

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