

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 accountholders?
- 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