notice;
- Disapprove the notice; or
- For prior notices only, notify the applicant in writing that it is extending the 30-day review period for an additional period not to exceed 60 days. OTS is statutorily prohibited from extending the 30-day review period filed under the waiver of prior notice requirements.

Failure by OTS to act within 30 calendar days of receipt of the notice, or within any extended time period for review, shall result in the notice being accepted, and the proposed officer or director may begin service immediately.

Regulatory Criteria

OTS will disapprove a notice if it finds that the competence, experience, character, or integrity of the proposed director or senior executive officer indicates that it would not be in the best interests of the depositors of the savings institution or of the public to permit the individual to be employed by, or associated with, the savings institution or savings and loan holding company. If OTS disapproves the notice, it will issue a written notice that explains why OTS disapproved the notice. OTS will send the notice to the savings institution or savings and loan holding company and the individual.

Decision Guidelines

In determining whether to approve a notice, the following should be taken into consideration in the evaluation process:

1. Is the competence, experience, character, or integrity of the candidate such that it would not be in the best interests of the depositors of the institution or in the best interests of the public to permit the candidate to be employed by, or associated with, the institution or holding company?
2. Is the experience of the candidate considered adequate or appropriate considering
3. The duties and responsibilities that the person would assume?
4. Does the proposed notice present any supervisory or safety and soundness concerns?
5. Does the candidate have any outstanding loans with the subject and other financial institutions?
6. Does the candidate have a criminal or arrest record?
7. Has the candidate ever filed bankruptcy?
8. Does the candidate have the ability to meet present and any anticipated future financial obligations?
9. Has the candidate had dealings with other insured institutions?

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10. If the candidate has had any previous dealings or association with OTS or other regulatory agencies, has the individual complied with all conditions, commitments, and regulations in a safe and sound manner?
 11. Does the candidate have any association with related businesses such as real estate or insurance? If so, is a conflict of interest apparent?
 12. Does the candidate have any business affiliations with other directors of the institution or any other financial institution?
 13. Does the notice, combined with other recent notices, result in multiple or sequential changes in the directorate and a de facto change in control?
 14. Would the candidate's service trigger a management official interlock pursuant to 12 CFR Part 563f?
 15. Were there any items of concern noted with respect to the review of the RB 20 certification?
 16. Did the candidate fail or refuse to furnish information requested by the Regional Office?
and
 17. Are there any other factors that would indicate that it would not be in the best interests of the institution, its depositors, or the public for the individual to be associated with the institution?

Conditions

The OTS may not condition statutory notices. Any commitments from the candidate or institution should be addressed in the notification process.

RECORDKEEPING REQUIREMENTS

The OTS should 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 into public and confidential material, and clearly identified as such. The public and memorandum, and compliance material. The file copy must be organized and separated confidential sections must be arranged in chronological order.

MONITORING AND CONTROL

Appropriate staff responsible for the supervision and examination of the institution should be notified regarding the action taken on a notice. In addition, such staff should be provided with copies of the approval order or letter. If a notice is approved, the first examination of the institution following the approval should include a review of any changes in operations as a result of the transaction.

A review of the notice 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 notice in the Regional Office, including a review of the documentation maintained in the notice file.

INFORMATION SOURCES

12 U.S.C. § 1831i
12 C.F.R. Part 516
12 C.F.R. §§ 563.550 – 563.590
12 C.F.R. Part 563f
12 C.F.R. Part 567
OTS RB-20
OTS TB 48 – 17

Forms

OTS Form 1624
OTS Form 1623
Application Certification Form RB-20

This section provides information for determining when and how otherwise prohibited management interlocks are allowed.

The purpose of the Depository Institution Management Interlocks Act is to foster competition by generally prohibiting a management official from serving two unaffiliated depository organizations in situations where the management interlock would likely have an anticompetitive effect. This applies to service as a management official of an institution, savings and loan holding company, and affiliates of either.

12 C.F.R. Part 563f sets forth several interlocking relationships that are prohibited. Generally, a management official of a depository institution or depository holding company may not serve as a management official of an unaffiliated depository institution or depository holding company if the entities in question (or a depository institution affiliate thereof) have offices in the same community or metropolitan statistical area or are of a certain asset size. Notwithstanding these general prohibitions, 12 C.F.R. § 563f.4 provides an exemption for certain depository organizations.

FILING REQUIREMENTS

Delegated Authority

This application type is not eligible for delegated processing. See Delegation Section (Section 040) of the handbook for further information.

Expedited and Standard Processing Procedures

This type of application is not subject to the expedited processing procedures 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 application should be filed 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 should file the original and two copies of this application with the appropriate Regional Office and three copies of this 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.

There are no standard forms to be submitted for interlock exemption requests.

The applicant should submit the following information to OTS when requesting an exemption from the management interlocks prohibitions:

- Identity (name, position) of all management officials to whom the filing pertains and the depository organizations they serve or propose to serve. The full legal name and home office/headquarters address of the depository organizations should be provided;
- A description of the product lines, geographic locations, market areas, and principal competitors for each affected depository organization. Specifically identify any product lines or market areas where the depository organizations compete;
- Market share data, such as the Herfindahl-Hirschman indexes (HHI), sufficient to show that the interlock will not have an anti-competitive effect on the financial services industry;
- If a diversified savings and loan holding company is involved, provide information concerning any banking relationships or transactions between the diversified holding company and/or its subsidiaries and the subject depository organization;
- Any known expansion or growth plans by any of the affected depository institutions that would have anticompetitive effects or cause decreased competition or increased market overlap in any of the affected market areas or product lines;
- Information regarding any other existing interlocks between the affected depository organizations; and
- If applicable, copies of filings and information regarding the status of any notices filed with any other Federal banking agency.

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 indicated, these 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 nondelegated 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 the Washington Office and the Regional Office.

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 of the application.

After the timely filing of additional information in response to an 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 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 at 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.

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 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 shall be provided to an applicant no later than the expiration of the time period.

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.

Under 12 C.F.R. § 516.290, if OTS has not acted on a pending application within two calendar years after the filing date, you may deem the application withdrawn unless OTS 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.

Regulatory Criteria

12 C.F.R. § 563f.4 lists organizations to which the prohibitions in § 563f.3 do not apply. In only one case, involving § 563f.4(h), where a *director* of a diversified savings and loan holding company also serves as a *director* of an unaffiliated depository organization, does a notice need to be filed with OTS.

Note: OTS has taken the position that this exception is available to directors of a non-depository organization subsidiary of a diversified savings and loan holding company, provided that such subsidiary and its subsidiaries, in the aggregate, meet the diversification test otherwise applied to the holding company as a whole.

A notice filed for dual service by a director of a diversified holding company pursuant to 12 C.F.R. § 563f.4(h) may be disapproved if OTS finds that:

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- The service cannot be structured or limited so as to preclude an anticompetitive effect in financial services;
 - The dual service would lead to substantial conflicts of interest or unsafe or unsound practices; or
 - The filing party did not furnish all of the information required.

12 C.F.R. § 563f.5 provides for an exemption from §§ 563f.3(a) and (b) (but not 563f.3(c), which is based on total asset size). Depository organizations may take advantage of this exemption if they and their depository institution affiliates hold, in the aggregate, no more than 20 percent of the deposits in each relevant metropolitan statistical area (RMSA) or community in which the depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community. No filing is required to take advantage of this exemption; however, the depository organizations must maintain records sufficient to support the determination of eligibility for the exemption and must reconfirm the determination on an annual basis.

12 C.F.R. § 563f.6 provides for a general exemption to the management interlocks prohibitions. If a depository organization is seeking an exemption under this section of the regulation, it must file an application with OTS. The OTS may exempt an interlock from the prohibition if it determines that the interlock will not result in a monopoly or substantial lessening of competition and would not present safety and soundness concerns.

There will be a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add the management official:

- Primarily serves low- and moderate-income areas;
- Is controlled or managed by persons who are members of a minority group, or women;
- Is a depository institution that has been chartered for less than two years; or
- Is deemed to be in “troubled condition” as defined in 12 C.F.R. § 563.555.

It should be noted that this rebuttable presumption relates only to the competitive aspect of the review and, therefore, safety and soundness criteria should still be considered.

If the exemption is approved in reliance upon one of the rebuttable presumptions, then unless otherwise provided in writing by the agency, the interlock may continue for three years. If the exemption is approved other than due to reliance upon one of the rebuttable presumptions, then unless a shorter expiration period is provided for in the approval, the interlock may continue so long as it does not result in a monopoly or substantial lessening of competition, or is unsafe or unsound.

Decision Guidelines

In determining whether to allow a management interlock to exist, the review should include an analysis of whether the dual service would result in a monopoly or a substantial lessening of competition. In addition, OTS should consider whether the dual service could lead to significant

conflicts of interest for the individual or could lead to unsafe and unsound practices. To assist in this analysis, the following factors should be considered:

- Analyze the competitive aspects of the interlock, consider HHI, locations, products, competition in affected area. Will the proposed interlock have an adverse effect on the competition in the affected area?
- Review any relationships between the subject depository organizations and their affiliates. Does the interlock create a conflict of interest for the director or officer?
- Would known expansion or growth plans of the subject organizations create the potential for a violation of 12 C.F.R. Part 563f?.
- Does the rebuttable presumption of 12 C.F.R. § 563f.6(b) apply?
- Should OTS specify an amount of time for the interlock to continue which differs from the time allowed under the regulation?

Conditions

There are no standard conditions imposed in these filings. OTS may impose certain nonstandard conditions in connection with a management interlocks filing. Any nonstandard conditions imposed will be based on the individual circumstances surrounding the application. In circumstances where nonstandard conditions will be imposed, they 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.

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.

MONITORING AND CONTROL

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. If an application is approved, the first examination of the institution following the approval should include a review of compliance with any 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 USC §§ 3201 – 3208
12 USC § 1467a(1)(F)

Depository Institutions Management Interlocks Act
Definition of diversified savings and loan holding company

Regulations

12 C.F.R. Part 563f
12 C.F.R. § 583.11

Management Official Interlocks
Definition of diversified savings and loan holding company

Other

FDIC Deposit Summary can be accessed from the FDIC's web page.
Specific address: www.fdic.gov/news/publications/public/index.html#statistical

Section: Lending Exceptions - Loans to One Borrower for the Development of Domestic Residential Housing Units

Section 820

This handbook section provides information for a savings institution seeking an exception to the general lending limitations on loans to one borrower (LTOB) for loans to develop domestic residential housing units. As set forth in 12 C.F.R. § 560.93, the total loans and extensions of credit an institution may have outstanding at one time to one borrower shall not exceed 15 percent of its unimpaired capital and unimpaired surplus. Pursuant to 12 C.F.R. § 560.93(d)(3), however, OTS may permit an institution to make loans to one borrower in an amount not to exceed the lesser of 30 percent of unimpaired capital and surplus or \$30,000,000, provided such loans are to develop domestic residential housing units that meet specific criteria. The higher lending limit exception is available to encourage the development of domestic residential housing units by making lending for this purpose more convenient. In determining whether to permit an institution to avail itself of the higher limits, the Regional Office, must determine whether such action would compromise the safety and soundness of the institution. The loans to one borrower limitation is a critical safety and soundness standard that is intended to prevent an institution from placing itself at risk by concentrating too great a portion of its assets in any single borrower.

Approval of notices and applications under this section will generally provide blanket approval to the institution to exceed the lending limitations with all borrowers for the purpose of loans to develop residential housing units, subject to the aggregate limitation of 150 percent of unimpaired capital and surplus. However, OTS may determine that a filing is required for each borrower in circumstances when safety and soundness concerns exist.

FILING REQUIREMENTS

Delegated Authority

Generally, applications and notices filed under this section may be processed by the Regional Office under delegated authority. However, certain situations may cause a filing to be nondelegated, including applications that raise a significant issue of law or policy. See Delegation Section 040 of the handbook for further information on the delegation process.

Expedited and Standard Processing Procedures

OTS processes applications using two procedures, expedited treatment and standard treatment. Applications filed under this section may qualify for either expedited or standard treatment, based on the criteria below. Please refer to the Processing Procedures and Time Frames discussion of this handbook section for more information on processing procedures and applicable time frames for notices and applications.

Expedited Processing

The institution is eligible for expedited treatment if it satisfies all of the following criteria:

1. Has a composite CAMELS rating of “1” or “2;”
2. Has a CRA rating of “Satisfactory” or better;

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3. Has a Compliance rating of “1” or “2;”
 4. Meets or exceeds the minimum capital requirements set forth in 12 C.F.R. Part 567; and
 5. Has not been notified that it is in troubled condition.

If the institution qualifies for expedited processing, a notice is filed with the appropriate Regional Office. OTS considers a filing to be appropriately filed when sufficient information to evaluate the proposal is received from the applicant in its notice.

Notices submitted by institutions eligible for expedited treatment are deemed applications for purposes of statutory and regulatory requirements referring to applications.

Standard Processing

If the applicant does not qualify for expedited processing, it must file an application subject to standard application processing time frames. Specifically, the institution is subject to standard processing if any of the following conditions exist regarding the institution:

1. Has a composite CAMELS rating of “3,” “4” or “5;”
2. Has a less than “Satisfactory” CRA rating;
3. Has a Compliance rating of “3,” “4” or “5;”
4. Has inadequate capital or fails at least one of its capital requirements;
5. Has been notified that it is in troubled condition;
6. The applicant is not a savings institution; or
7. The applicant has not received a composite CAMELS rating, a CRA rating, or a compliance rating from any federal banking regulator.

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

If delegated, all applications and notices should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant should file the original and two copies of the application or notice, and the application fee, with 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. For applications that are not delegated to the Regional Office, an additional three copies of the application should be filed with the Applications Filing Room in OTS-Washington.

Section: Lending Exceptions - Loans to One Borrower for the Development of Domestic Residential Housing Units

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OTS Form No. 1560, "Notice for Higher Lending Limitations," is to be used by institutions that qualify for expedited treatment pursuant to 12 C.F.R. Part 516.

An OTS form does not exist for institutions required to file an application under standard treatment. The applicant should provide information to OTS that will address the decision factors outlined in the Decision Guidelines section of this handbook section.

Processing Procedures and Time Frames

Notices under Expedited Treatment

Within five business days of receipt of the notice and fee, OTS must notify the applicant of the notice's receipt. The appropriate fee must accompany each notice in order for the filing to be considered filed.

The applicant may engage in the proposed activity upon the expiration of 30 calendar days after the filing date of its notice, unless OTS takes one of the following actions before expiration of that time period:

- Requests, in writing, any additional information necessary to supplement the notification;
- Notifies the applicant that the notice is subject to standard treatment as it raises a supervisory concern, raises a significant issue of law or policy, or requires significant additional information; or
- Disapproves the notice.

Failure by OTS to act within 30 calendar days of receipt of the notice for processing shall result in acceptance of the notice when originally filed. If supplemental information is requested, the applicant will have 30 days to provide such information. The 30-day time frame will restart upon receipt of such information.

Applications under Standard Treatment

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 nondelegated will be transmitted from OTS-Washington. Correspondence on delegated applications will generally come 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 for it to be considered filed. If the application is nondelegated, the application will not be considered filed until received by both OTS-Washington and the Regional Office.

Section: Lending Exceptions - Loans to One Borrower for the Development of Domestic Residential Housing Units

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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.

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

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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.

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.

Section: Lending Exceptions - Loans to One Borrower for the Development of Domestic Residential Housing Units

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Regulatory Criteria

Pursuant to 12 C.F.R. § 560.93(d)(3), an institution may request permission to make loans to one borrower in an amount not to exceed the lesser of \$30,000,000 or 30 percent of unimpaired capital and surplus, provided:

1. The final purchase price of each single-family dwelling unit does not exceed \$500,000;
2. The institution is in compliance with its capital requirements as prescribed in the capital regulations (12 C.F.R. Part 567);
3. The total of all loans made under 12 C.F.R. § 560.93(d)(3) to all borrowers for development of domestic residential housing cannot, in the aggregate, exceed 150 percent of the institution's unimpaired capital and unimpaired surplus; and
4. The loans comply with applicable loan-to-value ratio requirements.

In addition, notwithstanding the above limitations, 12 C.F.R. § 560.93(d)(1) provides that an institution may have total loans and extensions of credit, for any purpose, to one borrower outstanding at one time not to exceed \$500,000.

Decision Guidelines

Increased lending by a savings institution to individual borrowers increases the risk expose of an institution through a greater concentration of credit risk in any one borrower. The analysis will focus on whether the institution has the financial and managerial capacity to prudently conduct the increased lending activity. Approval of the application is based upon a conclusion that the increased lending does not compromise the safety and soundness of the institution. OTS must consider the statutory and regulatory criteria, and the following factors in reaching a conclusion:

1. Was the institution cited for significant deficiencies in lending policies, documentation, or internal control deficiencies at the most recent examination?
2. What has been the institution's experience and success in funding the development of similar residential housing units in a similar market?
3. Is there a current business plan of the institution, and does it address this type of lending in loans of this size?
4. Have a majority of the board of directors authorized the loan contingent upon the approval of OTS and signed a statement certifying that the proposed loan will comply with all requirements of applicable laws, regulations, and institution policies, prior to and after funding?
5. Will the proposed loans be made pursuant to a prudent program of domestic residential lending to meet both the community's and the institution's present needs or reasonable future needs?
6. Is the institution in compliance with its minimum capital requirements?

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To the extent the information below is known by the applicant on each borrower, the following criteria should be considered in evaluating the application:

1. What is the borrower's experience and success in the development of similar residential housing units in a similar market?
2. What is the borrower's credit history of how credit problems, if any, were handled and resolved, as reported by the institution's management and any other sources?
3. Is the borrower the obligor of the loan, does he/she own the equity in the collateral, and does he/she have sufficient funds projected to be available to pay all interest and fees on the proposed loan until the loan is paid in full?
4. Is the loan, as proposed, to be collateralized by a first lien on the site and improvements of the proposed development?
5. Are the loan proceeds to be used for funding the developer's profit or planning (soft) expenses?
6. Would the maximum loan-to-value percentage be consistent with safe and sound operating practices?

Conditions

The subject applications are not subject to standard approval conditions. OTS may condition its approval with nonstandard conditions. Any conditions imposed by OTS will be based on the individual circumstances surrounding the institution and the transaction itself. If such nonstandard conditions are utilized, the recommendation digest must include appropriate justification for imposing such condition. Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application.

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 must 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 or letter to the Regional Office within the stated time frames.

Section: Lending Exceptions - Loans to One Borrower for the Development of Domestic Residential Housing Units

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The Regional Office should notify the appropriate staff responsible for the supervision and examination of the institution regarding the action taken on an application, and provide 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 Office, including a review of the documentation maintained in the application file.

Information Sources

Statutes

12 U.S.C. § 1464(u)	Limits on loans to one borrower.
12 U.S.C. § 84	Lending Limits

Regulations

12 C.F.R. Part 516	Applications Processing Guidelines
12 C.F.R. § 560.31	Election regarding classification of loans
12 C.F.R. § 560.93	Lending limitations
12 C.F.R. § 567.5	Components of Capital

Other

12 C.F.R. 32	OCC, Lending Limits
TA 211	Thrift Activities Regulatory Handbook
Fees and Assessments Thrift Bulletin	

Application Forms

OTS Form 1560	Notice for Higher Lending Limitations
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This handbook section provides information for a federal savings institution seeking an exception to the general lending limitations for nonresidential real estate lending. The limitation exists to ensure that an institution that engages in nonresidential real estate lending has adequate capital in the event of default of the loans. This handbook section sets forth the parameters for the review of applications that request an exception to the limitation.

As set forth in Section 5(c)(2)(B) of Home Owners' Loan Act of 1933, as amended (HOLA), a federal savings institution's aggregate amount of loans on the security of liens upon nonresidential real property cannot exceed 400 percent of its total capital. Exceptions will be granted on a percentage or blanket basis to individual institutions, rather than on a loan-by-loan basis. For example, an institution might be granted the authority to expand its nonresidential real property portfolio to 500 percent of total capital.

To determine compliance with the 400 percent limit or any expanded limit, an institution should use total capital as reported on its most recently filed periodic report with OTS, adjusted by any significant events, such as charging off a major loan in whole or in part.

A State-chartered thrift institution seeking to exceed the 400 percent lending limitation is subject to the notice requirements set forth in 12 C.F.R. § 362.11(b)(2)(ii) and the nonobjection of the Federal Deposit Insurance Corporation. No filing to OTS is required for a State-chartered savings 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 Processing Procedures

An application seeking an exception to the general lending limitations for nonresidential real estate lending is 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.

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 application fee, with the appropriate Regional Office, and file three copies 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.

An OTS form does not exist for this filing. The applicant should provide information to OTS that addresses the factors outlined in the Decision Guidelines section of this document to allow staff to make an informed recommendation. The following information should be submitted:

- Submission of a nonresidential real property lending plan describing any future activity that is consistent with the institution's business plan;
- A statement setting forth:
 - * The level (as a percentage of total capital and total assets) to which the institution intends to expand its nonresidential real property loan portfolio;
 - * The size of the proposed loans;
 - * How the increase in nonresidential lending will affect the institution's Qualified Thrift Lender (QTL) status;
 - * The length of time for which the institution is seeking to expand its nonresidential real property portfolio;
 - * The industries and geographic areas in which the loans will be made;
 - * Whether the loans will be acquired from brokers;
 - * Whether the loans will be made on raw land;
 - * Whether the loans will be for construction or on existing properties; and
 - * The institution's current aggregate amount of investment in nonresidential real property.
- Discussion of the funding source(s) to be utilized to fund the increase in the nonresidential real property portfolio;
- The experience of the officers/employees in the nonresidential real property lending area; and
- The institution's current collection policies and procedures.

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 Regional Office.

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.

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:

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- 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

Pursuant to Section 5(c)(2)(B) of the HOLA, OTS may permit an institution to exceed the nonresidential real property lending limitation, provided:

- The increase in authority poses no significant risk to the safe and sound operation of the institution; and
- The increase in authority is consistent with prudent operating policies.

Decision Guidelines

Increased non-residential lending by a savings institution may increase the risk profile of the institution. The analysis will focus on whether the institution has the financial and managerial capacity to prudently conduct the increased lending activity. Approval of the application is based upon a conclusion that the increased lending does not compromise the safety and soundness of the institution. The following factors should be considered, as well as any other information deemed relevant, in reaching a conclusion:

- Why is the institution seeking an exception to the nonresidential real property lending limitation?
- Has the institution submitted a nonresidential real property lending plan describing any future intentions related to this type of activity? Is the plan consistent with the institution's business plan?
- To what level is the institution seeking to expand its nonresidential real property loan portfolio (as a percentage of total capital and total assets)?
- How will the increase in nonresidential lending affect the institution's QTL status? (An exception will not be granted if the institution will fail its QTL test as a result of the increase in nonresidential real property lending.)
- Was the institution's most recent Community Reinvestment Act rating acceptable?
- Is the institution in compliance with the capital standards contained in 12 C.F.R. § 567.5(c)?
- For what time frame is the institution seeking to expand its nonresidential real property loan portfolio?
- What is the institution's current aggregate amount of investment in nonresidential real property?
- What are the characteristics of the increased nonresidential real property loan portfolio, i.e. size of the loans, industries and geographic areas involved, types of loans (raw land, construction, or existing properties), and will brokers be utilized?
- What funding source(s) will be utilized to fund the increase in the nonresidential real property portfolio?

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- Will the return on the loans be sufficient to compensate for the higher risk generally associated with nonresidential real property loans?
 - Will the institution plan to periodically adjust the rates on its nonresidential real estate loans to reflect changes in interest rates?
 - Was the institution criticized in the previous report of examination for any significant deficiencies in loan policy, staffing, appraisal policy, loan documentation, or internal controls, especially in the area of nonresidential real property lending?
 - Is the experience of the officers/employees in the nonresidential real property lending area adequate to manage the proposed increases?
 - Is the present level of delinquent nonresidential real property loans considered significant, as indicated by the trend in delinquency and by comparison with other nonresidential real property lenders? (The presence of interest reserves will mask the degree of delinquencies.)
 - Are current collection policies and practices considered adequate?
 - What loan-to-value ratios does the institution permit for nonresidential real property loans? Will the additional loans conform to the current policy?
 - Does the institution have an effective internal asset classification system?
 - What level of allowances for loan and lease losses will be established in connection with the institution's increased nonresidential real estate?
 - Will the increase in nonresidential real property loans create a concern regarding concentration of risk or dilution of diversification in the balance sheet?

Conditions

The subject applications are not subject to standard approval conditions. OTS may condition its approval with nonstandard conditions. Any conditions imposed by OTS will be based on the individual circumstances surrounding the institution and the transaction itself. If such nonstandard conditions are utilized, the recommendation digest must include appropriate justification for imposing such condition. Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application.

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

INFORMATION SOURCES

Statutes

12 U.S.C. § 1464 (5)(c)(2)(B)	Nonresidential real property loans
12 U.S.C. § 1467a(m)	Qualified Thrift Lender Test

Regulations

12 C.F.R. Part 516	Applications Processing Guidelines
12 C.F.R. § 560.30	General Lending and Investment Powers
12 C.F.R. § 560.31	Election regarding classification of loans
12 C.F.R. § 560.93	Lending limitations
12 C.F.R. § 567.5	Components of Capital
12 C.F.R. 362.11(b)	FDIC Requirements for State-Chartered Thrift Institutions

Other

12 C.F.R. 32	OCC, Lending Limits
TA 211	Thrift Activities Regulatory Handbook
Fees and Assessments Thrift Bulletin	

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

Section: Increase in Lending Limitation to One Borrower for 1-4 Family Residential Real Estate and Small Business Loans

Section 850

This handbook section provides information for a savings institution seeking to increase its lending limitation to one borrower in connection with the origination of 1-4 family residential real estate and loans to small businesses. As set forth in 12 CFR § 560.93, the total loans and extensions of credit an institution may have outstanding at one time to one borrower may not exceed those limitations applicable to national banks. Such limitations are currently 15 percent of the institution's unimpaired capital and surplus, plus an additional amount of up to 10 percent of unimpaired capital and surplus, provided the amount of the loan that exceeds the 15 percent limit is secured by readily marketable security. On June 11, 2001, the Office of the Comptroller of the Currency (OCC) published a final regulation that establishes a three-year pilot program that expands the lending authority for "eligible" national banks. OCC intends the pilot program to address the competitive disparity that exists in states that have higher lending limits for state-chartered institutions than the federal limits available to federally-chartered institutions.

The regulation, which becomes effective on September 10, 2001, permits an "eligible" national bank to extend credit to one borrower for residential real estate loans and small business loans, in addition to its general lending limitations, in the lesser of the following amounts:

- \$10 million;
- 10 percent of its capital and surplus; or
- The percent of its capital and surplus, in excess of 15 percent, that a State bank is permitted to lend under the State lending limit that is available for residential real estate loans in the State where the main office of the national bank is located.

Any such loan or extension of credit for 1-4 family real estate must be secured by a perfected first lien security interest in such real estate in an amount that does not exceed 80 percent of the appraised value of the collateral at the time the loan or extension of credit is made. In no event may a bank lend more than \$10 million to one borrower under this authority. In addition, the total outstanding amount of all loans and extensions of credit to one borrower made under this authority and the general lending authority may not exceed 25 percent of capital and surplus. Furthermore, the total outstanding amount of loans and extensions of credit to all of its borrowers under this special lending limitation authority may not exceed 100 percent of capital and surplus.

An "eligible" national bank is defined as being well capitalized, with a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with the bank's most recent examination or subsequent review, with at least a rating of 2 for asset quality and for management. In order for a national bank to avail itself of this increased lending authority, it must file an application with, and receive the approval of, the OCC.

Since OTS regulated savings institutions are authorized to make loans to one borrower to the same extent as national banks, "eligible" savings institutions may apply to the OTS to make loans or extend credit under the same terms and conditions applicable to national banks. The savings institution's home office must be located in a state where the "state lending limit" for residential real estate loans,

Section: Increase in Lending Limitation to One Borrower for 1-4 Family Residential Real Estate and Small Business Loans

Section 850

small business loans, or unsecured loans is a higher percentage limit than the limit for federal thrifts. An eligible savings institution must meet all of the following criteria:

- Well capitalized as defined in 12 CFR Section 565.4(b)(1);
- A composite CAMELS rating of 1 or 2; and
- A component rating of 1 or 2 in asset quality and in management.

Approval of an application under this section will generally provide blanket approval to the institution to extend credit under this pilot program; however, OTS may determine that a filing is required for each borrower in circumstances when safety and soundness concerns exist.

FILING REQUIREMENTS

Delegated Authority

Generally, the Regional Office may process applications filed under this section under delegated authority. However, certain situations may cause a filing to be nondelegated, including applications that raise a significant issue of law or policy. See Delegation Section 040 of the handbook for further information on the delegation process.

Prefiling Meeting Requirements

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

Information and Form Requirements

The application should be filed with the appropriate Regional Office in accordance with 12 CFR Part 516. The applicant should file the original and two copies of the application with 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. For applications that are not delegated to the regional office, an additional three copies of the application should be filed with the Applications Filing Room at OTS-Washington. The application should be in letter form and include, at a minimum, the following information:

- A certification stating the savings institution is an “eligible” institution;
- Citations to relevant State lending laws or regulations;
- A copy of a written resolution executed by a majority of the savings institution’s board of directors approving the use of the higher limits, and confirming the terms and conditions for use of this lending authority;

Section: Increase in Lending Limitation to One Borrower for 1-4 Family Residential Real Estate and Small Business Loans

Section 850

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- A detailed description of how the board of directors will exercise its continuing responsibility to oversee the use of this lending authority; and
 - Information that will assist the OTS in evaluating the application under the decision factors outlined in the Decision Guidelines section of this handbook section.

Processing Procedures and Time frames

Within five business days of receipt of application, OTS must notify the applicant of the application's receipt. The application will be automatically approved upon the expiration of 30 calendar days after the filing date of the application, unless OTS takes one of the following actions before expiration of that time period:

- Requests, in writing, any additional information necessary to supplement the application;
- Notifies the applicant that the application raises a supervisory concern, raises a significant issue of law or policy, or requires significant additional information; or
- Denies the application.

If supplemental information is requested, the applicant has 30 calendar days to provide such information. The 30-day time frame review period will restart upon receipt of such information.

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.

Regulatory Criteria

The three-year pilot program will allow certain institutions with the highest supervisory ratings to lend up to the state limit - but no more than 25 percent of capital - to single borrowers for:

- Small business loans, defined as: (i) loans or extensions of credit "secured by nonfarm, nonresidential properties," or (ii) "commercial or industrial loans" as defined in the Thrift Bulletin; and

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- Residential real estate loans, defined as loans that do not exceed 80 percent of the collateral property's appraised value at the time the loan was made and which are secured by a perfected first-lien security interest in 1-4 family residential real estate.

To be able to avail itself of this authority, an institution must be:

- Well-capitalized;
- Have a CAMELS rating of "1" or "2" with at least "2" for the asset and management components; and
- Its home office must be located in a state where the "state lending limit" for residential real estate loans and small business loans a higher percentage limit than the limit for federal institution.

In exercising this authority, a savings institution is subject to the following:

- No institution may lend more than 25 percent of its capital to a single borrower, even in states with higher limits;
- Loans to a single borrower are limited to a maximum of \$10 million under the special lending limits; and
- An aggregate lending cap on all loans, to all borrowers, made under the special lending limits cannot equal more than 100 percent of the institution's capital and surplus.

Decision Guidelines

Increased lending by a savings institution to individual borrowers increases the risk exposure of an institution through a greater concentration of credit risk in any one borrower. The analysis will focus on whether the institution has the financial and managerial capacity to prudently conduct the increased lending activity. Approval of the application is based upon a conclusion that the increased lending does not compromise the safety and soundness of the institution. OTS should consider the following factors in reaching a conclusion:

- Was the institution cited for significant deficiencies in lending policies, documentation, or internal control deficiencies at the most recent examination?
- Is there a current business plan of the institution, and does it address this type of lending in loans of this size?
- To what level is the institution seeking to expand its loan volume in small business loans (as a percentage of total capital and total assets)?
- Will the institution maintain compliance with the limitations set forth in Section 5(c)(2)(A) of HOLA with respect to small business loans?

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- How will the increase in this type of lending affect the institution's Qualified Thrift Lender (QTL) status? (An exception will not be granted if the institution will fail its QTL test as a result of the increase in nonresidential real property lending.)
 - Is the experience of the officers/employees adequate to properly manage the proposed increase in the lending limits?
 - Do officers/employees possess the necessary expertise in the types of loans that will be subject to the increased lending authority?
 - Is the present level of delinquent loans considered significant, as indicated by the trend in delinquency and by comparison with other lenders?
 - Are current collection policies and practices considered adequate?
 - Does the institution have an effective internal asset classification system?
 - Will the increase in lending authority create a concern regarding concentration of risk or dilution of diversification in the balance sheet?
 - Does the board of directors have a plan to oversee the increase lending authority in a safe and sound manner?

Conditions

If the application is approved, the approval letter should include the following three standard conditions:

- The institution may continue to make loans and extensions of credit under this expanded authority through September 10, 2004;
- The OTS may rescind the institution's authority to exercise this expanded lending authority at any time; and
- In the event the institution ceases to qualify as an "eligible institution," the authority to exercise this expanded lending authority is rescinded on the date it no longer qualifies. No further loans or extensions of credit shall be made using this expanded authority without application to and approval of the OTS.

The OTS may condition its approval with nonstandard conditions if a particular situation warrants. Any conditions imposed by the Regional Office will be based on the individual circumstances surrounding the institution and the lending transaction itself. If such nonstandard conditions are utilized, the Regional Office's digest must include appropriate justification for imposing such condition. Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application.

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RECORDKEEPING REQUIREMENTS

All correspondence related to the processing of the 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 must 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 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, and provide 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 Office, including a review of the documentation maintained in the application file.

INFORMATION SOURCES

Statutes

12 U.S.C. § 1464(u) Limits on loans to one borrower.
12 U.S.C. § 84 Lending Limits

Regulations

12 CFR Part 516 Applications Processing Guidelines
12 CFR § 560.93 Lending limitations

Other

12 CFR 32 OCC, Lending Limits
TA 211 Thrift Activities Regulatory Handbook
TB 79 Lending Limits Pilot Program