

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.

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.

Section: Subordinated Debt and Mandatorily Redeemable Preferred Stock

Section 610

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;

-
- 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?

-
- 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

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- 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	