

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

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

## **FILING REQUIREMENTS**

### **Delegated Authority**

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

### **Expedited and Standard Processing Procedures**

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

#### *Expedited Processing*

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

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

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

#### *Standard Processing*

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

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

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

### **Prefiling Meeting Requirements**

Prefiling meetings are not required for this filing. However, applicants are encouraged to contact the Regional Office, particularly in the event the transaction involves unique or novel issues, to determine if a prefiling meeting will expedite the application review process.

### **Information and Form Requirements**

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

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

#### *Expedited Filing*

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

In addition, the filing should include:

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

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

### *Standard Filing*

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

In addition, the filing should include:

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

### **Confidentiality**

The applicant must submit in writing, concurrently with the submission of the notification or application, any requests to keep specific portions of the filing confidential. In accordance with the Freedom of Information Act, the request should discuss the justification for the requested treatment and should specifically demonstrate the harm (e.g., to competitive position, invasion of privacy) that would result from the public release of information.

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

## **REVIEW GUIDELINES**

### **Processing Procedures and Time Frames**

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

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

### **Applications under Standard Treatment**

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

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

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

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

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

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

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

The 15-day review period commences when OTS receives a response that purports to respond to all questions in the information request. OTS may extend the 15-day review period for an additional

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15 calendar days, if OTS requires the additional time to review the response. OTS will notify the applicant that it has extended the period before the end of the initial 15-day period.

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

Once the application has been deemed complete, there is a 60-calendar day review period at which time OTS will take into consideration all factors present in the application and render a decision thereon. If, upon expiration of the 60-day review period (assuming no extension has been granted) OTS has failed to act, the application is deemed approved automatically, and the applicant may thereafter consummate the transaction.

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

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

### **Notifications under Expedited Treatment**

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

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

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

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

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

### **Regulatory Criteria**

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

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

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

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

### **Decision Guidelines**

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

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

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

**Conditions**

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

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

For applications filed under this section, OTS will impose the two requirements listed above as standard conditions. In addition, OTS may condition the approval of an application with nonstandard conditions. Any conditions imposed will be based on the individual circumstances surrounding the institution and the transaction itself. In circumstances where nonstandard conditions are involved, all nonstandard conditions must be supported with justification in the recommendation memorandum related to approval of the application. Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application.

**RECORDKEEPING REQUIREMENTS**

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

**MONITORING AND CONTROL**

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

The Regional Office should notify the appropriate staff responsible for the supervision and examination of the institution regarding the action taken on an application. In addition, the Regional Office should provide the appropriate staff with copies of the approval order or letter. If an application is approved, the first examination of the institution following the approval should include

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a review of compliance with all conditions of approval and any changes in operations as a result of the transaction.

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

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

## **INFORMATION SOURCES**

### **Statutes**

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

### **Regulations**

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

### **OTS Bulletins**

Thrift Bulletin 48-17

### **OTS Forms**

Form 1585  
Form 1589