

Department of the Treasury

Regulatory Bulletin

RB 20a



Handbook: **Thrift Activities (TA);
Applications Processing (AP)**

Subjects: **Management Assessment; Fraud/Insider Abuse (TA)** **Section: 330**

**Change in Control; Rebuttals; De Novo/Permission
to Organize; Holding Company Acquisition;
Conversion to Federal Charter; Appointment of
Officers and Directors (AP)** **Sections: 310,
320, 430, 440,
510, 520, 720**

Investigation of Applicants Proposing to Directly or Indirectly Acquire Control of, or to Exercise Control or a Controlling Influence Over OTS Regulated Savings Institutions and Savings and Loan Holding Companies

Summary: This Bulletin sets forth the Office of Thrift Supervision (OTS) policy with respect to the review of the integrity and competency of persons or entities applying to acquire control of a savings institution or savings and loan holding company, organize a new savings institution, or to serve in a management position in which they would have the ability to influence the management, policies or business operations of a savings institution or a savings and loan holding company. Savings institutions and savings and loan holding companies are jointly referred to as "savings institutions" in this Bulletin. RB 20, dated November 20, 1989, is hereby rescinded with the issuance of this Bulletin.

For Further Information Contact:

The OTS Regional Office for the area in which the savings institution is located, or the Director, Examination Policy, Washington, DC, (202) 906-6000.

Regulatory Bulletin 20a

Introduction

The OTS is charged with the responsibility of ensuring that individuals and/or companies (collectively the Applicant) proposing to acquire, either directly or indirectly, control of, or to exercise influence over the operations of, OTS regulated savings institutions, will operate such institutions in a safe and sound manner. To fulfill this responsibility, OTS staff conducts appropriate background investigations of Applicants to ensure their integrity, experience and knowledge does not raise supervisory concerns with their involvement with a savings institution. Of particular importance during the review process is

Regulatory Bulletin 20a

the evaluation of the manner in which the Applicant has conducted its personal, professional and business affairs.

Policy Statement

The review of the Applicant should be conducted using a risk-based approach; however, it is expected that at least a minimum review will be performed on all Applicants. Limited background checks may be performed for persons or entities known to the OTS and/or considered to pose minimal risks to the institution. A more extensive background check should be conducted for persons or entities who have previously been involved with other financial institutions, have conflicting business interests or have conducted themselves or operated other businesses in a manner that raises concerns. At a minimum, all Applicants, and those parties identified in the attachment to this memorandum, are required to execute the attached Applicant Certification Form.

Review of Applicants

The depth of review of an Applicant will depend on several factors, including the following:

- The Applicant's degree of control or influence over the operations of the savings institution
- The Applicant's qualification and experience
- The nature and type of business interests operated by the Applicant
- The manner in which the Applicant has operated its subsidiaries
- Past affiliation with other depository institutions
- Loan or other relationships with the subject savings institution or other depository institutions
- The nature and disposition of any criminal charge or arrest
- Whether the Applicant has declared bankruptcy
- Ability to meet financial obligations
- Failure to disclose items that are subsequently brought to the attention of the Applicant, or to the OTS through its own investigation

Staff should begin background investigations promptly upon the filing of an application. There are many sources that may be used in the investigation process, including:

- Applicant certification
- Application forms
- CIIS search
- Credit bureau reports
- Discussions with examiners and field managers
- Discussions with independent auditors
- Discussions with supervisory personnel at other regulatory agencies

- FBI name and fingerprint check
- Federal or state examination reports of affiliated, or formerly affiliated financial institutions
- Federal or state examination reports of financial institutions in which an Applicant has served as a controlling party, officer or director
- Foreign Bank Regulators
- Independent audit reports
- Interagency Biographical and Financial Reports
- Interpol check
- Legal research services, e.g. WESTLAW, LEXIS/NEXIS
- National Association of Insurance Commissioners (NAIC) Data Base
- North American Securities Administration Association (NASAA)
- Resumes of officers, directors and controlling persons
- U.S. Securities and Exchange Commission (SEC)
- SEC filings
- State Insurance Commissioners
- State office of consumer affairs
- U.S. Department of Justice Criminal Division (Criminal Referral Database)
- United States Customs Service name check

Communication with Other Regulatory Agencies

When Applicants have been affiliated with other financial institutions or financial services companies, the OTS personnel considering the application should contact the regulators of the other institution(s) or companies to determine if they have experienced significant problems, and if the Applicant's involvement was the basis for any regulatory concerns. In such cases, additional research should be undertaken to determine what role the individual played in those problems. Factors that should be taken into consideration when the Applicant has been associated with other financial institutions or financial services companies that have experienced supervisory problems include:

- Type and nature of supervisory problems
- Applicant's position with the institution or company
- Length of time and timeframe the Applicant was associated with the institution or company
- Amount of loss, if any, to the insurance fund or the company as a result of the problem
- Type of enforcement action against the institution or individual; e.g. consent agreement, supervisory agreement, memorandum of understanding, civil money penalties

Regulatory Bulletin 20a

Evaluation of Adverse Information

All adverse information discovered during an investigation should be appropriately weighed in the decision process. In the event that information is disclosed on the certification form or discovered through the investigation process that may have an adverse effect on the Applicant's filing, staff should conduct further investigation and analysis regarding the disclosure item. Factors that should be taken into consideration when conducting the analysis include the following:

- Severity of the misconduct, including:
 - * Nature, materiality and/or willfulness of actions giving rise to misconduct
 - * Repetitive nature of misconduct
 - * Nature of enforcement action or sanction
 - * Amount of fine or loss
- Degree of common management between Applicant and company that experienced misconduct
- Time period in which conduct occurred
- Does a pattern or practice of conduct exist; is conduct systemic or isolated
- Is there a demonstrated track record that corrective action has resolved deficiencies
- How does the type and number of actions compare to industry practice
- Does action pertain to subsidiaries engaged in financial services
- Once notified of action, did Applicant take immediate and effective action to correct deficiencies

In the event that the misconduct relates to open and settled actions, such as governmental investigations, class action lawsuits, shareholder lawsuits, and other private litigation, staff should take into consideration the following factors:

- The seriousness of the alleged or settled action
- Type of investigation; i.e. civil or criminal
- Does the action underlying the litigation represent pattern or practice
- What is the potential impact to Applicant and savings institution

Waiver of Background Information Filings

The certification form should be executed without modification by the Applicant. In those cases where an Applicant states that circumstances prevent the execution of the form, staff should allow the Applicant the opportunity to explain why they cannot execute the form without modification. Staff should fully evaluate such circumstances and request further information if necessary. Except in those circumstances listed below, obtaining a certification form from all parties is a requirement that cannot be waived by regional staff. Any other waiver of the submission, or modification, of the certification form requires the concurrence of the Director, Examination Policy.

On certain occasions, it may be appropriate to waive the filing of all or a portion of the biographical and financial report, the fingerprint card and, in limited cases, the certification form. The OTS will use the following guidelines to consider a waiver of filing requirements based on the individual circumstances of a particular case. For applications processed by the Regional Office on a delegated basis, the Region has the authority to waive filing requirements, provided such waiver is consistent with these guidelines. Applicants should be aware that the waiver of any filing requirements will not affect the internal investigation staff deems appropriate to ensure the Applicant's background does not raise supervisory concerns.

A. Holding Company Reorganizations

The most common types of these transactions are the conversion of a mutual institution to the stock form of organization with a simultaneous acquisition by a newly formed holding company, or the reorganization of a stand-alone stock institution into a holding company structure. Generally, these types of transactions do not result in a change in directors or senior management, or the acquisition of control by any new party. Therefore, the RB 20a certification form, fingerprint card and financial and biographical report may be waived for all officers and directors of the resulting company and thrift if such individuals have been associated with the thrift for a sufficient amount of time (generally one year or more) to assess their effectiveness as management officials. For all other individuals, a fingerprint card and biographical and financial report, as well as the RB 20a certification form, is required.

B. Holding Company Application

The waiver of fingerprint cards and the biographical and financial reports for officers and directors of publicly held companies applying to control a savings institution may be granted if: (1) sufficient publicly available information regarding the individual and the operations of the company can be obtained from other sources, (2) such officers and directors will have a limited role in the operations of the savings institution, and (3) no financial commitment is being made on their part. Receipt of the RB 20a certification along with information pertaining to their background and employment history obtained from various reports filed with the SEC may suffice. If any of these individuals will also serve in a director or officer position at the savings institution, a waiver of these filings will not be granted.

C. Immaterial Increases in Ownership by Previously Approved Control Parties

The background informational filing requirements are dependent on several factors, including the amount of current ownership, the proposed increase in ownership, and the time that has elapsed since approval of the control parties. In those cases involving an immaterial increase in ownership by an approved control party, the biographical and financial report and the FBI fingerprint card may be waived. Immateriality should be determined given the circumstances of the transaction. For example, a waiver of the fingerprint card and biographical and financial report for a control party that already owns a majority of the stock outstanding would be more appropriate than waiving such material for a control party that is increasing ownership from a minority position to a majority position. The time that has elapsed since the initial review process was concluded, as well as the supervisory history of the institution during the control party's ownership, should also be taken into consideration in waiving the requirements. Generally, an increase in ownership of 10 percent or less of the outstanding stock of the institution or holding company may be considered immaterial. However, the effects of the increase in ownership,

Regulatory Bulletin 20a

such as moving from a minority ownership position to a majority ownership position, should be taken into consideration when determining materiality.

D. FDIC Insured Bank Conversions

For those individuals who have been reviewed and approved by the appropriate bank regulatory authority, a waiver of the biographical and financial report and fingerprint card may be granted. For those directors and officers who have been associated with the bank for a sufficient amount of time to assess their effectiveness, a waiver of these documents may also be granted. Generally, if they have been associated with the bank for the longer of one year or through one examination cycle, a determination may be made that a sufficient amount of time has elapsed. For all other individuals, all filing requirements must be fulfilled.

E. Individuals with Current Association with FDIC Insured Institutions

For individuals who are currently employed by an FDIC insured institution and are proposed as an officer or director of a savings institution, waiver of the financial and biographical reports and fingerprint cards may be granted if they have been associated with the financial institution for a sufficient amount of time to assess their effectiveness. Generally, if they have been associated with the bank for the longer of one year or through one examination cycle, a determination may be made that a sufficient amount of time has elapsed.

F. Members of Control Groups

It is the policy of OTS to conduct background investigations on all members of a control group, regardless of the amount of stock such member may own or control. Each member is required to join in the appropriate application, e.g. change in control or holding company application. In certain cases, it may be appropriate to waive the filing of various documents, depending on the amount of stock owned and controlled and the nature of the party owning or controlling such stock.

In those cases where an individual is part of a control group, but owns or controls a de minimis amount of stock, the OTS will generally require only the biographical section of the interagency biographical and financial report. If such individual is a minor child (under 18), all documents may be waived. In that case, voting control is typically granted to an adult relative, and an appropriate background investigation of that individual should be conducted. The OTS will generally consider owning or controlling less than 1 percent of the outstanding stock of the institution or holding company to be de minimis for purposes of applying this standard.

In those cases where an entity, including a family trust or foundation, owns or controls a de minimis amount of stock of the target institution, it is required that they join in the filing. Furthermore, such entities must register as savings and loan holding companies upon consummation of the transaction (unless the family trust is excluded as a savings and loan holding company under 12 C.F.R. Section 574). The same treatment that applies to individuals who own or control a de minimis amount of the institution's outstanding stock may be afforded to officers, directors and controlling persons of an entity that owns or controls a de minimis amount of the institution's stock. In the case of a family trust, it is not unusual for an individual who also directly owns stock to serve as trustee. In those cases, such individual must file all background information (i.e. interagency biographical and financial report, FBI

fingerprint cards, RB 20a certification form) unless his ability to control the institution, through individual ownership and serving as a trustee, falls within the de minimis test.

G. Companies Controlled by and Affiliates of Holding Companies

It is OTS policy to obtain an RB 20a certification form from all companies controlled by and affiliates of companies applying to acquire control of a savings institution. Companies have the option of requesting a waiver of the certification if they can demonstrate that the research necessary for its execution would be unduly burdensome. If all of the criteria listed below are met, the OTS may consider waiver of this form.

1. There is no common management between the company or affiliate and the Applicant.
2. The company's assets, capital and net income for the most recent fiscal year does not exceed any of the following:
 - a. 10 percent of the Applicant's consolidated assets;
 - b. 10 percent of the Applicant's consolidated capital; or
 - c. 10 percent of the Applicant's consolidated net income
3. The company or affiliate is not expected to interact with the savings institution in any manner.



—Scott M. Albinson
Managing Director, Supervision

Attachments

INSTRUCTIONS APPLICANT CERTIFICATION FORM

This form is intended to address not only those management integrity factors that may subject the Applicant to a presumptive disqualifier under 12 C.F.R. Section 574.7(g), but to obtain information that the OTS has determined to be useful in the analysis of your application. The OTS may disclose information pertaining to any individual associated with the Applicant or savings institution found through the background investigation to the Applicant during the application process.

Who is required to execute the form?

Each Applicant must execute and submit the attached certification form as part of their filing with the OTS. For purposes of this certification, the term “Applicant” means:

1. The individual(s) submitting the application.
2. The company(s) submitting the application.

In addition, the following individuals/entities are required to execute the form:

1. Controlling persons of the Applicant, including the trustee of a Trust.
2. Senior executive officers and directors of the Applicant.
3. Persons who otherwise directly or indirectly exercise a controlling influence over the management or policies of the Applicant.
4. Companies controlled by the Applicant.
5. Affiliates of the Applicant.
6. All proposed senior executive officers and directors of the savings institution.

This form should not be modified and may be executed individually or jointly. In the event a party is unable to execute the form without modification, a detailed explanation must be provided to the OTS, along with the modified form, that sets forth the reasons why such modifications are necessary. The OTS will consider your request for the execution of a modified form, and may request additional information during the processing of your application. In addition, the OTS may consider requests for waivers of certain background information as described in RB 20a.

In the event that circumstances change during the processing of your application that would cause any of the responses to the form to be incorrect, an amended form must be submitted immediately.

What definitions apply?

For purposes of the foregoing, the following definitions apply:

Controlling person: Any person who directly or indirectly, either alone or acting in concert as defined under 12 C.F.R. Section 574.2(c), with one or more persons or companies, or together with members of his or her immediate family, owns, controls, or holds power to vote, or holds proxies representing, ten percent or more of the voting shares or rights of the Applicant, or controls in any manner the election or appointment of a majority of the Applicant's board of directors.

Control: The Applicant is deemed to control a company if the Applicant directly or indirectly owns, controls or has the power to vote 25 percent or more of any class of voting securities of such company, or would be deemed to control the company under 12 C.F.R. Section 574.4.

Affiliate: Any company that controls the Applicant, any other company that is controlled by the company that controls the Applicant, and any company that is controlled by a controlling person of the Applicant.

Principal Shareholder: Any person owning ten percent or more of the stock of a company.

What time period does the certification form cover?

The time period in which the certification covers is as follows:

Individual Persons

The period of time beginning with the person's 18th birthday.

Applicants that are Companies

The longer of either:

1. The time period during which any party currently in control of the Applicant has been in control of the Applicant, or
2. The time period during which any current member of the Applicant's board of directors or any senior executive officers served in either of those capacities for the Applicant.

If the time period under either 1 or 2 is greater than ten years, Applicants that are companies need only provide a certification for a period starting from the date ten years immediately prior to the filing date of the application. A written description of how the time period covered by the certification form was determined should accompany the form.

Companies controlled by the Applicant and Affiliates

The longer of either:

1. The time period during which the Applicant has controlled the company or has been affiliated with the Applicant, or
2. The time period during which any current member of the company's or affiliate's board of directors or senior executive officers served in either of those capacities for such company or affiliate.

If the time period under either 1 or 2 is greater than ten years, the company or affiliate need only provide a certification for a period starting ten years immediately prior to the filing date of the application. A written description of how the time period covered by the certification form was determined should accompany the form.

What types of additional information may be required?

In the event that you answered yes to any of the questions, you must provide a detailed discussion of the facts and circumstances that led to such answer. For any matters that raise of presumptive disqualifier under 12 C.F.R. Section 574.7(g), also provide the Applicant's reasons for a rebuttal of the presumptive disqualifier, along with any supporting information or documents. Please be advised that a matter's origination as a result of routine or customary audits, inspections, and investigations is not grounds for a rebuttal.

With respect to a "yes" answer to question number 1, you must also provide the following:

1. A copy of the complaint, judgment, court orders, settlement documents, and any final disposition documents.
2. Evidence that the activity has ceased.
3. Description of the actions taken to prevent reoccurrence.
4. Documentation to evidence the nature and type of remedial actions.
5. Documentation to evidence effectiveness of remedial actions.

In the event that you answered "yes" to question number 6, you must provide the following:

1. The nature of the allegation.
2. The terms of the settlement, if any.
3. Whether the allegation is civil or criminal in nature.
4. Whether the allegation represents a pattern or practice.
5. A discussion of the maximum exposure, and its potential impact on the Applicant and the savings institution.

APPLICANT CERTIFICATION

PAPERWORK REDUCTION ACT STATEMENT

The Office of Thrift Supervision will use this information to evaluate the application against relevant statutory criteria. Collection is mandatory. Public reporting burden for this collection of information is estimated to average twenty minutes per response, including the time for reviewing instructions and completing and reviewing the collection of information. **If a valid OMB Control Number does not appear on this form, you are not required to complete this form.** Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Thrift Supervision, Policy, 1700 G Street, N.W., Washington, D.C. 20552; and to the Office of Management and Budget, Paperwork Reduction Project (1550-0047), Washington, D.C. 20503.

Please refer to RB 20a and the instructions to this certification prior to completing.

Name of Applicant:
Name of Individual or Entity Submitting Form:
<i>(herein referred to as "you")</i>
Time Period Covered by Certification:
Submitted in Connection with Application Filed For:

	Yes	No
1. Have you, or any company in which you are, or were, an officer, director, or principal shareholder, or any partnership in which you are, or were, a partner, been the subject of any criminal, civil or administrative judgments, consents, undertakings or orders, or any past or ongoing indictments, investigations, examinations, or administrative proceedings, issued by any federal or state court, any department, agency, or commission of the U.S. Government, any state or municipality, any self regulatory trade or professional organization, or any foreign government or governmental entity, which involve:		

	Yes	No
A. Commission of a felony, fraud, moral turpitude, dishonesty, breach of trust or fiduciary duty, organized crime or racketeering?	<input type="checkbox"/>	<input type="checkbox"/>
B. Violation of securities or commodities laws or regulations?	<input type="checkbox"/>	<input type="checkbox"/>
C. Violation of insurance laws or regulations which involve fraud or a penalty of \$50,000 (per violation) or more?	<input type="checkbox"/>	<input type="checkbox"/>
D. Violation of depository institution laws or regulations?	<input type="checkbox"/>	<input type="checkbox"/>
E. Violation of housing authority laws or regulations?	<input type="checkbox"/>	<input type="checkbox"/>
F. Violation of the rules, regulations, codes of conduct or ethics of a self-regulatory trade or professional organization?	<input type="checkbox"/>	<input type="checkbox"/>
G. Adjudication of bankruptcy or insolvency or appointment of a receiver, conservator, trustee, referee, or guardian?	<input type="checkbox"/>	<input type="checkbox"/>
2. If you are an insurance company, has any state insurance department suspended or revoked, or initiated any action to suspend or revoke, your Certificate of Authority to do business?	<input type="checkbox"/>	<input type="checkbox"/>
3. Have you, or any company in which you are, or were, an officer, director, or principal shareholder, or any partnership in which you are, or were, a partner, ever been denied, or withdrawn after receipt of formal or informal notice of a recommendation for denial, any of the following:		
A. An application relating to the organization of, or obtaining insurance of accounts for, a bank, savings bank, or savings and loan association, trust company, credit union or industrial bank?	<input type="checkbox"/>	<input type="checkbox"/>
B. An application to acquire any of the foregoing under the Savings and Loan Holding Company Act or the Bank Holding Company Act?	<input type="checkbox"/>	<input type="checkbox"/>
C. A notice relating to a change in control of any of the foregoing under the Change in Savings and Loan Control Act or the Change in Bank Control Act?	<input type="checkbox"/>	<input type="checkbox"/>
D. An application to acquire a foreign bank or parent thereof?	<input type="checkbox"/>	<input type="checkbox"/>
4. Have you been associated as a senior executive officer, director, partner in a partnership or principal shareholder, with any of the following:		
A. An insured depository institution or financial institution holding company that has been subject to any enforcement action?	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No
B. An insured depository institution that: (1) failed, (2) received financial assistance from a financial institution depository agency (e.g. FDIC, Resolution Trust Corporation, or former Federal Savings and Loan Insurance Corporation), or (3) was a merger partner with an institution that received financial assistance from a financial institution depository agency?	<input type="checkbox"/>	<input type="checkbox"/>
C. A business or enterprise which has filed for bankruptcy or forfeited property?	<input type="checkbox"/>	<input type="checkbox"/>
5. Do you own any equity securities of an insured institution or holding company thereof, other than the institution or company that is the subject of the application?	<input type="checkbox"/>	<input type="checkbox"/>
6. Are/were you a defendant in any pending or settled class action lawsuit that alleges, or alleged, fraud, dishonesty, misrepresentation, or breach of trust or fiduciary duty?	<input type="checkbox"/>	<input type="checkbox"/>

Please check one or more of the following. If the form is submitted on behalf of other parties, provide an attachment that identifies all parties in which it applies.

- As Individual - I am executing this form in my individual capacity because I am a controlling person, senior executive officer or director of the Applicant.
- As Applicant - I am executing this form on behalf of the Applicant. **Individual** forms are being provided for all companies the Applicant controls, and all of the Applicant's subsidiaries.
- As Applicant - I am executing this form **jointly** on behalf of the Applicant, all of the companies it controls, and all affiliates, which are listed as an attachment to the form.

In general, requests for confidential treatment of this form, or any information submitted in response to this form, must be submitted in writing with its submission and must discuss the justification for the requested treatment. The Applicant's reasons for requesting confidentiality should specifically demonstrate the harm (e.g., to its competitive position, invasion of privacy) that would result from public release of information (5 U.S.C. Section 552 and 12 C.F.R. Section 505). Information for which confidential treatment is requested should be separately bound and labeled "Confidential." The Applicant should follow the same procedure regarding a request for confidential treatment with regard to the subsequent filing of supplemental information to the form.

I hereby certify that the information contained in this certification is true, complete, and correct to the best of my knowledge and belief. I acknowledge that any misrepresentation or omission of a material fact with respect to the foregoing constitutes fraud in the inducement, or making false statements in violation of 12 C.F.R. Section 563.180(b), may subject me to legal sanctions provided by 18 U.S.C. Sections 1001 and 1007.

Signed this _____ day of _____

Name of Company, if applicable (print or type name)
Name and Title (print or type)

Signature