

The Office of Thrift Supervision (OTS) requires that applicants file a three-year business plan in connection with certain applications. Applications that require business plans include change of control, holding company, and permission to organize applications. OTS may also require business plans to be submitted with other applications on a case-by-case basis. The business plan should be an integral part of the management and oversight of the savings institution. It should be kept current and establish the institution's goals and objectives. It is a written summary of how an institution will organize its resources to meet its goals and how it will measure progress. General requirements for the business plan are contained in the Business Plan Guidelines Section 625 of the handbook.

In many cases, application business plans may contain assumptions that over time become unrealistic or irrelevant due to changes in the management philosophy, economic environment, interest rates, or some other variable. When OTS approves applications requiring a business plan, it generally imposes a standard condition that requires an institution to obtain prior approval from the Regional Director, or his/her designee, for any material changes in the business plan during the first three years. This section provides guidance for reviewing business plan modifications required to be submitted for approval.

FILING REQUIREMENTS

Delegated Authority

The decision to approve or deny the business plan modification application is delegated to the Regional Office, unless the proposal is found to contain an issue of law or policy that requires OTS Washington action. See Delegation Section 040 of the handbook for information on the delegation process.

Applications for significant business plan modifications may require submission to the OTS-Washington Examination Policy Department (EPD) for a concurrent review. In most cases, the concurrent review will not result in the non-delegation of the modification, but instead will provide OTS-Washington with the ability to provide input on the proposed business plan modification. This determination will be made on a case-by-case basis. The Regional Office should contact the appropriate EPD personnel upon receipt of all modification applications during the first 18 months of operations to determine if a concurrent review is warranted. Modification applications filed subsequent to the first 18 months of operations may be processed by the Regional Office without notification to EPD, unless said modification includes a unique or novel proposal.

Expedited and Standard Processing Procedures

This application is not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. Accordingly, the request for OTS approval to modify a business plan will be processed utilizing the procedures set forth in 12 C.F.R. §§ 516.210 – 516.290.

Prefiling Meeting Requirements

Pre-filing meetings are not required unless specifically requested by the Regional Office. It is the applicant's responsibility to contact the Regional Office in a reasonable period of time in advance of filing the application, to discuss whether a pre-filing meeting will be necessary. The purpose of the meeting is to permit OTS and the applicant to identify any legal or policy issues before submission of the application, and enable the applicant to address these issues early in the process. The Regional Office will work with the applicant to determine a schedule and forum for a meeting. The forum for the meeting will usually be in person at the Regional Office, although the Regional Office may consider meetings by telephone or video conferencing at its discretion on a case-by-case basis. OTS may decide not to accept a submitted application as officially filed until the pre-filing meeting requirements in 12 C.F.R. Part 516 are met, leading to significant delays in processing the application.

When a meeting is necessary, the applicant should contact the Regional Office to determine which individuals should be present at the meeting. These individuals will be expected to discuss the salient aspects of the proposed transaction. The institution must also describe the associated risks of the proposal, discuss the qualifications and experience to prudently oversee operations and demonstrate how the institution will continue to serve the credit and lending needs in its target market.

Information and Form Requirements

The institution may not be required to file a formal business plan modification application if it can sufficiently justify to the Regional Director or his/her designee that:

- The proposed deviation from the business plan is of a minor nature and will not significantly alter the financial projections submitted with the previously approved business plan;
- The deviation from the business plan is the result of sudden, drastic or unforeseen changes in the market conditions beyond the institution's control, and will not delay the institution more than six months from achieving the original projections in its plan;
- The deviation from the approved business plan results in a positive effect on the institution and represents an improvement over its initial plan without significantly invalidating the plan's assumptions; or
- The proposal includes only a limited expansion of activities, with no significant growth or increase in its risk profile, and the institution demonstrates that it has the expertise to manage such expanded activities.

The institution must contact the Regional Office well in advance of any planned deviations from the plan if it believes a formal application may not be required. It is at the discretion of the Regional Director, or his/her designee, whether to accept the institution's justification that the deviation from the approved business plan is not material or requires a formal application.

Applications for business plan modifications should be filed in letter format, accompanied by all relevant schedules, exhibits or other supporting documentation. All applications are to be filed with

the Regional Office. The institution is required to file the original and two copies of all application documentation, clearly identifying the type of filing.

The application must include, at the minimum, the following information:

- Name of the institution, OTS docket number, date the original business plan was submitted, and a brief description of the original application;
- Duration of the original plan;
- A discussion of the major areas of the business plan that will be modified;
- Background or executive summary of the major circumstances that led to the proposed modification of the plan, reasons for the modification and a brief explanation as to how the modification is likely to affect the major areas addressed in the original plan. The major areas should include, but not be limited to: (1) lending, leasing and investment activity; (2) deposit, savings and borrowing activity; (3) interest-rate-risk management; (4) operations; (5) Community Reinvestment Act; (6) projected statement of condition; and (7) projected statement of operations;
- If the modification involves engaging in a new activity or line of business, include information to support the business decision to commence such activity, the relevant market demand for the proposed service or product (also submit a copy or summary of any feasibility study that may have been conducted), the availability of appropriately trained staff or plans to staff the new activity, and justification for the additional expenses to be incurred;
- A copy of the revised business plan, as approved by the board of directors. The revised business plan should include all financial projections, with all assumptions clearly disclosed;
- A copy of the previously approved business plan; and
- A certified resolution of the board adopting the new business plan, which authorizes the filing of an application to modify the plan

NOTE: Applications to modify a business plan typically are not subject to payment of an application fee. However, application fees may be required on a case-by-case basis. Special purpose thrift institutions (e.g. trust, only, or credit card, only) that request full-service powers must file a more extensive application. See Expansion of Business Activities Guidelines Section 645 of the Handbook for further information.

Confidentiality

The applicant must submit in writing, concurrently with the submission of the application, any requests to keep specific portions of the application confidential. In accordance with the Freedom of Information Act, the request should discuss the justification for the requested treatment and should specifically demonstrate the harm (e.g., to competitive position, invasion of privacy) that would result from the public release of information. OTS will not treat as confidential the portion of an application describing the plan to meet the Community Reinvestment Act objectives.

Information for which confidential treatment is requested should be: (i) specifically identified in the public portion of the application by reference to the confidential section; (ii) separately bound; and (iii) labeled “confidential.” The applicant should follow these same procedures when filing supplemental information to the application. OTS will determine whether information designated as confidential must be made available to the public under the Freedom of Information Act. OTS will advise the applicant before it makes information designated as confidential available to the public.

REGULATORY GUIDELINES

Processing Procedures and Time frames

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

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

If new individuals are appointed to implement the new business plan, the Regional Office should conduct background investigations on individuals who were required to submit such information in connection with the application. At a minimum, individuals must submit an Interagency Biographical and Financial form, FBI Fingerprint Card, and a Regulatory Bulletin (RB) 20 Certification Form. RB-20 authorizes OTS to request supplemental information from applicants if the information is useful in completing a thorough background investigation. Applicants can request a waiver from filing portions of this information by providing justification stating why this information is unduly burdensome or unnecessary. Waiver requests will only be granted in limited circumstances and consistent with current OTS policy. The Regional Office will conduct a background investigation in compliance with RB-20. If appropriate, the review may also require OTS to contact other regulatory agencies to seek additional comments on the applicants. Individuals must be fingerprinted by an independent third party unrelated to the individual or companies affiliated with the individual on fingerprint cards bearing the OTS identification number. Results of all background checks should be addressed in the Regional Office's digest.

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

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

- Deem the application complete;

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- Request, in writing, any additional information necessary to deem the application complete; or
 - Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

Failure by OTS to act within 30 calendar days of receipt of the application for processing shall result in the filed application being deemed complete, commencing the period for review.

OTS must review requests for a waiver of an application requirement that certain information be supplied, in a timely manner. Unless OTS requests, in writing, additional information about the waiver request, or denies the waiver request, the waiver request shall be deemed granted.

If additional information is requested, a response must be submitted within 30 calendar days of the letter requesting such information. The applicant may, in writing, request a brief extension of the 30-calendar day period for responding to a request for additional information, prior to the expiration of the 30-calendar day time period. OTS, at its option, may grant the applicant a limited extension of time in writing. Failure to respond to a written request for additional information within 30 calendar days of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial or disapproval of the application.

After the timely filing of any additional information in response to an initial or subsequent request by OTS for additional information, OTS has 15 calendar days to review the additional information for completeness or appropriateness and take one of the following actions.

- Request, in writing, any additional information necessary to deem the application complete;
- Deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

The 15-day review period commences when the OTS receives a response that purports to respond to all questions in the information request. OTS may extend the 15-day review period for an additional 15 calendar days, if OTS requires the additional time to review the response. OTS will notify the applicant that it has extended the period before the end of the initial 15-day period.

Failure by OTS to act within 15 calendar days of receipt of the additional information shall result in the filed application being deemed complete, commencing the period for review.

Once the application has been deemed complete, there is a 60-calendar day review period during which time OTS will take into consideration all factors present in the application and render a decision thereon. If, upon expiration of the 60-day review period, assuming no extension has been granted, OTS has failed to act, the application is deemed approved automatically, and the applicant may thereafter consummate the transaction. If multiple applications are submitted in connection with one transaction, the applicable review period for all applications is the review period for the application with the longest review period, subject to statutory review periods.

During the review period, OTS may request additional information if the information is necessary to resolve or clarify the issues presented in the application. OTS may also notify the applicant that the application is incomplete and require that the applicant submit additional information to complete the application. The review period can be extended an additional 30 calendar days if OTS determines that additional time will be required to analyze the proposed transaction. In such cases, OTS must notify an applicant prior to the expiration of the period for review. In situations in which an application presents a significant issue of law or policy, OTS may extend the applicable period for review of such application beyond the time period for review. In these cases, written notice must be provided to an applicant no later than the expiration of the time period.

For purposes of calculating processing time frames, OTS does not include the day of the act or event, in determining the date the time period commences. In determining the conclusion of a time period, when the last day of the time period is a Saturday, Sunday, or a Federal holiday, the last day will become the next day that is not a Saturday, Sunday, or Federal holiday.

Under 12 C.F.R. § 516.290, if OTS has not acted on a pending application within two calendar years after the filing date, OTS may deem the application withdrawn unless OTS determines that the applicant is actively pursuing a final determination on the application. Applications that are subject to this withdrawal provision are those that have failed to timely take action such as filing required additional information, or OTS has suspended processing of an application based on circumstances that are, in whole or in part, within the applicant's control and have failed to take reasonable steps to resolve these circumstances.

Regulatory Criteria and Decision Guidelines

The Regional Director, or his/her designee, should conclude that the institution has adequate capital, expertise, management and controls to implement the proposed business plan modification and continue to operate the institution in a safe and sound manner. OTS should consider the following factors in analyzing the application to determine if the transaction satisfies the applicable criteria for approval:

- Does the business plan satisfy OTS business plan requirements?
- Are the revised business plan and its underlying assumptions reasonable and attainable?
- Does the institution have sufficient capital resources to fund the revised business plan?
- Do the new activities present unusually high elements of risk, such as a significant volume or concentration of sub-prime loans, speculative lending, or credit card activity?
- Will the institution comply with the lending and investment limitations of Section 5(c) of the HOLA and 12 C.F.R. Part 560, as well as the QTL test?
- Does the proposed business plan contemplate entering into new or novel lines of business with which the institution has had little or no experience?
- Does management have the expertise to engage in the additional operations and operate the institution in a safe and sound manner?

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- Has management established strong internal controls to ensure the overall adequacy and adherence to policies and procedures?
 - Does the revised business plan rely on the excessive use of brokered deposits?
 - How has management operated under its existing business plan? Is there a propensity on the part of management and/or the board of directors to forego long-term stability in favor of short-term profits?
 - Has the board of directors properly monitored and controlled management's adherence to previous business plan?
 - Will the institution continue to meet its obligations under the CRA?

Conditions

Business plan modification applications are not subject to standard approval conditions. OTS may condition its approval of the business plan modification to include nonstandard conditions. If such nonstandard conditions are utilized, the Regional Office's digest must include appropriate justification for imposing such condition.

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

RECORDKEEPING REQUIREMENTS

OTS is required to consolidate all correspondence related to the processing of the application into a file copy to be sent to a central file. Both the Regional Office and OTS-Washington will maintain a separate file copy for nondelegated filings. The file copy must include a copy of the original filing including all exhibits, all amendments, all internal and external correspondence between interested parties, all documentation associated with the review and analysis of the filing, and all decision, recommendation memorandum, and compliance material. The file copy must be organized and separated into public and confidential material, and clearly identified as such. The public and confidential sections must be arranged in chronological order.

MONITORING AND CONTROL

The Regional Office will monitor compliance with any conditions imposed in connection with an application's approval. The applicant must submit evidence of satisfaction of the conditions included in the approval order or letter to the Regional Office within the stated time frames.

OTS should notify the appropriate staff responsible for the supervision and examination of the institution regarding the action taken on an application. In addition, OTS should provide the appropriate staff with copies of the approval order or letter. If an application is approved, the first examination of the institution following the approval should include a review of compliance with all conditions of approval and any changes in operations as a result of the transaction.

A review of the application file should be made after all compliance material is received to ensure that the file is complete. Any deficiencies should be corrected before the file is sent to storage.

OTS-Washington may conduct a post audit review of the application in the Regional Office, including a review of the documentation maintained in the application file.

INFORMATION SOURCES

Statutes

12 USC § 1464	HOLA Section 5(b); Deposits and Related Powers
12 USC § 1464	HOLA Section 5(c); Loans and Investments
12 USC § 1467a	HOLA Section 10(m); Qualified Thrift Lender Test
12 USC § 1468	HOLA Section 11; Transactions with Affiliates
12 USC §§ 2901 et seq.	Community Reinvestment Act

Regulations

12 C.F.R. Part 516	Applications Processing Guidelines
12 C.F.R. Part 560	Lending and Investment Limitations
12 C.F.R. § 563.41	Loans and other transactions with affiliates and subsidiaries
12 C.F.R. § 563.42	Additional standards applicable to transactions with affiliates and subsidiaries
12 C.F.R. § 563.43	Restrictions on Loans and Other Investments Involving Affiliated Persons
12 C.F.R. Part 563e	Community Reinvestment Act
12 C.F.R. Part 565	Prompt Correct Action
12 C.F.R. Part 567	Capital

Other

Regulatory Bulletin 32-5 23A and 23B of the Federal Reserve Act	Qualified Thrift Lender Test Transactions with Affiliates
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Forms

OTS Business Plan Guidelines OTS Form 1623	Interagency Biographical and Financial Report
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