

This handbook section provides guidance on notices filed by individuals seeking to acquire control of a savings institution. The Office of Thrift Supervision (OTS) has the authority to prevent an individual of questionable integrity or financial condition from acquiring control of a savings institution. Furthermore, OTS has the authority to deny a proposed acquisition of control if it would lessen competition in the banking industry or have an adverse effect on the Savings Association Insurance Fund (SAIF) or Bank Insurance Fund (BIF).

12 C.F.R. § 574.4 includes a list of the circumstances under which an individual is deemed to have acquired control of a savings institution. Control of an institution is divided into two categories: rebuttable control and conclusive control. Rebuttable control occurs, for example, when, at a minimum, ten percent of any class of voting stock, or 25 percent of any class of stock, is acquired, and a control factor exists (e.g., acquiror is one of the two largest holders of any class of stock). A more detailed discussion of rebuttable control is provided in Section 320, Rebuttals.

An individual has acquired conclusive control of a savings institution if the individual, or a group of individuals acting in concert, acquires more than 25 percent of a class of the institution's voting stock or controls the election of a majority of the directors of the institution. If an individual proposes to acquire conclusive control, or is in a rebuttable position and elects not to rebut control, the individual must file a notice of change in control (notice). Except for special circumstances set forth in 12 C.F.R. § 574.3(d), OTS must issue a no-objection letter prior to the acquisition of control.

Note: The definition of a savings institution, as set forth in 12 C.F.R. § 574.2(p), includes a savings and loan holding company.

## **FILING REQUIREMENTS**

### **Delegated Authority**

Generally, notices filed under this section may be processed by the Regional Office under delegated authority. Notices that are not delegated to the Regional Office are those involving: a significant issue of law or policy; filings under 12 C.F.R. § 563b.3(i); approval of requested waivers of statutes, regulations, OTS policy or significant notice requirements; adverse comments and formal meetings; hostile or contested acquisitions, opposition proxy solicitations or other potential acquisitions where there is a competing acquiror; person(s) subject to a pending notice of charges or formal investigation; or raise significant competitive factors. See Delegation Section 040 of the handbook for information on the delegation process

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

This notice is not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. Accordingly, the notice for change in control will be processed utilizing the procedures set forth in 12 C.F.R. § 574.6.

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### Prefiling Meeting Requirements

It is the applicant's responsibility to contact the Regional Office in a reasonable time period in advance of filing the notice, to discuss whether a prefiling meeting will be required. Since this notice is identified as a type that may necessitate a prefiling meeting, OTS anticipates that a meeting will be held in certain cases. The purpose of the meeting is to permit OTS and the applicant to identify any legal or policy issues before submission of the notice, 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 notice until the prefiling meeting requirements in 12 C.F.R. Part 516 are met, leading to significant delays in processing the notice.

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. Depending upon the circumstances of the proposed transaction, the Regional Office may require that information be provided prior to the meeting in a time frame in advance of the meeting acceptable to the Regional Office. If the Regional Office determines that the proposed transaction warrants the submission of a draft business plan, the plan at a minimum 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 transaction on the institution;
- Identify all or a majority of the proposed director and key senior executive officers with documentation to support that these individuals have the required qualifications and experience to prudently oversee operations; and,
- Demonstrate how the institution will serve the credit and lending needs in its target market.

### Information and Form Requirements

Notices must receive approval prior to the acquisition of control except for certain transactions.

For the following transactions, the acquiror must file the appropriate notice within 90 days of acquisition of control. The acquiror must not take any action to direct management or policies of the institution or which are designed to effect a change in the business plan of the institution other than voting on matters that may be presented to stockholders by management, until OTS has acted favorably on the notice.

- Control acquired through *bona fide* gift;
- Control acquired through liquidation of a loan contracted in good faith where the loan was not made in the ordinary course of business of the lender;

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- Control acquired through a percentage increase in ownership following a stock split or redemption that was not *pro rata*; or
  - Control determined pursuant to 12 C.F.R. § 547(a) or (b) as a result of actions by third parties that are not within the control of the acquiror.

Control acquired through testate or intestate succession is also exempt from the filing requirements of 12 C.F.R. Part 574, provided that the acquiror transmits written notification of the acquisition to OTS within 60 days of the acquisition and provides such additional information as OTS may specifically request.

If delegated, all notices and the applicable filing fee 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 notice. In addition, the applicant should provide three additional copies. These copies should be distributed by the Regional Office to the Office of the Comptroller of the Currency, Federal Reserve Board and Federal Deposit Insurance Corporation. If the applicant wishes to acquire a state-chartered institution, one additional copy should also be provided. 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.

Each notice submitted to OTS for action should include the following:

- Interagency Notice of Change in Control;
- Interagency Biographical and Financial Report, including financial statements for an acquiror's proprietary interests;
- Attachment A to Regulatory Bulletin 20;
- FBI fingerprint cards completed by the acquiror and processing fee made payable to OTS and submitted to the Regional Office;
- If funds are to be borrowed to acquire the stock, copies of any loan agreement or commitment letter;
- Three-year business plan;
- Proxy material; and
- Copies of any filings made with other regulatory agencies.

### **Confidentiality**

The applicant must submit in writing, concurrently with the submission of the notice, any requests to keep specific portions of the notice 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

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public release of information. OTS will not treat as confidential the portion of a notice 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 notice 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 notice. 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 and Comment Procedures*

The applicant shall publish notice of its change in control filing no earlier than three days before and no later than three days after filing the notice, in accordance with the requirements of 12 C.F.R. § 574.6(d). Notice shall 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 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). See Publication Forms Section 020 of the handbook for examples of publication language.

Any person may submit a written comment supporting or opposing the application within 20 days after the filing date of the application. Up to an additional 20 days to submit comments may be obtained upon a showing of good cause, if a written request is received by OTS within the initial 20-day period. Comments received after the comment period shall not be part of the record and need not be considered by OTS. 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 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.

#### *Waiver of Certified Financial Statements*

The Regional Director, or his/her designee, may grant, or deny, a request for the waiver of certified financial statements for an acquiror's proprietary interests, provided that the acquiror files the following information:

- A statement supporting the acquiror's contention that production of certified financial statements is unduly burdensome.

- A table setting forth: (1) the acquiror's percent of interest and amount of investment in the savings institution; and (2) the amount of investment as a percentage of the acquiror's total assets, net worth, and gross income.

### *Background Checks*

OTS policy requires background investigations of all organizers, 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. With respect to any changes in these individuals as a result of this application, said individuals must submit, at a minimum, 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.

### *Safe Harbor Filings and Certifications of Ownership*

An acquiror, including any person acting in concert, who owns less than 25 percent of the institution's voting stock, has no control factors present (see discussion in Section 320), and has no plans to solicit proxies from other stockholders, may make a "safe harbor" filing with OTS. In order to qualify for the safe harbor, an acquiror must submit a certification in the form set forth at 12 C.F.R.

§ 574.4(f)(1). OTS will accept a safe harbor filing when the certification is properly filed. Acquirors who claim safe harbor status may vote their stock freely and dissent with respect to their institution stock. It should be noted that the filing is not mandatory, but is available to investors who seek certainty that their investment complies with OTS control regulations.

Upon the acquisition of ten percent or more of any class of stock of an institution under circumstances that do not give rise to a conclusive or rebuttable control determination, an acquiror must file a certification of ownership with OTS in accordance with 12 C.F.R. § 574.5(a). Such certification is required based upon beneficial ownership of the stock. The certification identifies the savings institution and states that: the acquiror owns ten percent or more of any class of stock of the institution; the acquiror is not currently subject to a rebuttable or conclusive determination of control; and the acquiror will file a rebuttal or notice prior to taking any action that would give rise to a determination of control. An acquiror is not required to file a certification if the acquiror has already obtained OTS approval to acquire control or is in the process of obtaining such approval. The filing of a certification of ownership is not treated as a notice subject to any statutory or regulatory time frames for review. The certification provides OTS with notice of acquirors who have amassed substantial amounts of stock of a savings institution and, thus, are capable of acquiring control of the institution.

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*Interim Institutions*

If an individual proposes to form an interim Federal savings institution, as defined in 12 C.F.R. § 541.18, to facilitate the acquisition of control, the transaction will be subject to the Bank Merger Act rather than the Change in Bank Control Act or 12 C.F.R. Part 574. The individual must file an application to establish and merge an interim institution.

The approval of an interim application is conditioned upon OTS approval of an application to merge the interim institution into an existing insured savings institution or upon OTS approval of a related transaction. In evaluating the application, OTS considers the following factors:

- The purpose for which the institution will be organized;
- The form of any proposed transaction involving the organizing institution;
- The effect of the transaction on existing institutions involved in the transactions; and,
- The factors specified in 12 C.F.R. § 543.2(g)(1) to the extent relevant.

*Prohibition on Offers to Acquire and Acquisitions of Stock for Three Years Following Conversion*

If the subject institution converted from the mutual to stock form of ownership within the previous three years, no person may, directly or indirectly, acquire or offer to acquire the beneficial ownership of more than ten percent of any class of the institution's equity securities without OTS prior written approval. If a person violates this prohibition, the institution may not permit the person to vote shares in excess of ten percent, and may not count these shares in any shareholder vote.

Certain exceptions to the regulations governing offers to acquire stock within three years of conversion are set forth at 12 C.F.R. § 563b.3(i). OTS may deny an notice filed under 12 C.F.R. § 563b.3(i) if the proposed acquisition:

- Is contrary to the purposes of 12 C.F.R. Part 563b;
- Is manipulative or deceptive;
- Subverts the fairness of the conversion;
- Is likely to injure the institution;
- Is inconsistent with the institution's plan to meet the credit and lending needs of its proposed market area;
- Otherwise violates law or regulation; or
- Does not prudently deploy the institution's conversion proceeds.

The primary purposes of this rule are to provide a reasonable period of time for the institution to prudently deploy the new capital according to its business plan, for it to acclimate to operating as a

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public company, and to do both without the distraction of considering takeover proposals. OTS does not believe acquisitions in the first three years following conversion are in the best interests of newly converted institutions, the communities the institutions serve, or the shareholders. In addition, OTS believes that the approval of friendly acquisitions may be inconsistent with the purposes of the conversion rules. As such, the standards for allowing such acquisitions are high and should not be approved unless there are significant risks to the institution operating on a stand-alone basis.

### *Actions Concerning Violations*

OTS staff should review for violations of the Change in Control regulations on a case-by-case basis. During the review period, the shareholder(s) under review is prohibited from (i) receiving dividends from the subject institution and (ii) voting on his/her stock, other than proportionately with other stockholders.

OTS may take one or more of the following actions concerning a violation of the change in control regulations:

- Require the shareholder(s) under review to file a notice with the appropriate OTS office. (If OTS issues a no-objection letter, the violation will be remedied as of the date of the no-objection letter.)
- Require the shareholder to divest his/her stock holdings below a control threshold.
- Impose one or more enforcement actions against the shareholder(s).

The Reviewing Analyst should consult with the appropriate Regional Counsel to determine what action should be taken.

## **REVIEW GUIDELINES**

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

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

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

Immediately upon receiving a notice, Regional staff should submit copies of the notice to the other appropriate Federal regulators for comments and allow 30 days for the regulators to review and provide comments. For notices relating to the acquisition of control of a state-chartered institution, the Regional staff should forward a copy of the notice and allow 30 days for the state authority to

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review and provide comments. OTS should consider the views and recommendations of federal and state agencies in determining whether to disapprove a proposed acquisition of control.

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

- Deem the notice complete;
- Request, in writing, any additional information necessary to deem the notice complete; or
- Decline to further process the notice 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 notice for processing shall result in the filed notice being deemed complete, commencing the period for review.

OTS must timely review requests for a waiver of a notice 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 notice or may be treated as grounds for denial or disapproval of the notice.

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 notice complete;
- Deem the notice complete; or
- Decline to further process the notice 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 notice being deemed complete, commencing the period for review.

For transactions involving a contribution of assets (companies, loans, receivables, etc.) to the institution, OTS may elect to conduct an eligibility examination during the review process. OTS will



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not deem a notice 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 notice has been deemed complete, there is a 60-day review period during which time OTS will take into consideration all factors present in the notice 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 notice is deemed accepted 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 notice. OTS may also notify the applicant that the notice is incomplete and require that the applicant to submit additional information to complete the notice. 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.

Pursuant to 12 U.S.C. § 1817(j)(1) and 12 C.F.R. § 574.6(c)(3)(ii), the review period may be further extended not to exceed two additional times for not more than 45 days each time if:

- OTS determines that any acquiring party has not furnished all the information required by 12 C.F.R. Part 574;
- In OTS's judgment, any material information submitted is substantially inaccurate;
- OTS has been unable to complete an investigation of each acquiror because of any delay caused by, or the inadequate cooperation of, such acquiror; or
- OTS determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31 of the United States Code.

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 notice within two calendar years after the filing date, OTS may deem the notice withdrawn unless OTS determines that the applicant is actively pursuing a final determination on the notice. Notices 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 notice 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.

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### Regulatory Criteria

Authority to act on a notice is granted in the Change in Bank Control Act (12 U.S.C. § 1817(j)). The regulations under this statute are found in 12 C.F.R. Part 574. Specifically, 12 C.F.R. § 574.7(d) sets forth the grounds upon which a notice may be disapproved. These grounds include situations where:

- The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the banking business in any part of the United States.
- The effect of the proposed acquisition of control, in any section of the country, may be to substantially lessen competition, to create a monopoly, or in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.
- The financial condition of the acquiring person might jeopardize the financial stability of the institution or prejudice the interests of the depositors of the institution.
- The competence, experience, or integrity of the acquiring person, or any of the proposed management personnel, indicates that it would not be in the interests of the depositors of the institution, OTS, or the public to permit such person to control the institution.
- The acquiring person fails or refuses to furnish information requested by OTS.
- OTS determines that the proposed acquisition would have an adverse effect on the SAIF or BIF.

Note: If it appears that grounds for disapproval of a notice are present, OTS-Washington should be consulted as soon as possible to determine whether there is an adequate basis for disapproval.

12 C.F.R. § 574.7(g) sets forth a list of presumptive disqualifiers that, if applicable, could result in the disapproval of a potential acquiror's notice. The purpose of these regulatory provisions is to put potential acquirors on notice as to the grounds upon which a notice may be disapproved, unless adequately refuted. The following factors give rise to a rebuttable presumptive disqualifier:

- During the ten year period immediately preceding filing of the notice, criminal, civil, or administrative judgments, consents, or orders, and any indictments, formal investigations, examinations, or civil or administrative proceedings (excluding routine or customary audits, inspections and investigations) that terminated in any agreements, undertakings, consents or orders, issued against, entered into by, or involving the acquiror or affiliates of the acquiror by any Federal or state court, any department, agency, or commission of the U.S. Government, any state or municipality, any Federal Home Loan Bank, any self-regulatory trade or professional organization, or any foreign government or governmental entity, that involve:
  - \* Fraud, moral turpitude, dishonesty, breach of trust or fiduciary duties, organized crime, or racketeering;

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- \* Violation of securities or commodities laws or regulations;
  - \* Violation of depository institution laws or regulations;
  - \* Violation of housing authority laws or regulations; or
  - \* Violation of the rules, regulations, codes of conduct or ethics of self-regulatory trade, or professional organizations.
- Denial, or withdrawal after receipt of formal or informal notice of an intent to deny, by the acquiror or affiliates of the acquiror, of:
    - \* Any application relating to the organization of a financial institution;
    - \* An application to acquire any financial institution or holding company thereof under the Savings and Loan Holding Company Act or the Bank Holding Company Act;
    - \* 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; or
    - \* An application or notice under a state holding company or change in control statute.
  - The acquiror or affiliate(s) of the acquiror were placed in receivership or conservatorship during the preceding ten years, or any management official of the acquiror was a management official or director (other than an official or director serving at the request of OTS, the Federal Deposit Insurance Corporation, the former Resolution Trust Corporation, or the former Federal Savings and Loan Insurance Corporation) or controlling shareholder of a company or savings institution that was placed into receivership, conservatorship, or a management consignment program, or was liquidated during his or her tenure or control or within two years thereafter.
  - Felony conviction of the acquiror, an affiliate of the acquiror, or a management official of the acquiror or its affiliate.
  - Knowingly making any written or oral statement to OTS or any predecessor agency (or its delegate) in connection with an notice, notice or other filing under 12 C.F.R. Part 574 that is false or misleading with respect to a material fact or omits a material fact with respect to information furnished or requested in connection with such an application, notice, or other filing.
  - Acquisition and retention of stock in the savings institution, at the time of submission of an application or notice, in violation of 12 C.F.R. § 574.3 or its predecessor sections.
  - Liability for amounts of debt that, in the opinion of OTS, create excessive risks of default and pressure on the savings institution to be acquired.
  - Acquisition of control would result in a significant change in the business strategy of the institution that would implement activities inconsistent with economical home financing.

The presence of any of these considerations may constitute grounds for disapproval of a proposed acquisition if not adequately addressed by the acquiror. In order to rebut a presumptive disqualifier on integrity grounds, an acquiror should submit materials proving that the conduct in question has

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ceased, has become irrelevant, or otherwise should not warrant a disapproval decision. With regard to financial factors, the submission of an acceptable business plan or the acquiror's commitment to raise additional capital (for the acquiror) may be sufficient to rebut a presumptive disqualifier.

### Decision Guidelines

The statutory and regulatory requirements are designed to ensure that the individuals seeking to acquire control of an institution will provide for the continued viability and safe and sound operation of the institution. The analysis should conclude that the proposed acquirors have the financial, ethical and managerial wherewithal to operate the institution in a safe and sound manner and expertise to implement the business plan. In addition, OTS must also conclude that the proposed transaction is in compliance with applicable rules and regulations. If, based upon the review, OTS has determined that the acquirors will adversely affect the institution; a denial recommendation may be the appropriate 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:
  - \* Interagency Notice of Change in Control;
  - \* Interagency Biographical and Financial Report, including financial statements for an acquiror's proprietary interests;
  - \* Attachment A to Regulatory Bulletin 20;
  - \* FBI fingerprint cards completed by the acquiror and processing fee made payable to OTS and submitted to the Regional office;
  - \* If funds are to be borrowed to acquire the stock, copies of any loan agreement or commitment letter;
  - \* Three-year business plan;
  - \* Proxy material; and
  - \* Copies of any filings made with other regulatory agencies.
- Is a notice the appropriate filing? OTS should determine whether the acquisition involves an individual or group of individuals acting in concert constituting a company as defined in 12 C.F.R. § 574.2(f). If a company is the acquiror, a holding company notice is the appropriate filing (see Holding Company Acquisitions Section 510). If an individual is a director or officer of a savings and loan holding company, or controls more than 25 percent of the voting shares of such holding company, and proposes to acquire control of an institution that is not a subsidiary of the savings and loan holding company, an H-(e)2 application is required.
- Have all appropriate parties joined in the filing? OTS should determine whether the person(s) filing the notice is acting in concert with another person(s) who has not filed. In addition, OTS should determine whether any trusts or voting agreements would qualify as

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savings and loan holding companies pursuant to 12 C.F.R. § 574.2(q) or 574.2(r), respectively.

- Did the certification or background check (FBI, LEXIS/NEXIS and/or Westlaw, and CIIS) of the individual(s) indicate that they have been the subject of any enforcement, criminal or questionable actions?
- Has the acquiror served as a management official or been a controlling person of another savings institution, savings and loan holding company, commercial bank, or bank holding company? If so, have the appropriate regulators been contacted for comment on the acquiror?
- Does the Interagency notice of Change in Control or information disclosed in the background checks raise a presumptive disqualifier as to the acquiror's integrity, competence, or financial condition? If so, has the acquiror provided information to OTS to successfully rebut the disqualifier?
- Does the acquiror own or control a business that engages in an activity that the target institution or its service corporation may engage, such as real estate development, mortgage lending, or insurance sales? If so, the acquiror should be required to identify those specific areas where any conflicts exist and should provide OTS with a set of specific policies and procedures to avoid potential conflicts.
- If the target institution was recently converted, has the acquiror filed and received approval of an application under 12 C.F.R. § 563b.3(i) prior to filing the notice?
- Has the acquiror indicated the method by which the institution's stock will be acquired (i.e., open market purchase, tender offer, etc.)? The specifics of the transaction should be detailed prior to OTS deeming the notice sufficient.
- How will the acquiror finance the acquisition? If the funds are to be borrowed, OTS should determine whether the acquiror could service the debt without placing undue pressure on the institution to pay dividends.
- If the acquiror will borrow funds for the stock purchase, specific information concerning the loan should be provided, including a copy of the loan agreement or commitment letter.
- Does the acquiror intend to radically alter the business strategy or corporate structure of the institution? If so, do the changes raise any supervisory concerns or are inconsistent with economical home financing?
- Does the acquiror propose to make changes in the management or board of the institution? If so, the identity of the new management officials should be provided in the notice filing.
- Does the notice adequately address all statutory and regulatory grounds for disapproval of an acquisition of control?

### Conditions

If OTS does not deny a notice, it will issue a nonobjection letter. Letters of nonobjection generally should state that (i) the acquisition must be consummated within one year of the date of the letter, (ii)

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that acquisition must be in accordance with the terms and representations made in the notice, and (iii) that there must be no material change in circumstances prior to the acquisition.

Letters of nonobjection should specify the nature of the proposed transaction. Unless notices specifically indicate otherwise, it is assumed that the acquiror will acquire 100 percent of an institution's voting stock. If the acquisition is for less than 100 percent of the institution's voting stock, the letter should state that the no-objection applies only to the percentage (or number, as appropriate) of shares proposed to be acquired.

OTS may condition its approval of the change in control notice 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 notices approved with nonstandard conditions of approval.

## **RECORDKEEPING REQUIREMENTS**

OTS is required to consolidate all correspondence related to the processing of the notice or notice 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 notice'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 notice. In addition, OTS should provide the appropriate staff with copies of the approval order or letter. If an notice 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 notice 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 notice in the Regional Office, including a review of the documentation maintained in the notice file.

**INFORMATION SOURCES****Statutes**

12 U.S.C. § 1817(j)	Change in Bank Control Act
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**Regulations**

12 C.F.R. Part 516	Applications Processing Guidelines
12 C.F.R. § 563.183	Reports of Change in CEO or Director
12 C.F.R. § 563b.3(i)	Acquisition of the Securities of Converting and Converted Savings Associations
12 C.F.R. Part 574	Acquisition of Control of Savings Institutions

**OTS Bulletins**

Regulatory Bulletin 20	Proper Investigation of Applicants and Increased Communications Between OTS and Other Financial Institution Regulatory Agencies
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**Forms**

OTS Form 1163	Interagency Notice of Change in Control
OTS Form 1623	Interagency Biographical and Financial Report

This handbook section provides guidance on submissions filed under 12 C.F.R. § 574.4(e), to permit a passive investor, who does not control or influence the management and operations of a savings institution, to invest in an institution without having to undergo the filing procedures and intense scrutiny of an acquisition of control filing. The regulation also permits an investor to rebut the presumption of concerted action with certain parties presumed to be acting in concert. Rebuttable presumptions of concerted action are defined in 12 C.F.R. § 574.4(d). A rebuttal filing must be accepted prior to an investor exceeding a control threshold so that the Office of Thrift Supervision (OTS) has the opportunity to review the investor's proposed relationship with the institution and other investors.

12 C.F.R. § 574.4(e) provides rebuttal procedures to be followed in the event that an acquiror (a person or a company) proposes to take an action that would result in rebuttable control of an institution. The regulation also provides procedures for the filing of a rebuttal if a presumption of concerted action is raised with respect to the stockholdings of a group of individuals and/or companies.

The rebuttal procedure is available only when a party proposes to take an action (such as acquiring stock or forming a group) that would cause the party to exceed a control threshold, but not gain conclusive control (as defined in 12 C.F.R. § 574.4(a)) of an institution.

Because the rebuttal filing is made before an acquiror exceeds the rebuttal threshold, it is important to understand not only how much stock the acquiror holds and proposes to acquire directly, but also what other relationships are present that may constitute concerted action and would result in the attribution of additional stock to the acquiror.

Note: The definition of a savings institution as set forth in 12 C.F.R. § 574.2(p) includes a savings and loan holding company.

## **FILING REQUIREMENTS**

### **Delegated Authority**

Generally, filings made pursuant to this section may be processed by the Regional Office under delegated authority. Filings that are not delegated to the Regional Office are those that include: a significant issue of law or policy; approval of requested waivers of statutes, regulations, OTS policy or significant notice requirements; involve hostile or contested acquisitions, opposition proxy solicitations or other potential acquisitions where there is a competing acquiror; involve person(s) subject to a pending notice of charges or formal investigation; involve material waivers of the required provisions for standard rebuttal of control or action in concert filings; or raise significant competitive factor issues. See Delegation Section 040 of the handbook for information on the delegation process.



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**Expedited and Standard Processing Procedures**

This filing is not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. Procedures for rebuttal of control filings are set forth in 12 C.F.R. § 574.4(e).

**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**

Rebuttal submissions must be filed and accepted prior to the acquisition of stock or control factor, except for certain transactions that are exempt from prior approval or notice under 12 C.F.R. § 574.3(d).

If delegated, all filings and the appropriate application fee 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 filing with the appropriate Regional Office. 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 filings that are not delegated to the Regional Office, an additional three copies of the submission should be filed with the Applications Filing Room in OTS-Washington. For specific information concerning the filing procedures, refer to Application Filing Requirements Section 010 of this handbook.

Each rebuttal of control filing submitted to OTS for action should include the following information:

- A submission (in letter form) naming the involved institution, the rebuttal parties, the number of shares and percentage of voting shares held by the rebuttal parties.
- A statement setting forth the facts and circumstances that support the acquiror's contention that no control relationship would exist if the filer of the rebuttal acquires stock or obtains a control factor with respect to a savings institution.
- An executed rebuttal of control agreement that materially conforms to the form of agreement set forth in 12 C.F.R. § 574.100. (See Exhibit I.)

Each rebuttal of concerted action filing submitted to OTS for action should include the following information:

- A submission (in letter form) naming the involved institution, the rebuttal parties, the number of shares and percentage of voting shares held by the rebuttal parties;
- A statement setting forth the facts and circumstances that clearly and convincingly demonstrate the filer's contention that no action in concert exists; and

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- An affidavit, executed by each person or company presumed to be acting in concert pursuant to 12 C.F.R. § 574.4(e)(2), stating that such person or company does not and shall not have any agreements or understandings with respect to the exercise of control over management or policies of the institution, including agreements related to voting acquisition, or disposition of the institution's stock. The affidavit should also include a recitation that the signatory is aware that the filing of a false affidavit may subject the person or company to criminal sanctions, would constitute a violation of 12 C.F.R. § 563.180(b), and would be considered a "presumptive disqualifier" under 12 C.F.R. § 574.7(g)(1)(v).

Although not required by regulation, OTS policy requires each party to a rebuttal to execute a copy of Attachment A to Regulatory Bulletin (RB) 20.

### **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 filings are not subject to delegated authority and are processed concurrently with OTS-Washington staff. As a general matter, correspondence from OTS regarding notices that are nondelegated will be transmitted from OTS-Washington. Correspondence on delegated notices will generally come from the Regional Office.

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

If applicable, within five business days of receipt of the submission, the Regional Office will begin its background investigations on individuals who were required to submit such information in connection with the filing. The background investigations should include, at a minimum, a search of the applicants in the Westlaw, LEXIS/NEXIS, 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 that OTS request examination reports from another agency. 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.

The applicant may acquire additional shares upon the expiration of 20 calendar days after the filing date of its submission, 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;
- Return the submission to the acquiror as materially deficient; or
- Accept or reject the submission.

Failure by OTS to act within 20 calendar days of receipt of the submission for processing shall result in the filed submission being accepted. If supplemental information is requested, the applicant will have 30 days to provide such information. Upon receipt of such information, OTS has 15 calendar days to take one of the three actions noted above.

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**

### *Rebuttal of Control*

An acquiror shall be determined, subject to rebuttal, to have acquired control of a savings institution, if the acquiror:

- Acquires more than ten percent of any class of voting stock of the institution and is subject to any control factor (discussed below).
- Acquires more than 25 percent of any class of stock of the institution and is subject to any control factor.

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- Holds any combination of voting stock and revocable and/or irrevocable proxies, representing more than 25 percent of any class of voting stock of an institution, and such proxies would enable the acquiror to:
    - \* Elect one-third or more of the institution's board of directors, including nominees or representatives of the acquiror currently serving on such board;
    - \* Cause the institution's stockholders to approve the acquisition or corporate reorganization of the institution; or
    - \* Exert a continuing influence on a material aspect of the business operations of the institution.

The following constitute control factors:

- The acquiror would be one of the two largest holders of any class of stock of the savings institution.
- The acquiror would hold more than 25 percent of the total stockholders' equity of the institution.
- The acquiror would hold more than 35 percent of the combined debt securities and stockholders' equity of the institution.
- The acquiror is party to any agreement that enables the acquiror to influence a material aspect of the management or policies of the institution or is party to any agreement pursuant to which the acquiror would possess a material economic stake in the institution resulting from a profit-sharing arrangement.
- The acquiror would have the ability, other than through the holding of revocable proxies, to direct the votes of more than 25 percent of a class of the institution's voting stock.
- The acquiror would have the power to direct the disposition of more than 25 percent of a class of the institution's voting stock other than through a public offering.
- The acquiror and/or the acquiror's representatives or nominees would constitute more than one member of the institution's board of directors.
- The acquiror or nominee or management official of the acquiror would serve as the chairman of the board of directors, chairman of the executive committee, chief executive officer, chief operating officer, chief financial officer, or in any position with similar policymaking authority in the institution.

#### *Rebuttal of Presumption of Concerted Action*

An acquiror will be presumed to be acting in concert with the following persons and companies:

- A company will be presumed to be acting in concert with a controlling shareholder, partner, trustee, or management official of such company with respect to the acquisition of stock of a savings institution, if:

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- \* The company and the person own stock in the savings institution;
  - \* The company provides credit to the person to purchase the savings institution's stock; or
  - \* The company pledges its assets or otherwise is instrumental in obtaining financing for the person to acquire stock of the savings institution.
- A person will be presumed to be acting in concert with members of his immediate family, as defined by 12 C.F.R. § 574.2(j).
  - Persons will be presumed to be acting in concert with each other where:
    - \* Both own stock in a savings institution and both are also management officials, controlling shareholders, partners, or trustees of another company, or
    - \* One person provides credit to another person or obtains financing for another person to purchase stock of the savings institution.
  - A company controlling or controlled by another company and companies under common control will be presumed to be acting in concert.
  - Persons or companies will be presumed to be acting in concert where they constitute a group under the rules and regulations of the Securities Exchange Act of 1934.
  - A person or company will be presumed to be acting in concert with any trust for which such person acts as trustee (except for tax-qualified employee stock benefit plans).
  - Persons or companies will be presumed to be acting in concert with each other, and with any other person or company with which they also are presumed to act in concert.

Pursuant to 12 C.F.R. § 574.4(e)(3), the OTS may reject any rebuttal that is inconsistent with the facts and circumstances known to it or where the rebuttal does not clearly and convincingly refute the rebuttable determination of control or presumption of action in concert, and may determine to reject a submission solely on such bases.

### **Decision Guidelines**

#### *Rebuttal of Control*

The regulatory requirements are designed to ensure that the individuals or companies maintain a passive ownership interest in, and are not in control of, the institution of savings and loan holding company. The analysis should conclude that the investors rebutting control do not and will not be in a position to influence control over the institution in any way, thereby avoiding a control filing. If it has been determined that the individuals do have control over the institution, the rebuttal must be rejected and the applicant must file a change in control notice or divest. OTS should consider the following factors in analyzing the application to determine if the transaction satisfies the applicable statutory and regulatory criteria for approval:

- Information concerning current and proposed stock holdings
  - \* How much stock does the applicant directly own and how much stock will the applicant acquire?
  - \* How much stock does the applicant indirectly control and how much will the applicant indirectly own after the acquisition? Should shares held by others be aggregated with the applicant's holdings?
  - \* Is any of the stock currently held "immediately convertible," and, therefore, considered "voting stock" pursuant to 12 C.F.R. § 574.2(u)?
  - \* Is any stock convertible at a later date? On what terms?
  
- Background information concerning the applicant
  - \* Occupation/lines of business of the applicant.
  - \* Source of funds to make the acquisition. If funds are to be borrowed, is the lender presumed to be acting in concert with the applicant?
  - \* Have background checks of the applicant provided evidence of fraud or questionable dealings in the past?
  
- Relationship with the institution
  - \* Information concerning the applicant's affiliations and business dealings with the institution.
  - \* Has the applicant made a material change in the rebuttal agreement, for example, to reflect plans for representation in the management of the institution or intent to attempt to influence the operations of the institution?
  
- OTS should be alert for information that is inconsistent with the "passive investor" status required for a rebuttal to be accepted. Such information could include the following:
  - \* The applicant has shown the desire to acquire control of the institution. Review Schedule 13D Reports (Shareholder Reports of Beneficial Ownership), if any, statements in the rebuttal filing, and any information provided by the institution.
  - \* The applicant has explored the possibility of acquiring the institution.
  - \* The applicant has indicated an interest in acquiring two or more board positions or other executive management positions.

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*Rebuttal of Concerted Action*

The regulatory requirements are designed to ensure that the filing party does not have control of an institution. The analysis should conclude that the individuals rebutting concerted action are independent of one another. If it has been determined that the individuals are acting in concert, the rebuttal must be rejected and the applicant must file a change in control notice or divest. OTS should consider the following factors in analyzing the application to determine if the transaction satisfies the applicable regulatory criteria for approval:

- Relationships among filing parties
  - \* Are current or prior family or business relationships present among the individuals or companies filing the rebuttal?
  - \* If the only presumption is a familial tie, is there evidence that family members work together or invest in (or own) similar companies or stocks?
  - \* Are the applicants comprised of a parent(s) and dependent child? (If yes, it is unlikely that the rebuttal would be accepted.)
  - \* Has a parent(s) purchased stock for a child or loaned the funds for such purchase?
  - \* If the presumption arises as the result of a series of business relationships, are the relationships formal and active undertakings?
  - \* Do the affiliations represent a major source of income, investment or business for the applicants?
  - \* What is the pattern of stock purchases by the applicants? Is there a pattern among the filers of purchasing stock at the same time, for the same price, or in the same amount?
  - \* Have the applicants generally voted their stock in the same manner?
  - \* Do the applicants share the same address?
  - \* Do the applicants use the same accountants, investment advisors, or legal counsel?
  - \* Does any information reflected in Schedule 13D reports (Shareholder Reports of Beneficial Ownership), indicate that the applicants are acting in concert?

Note: Generally, evidence of a pattern of relationships and dealings among the applicants will make it difficult to rebut the presumption of concerted action. Therefore, it is unlikely that two family members who own and operate a business together will be able to rebut the presumption. Similarly, when applicants who are not related have made a number of common investments, the presumption will be difficult to overcome.

- General information concerning each applicant, such as:
  - \* Each applicant's number of shares and percentage of stock currently held.
  - \* Each applicant's identity, occupation, and employer.

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- \* Previous or existing relationships or transactions between each applicant and the institution that would indicate whether the applicant is exerting control over the institution.
  - \* Have background checks of the applicant provided evidence of fraud or questionable dealings in the past?

#### *General Decision Guidelines*

- Is the acquiror already in violation of the regulations by acquiring such stock before filing a rebuttal?
- Does the rebuttal submission include all applicable parties?
- Does the rebuttal filing include the appropriate rebuttal agreement or affidavit?
- Has the applicant executed Certification A to RB-20?
- Has the target institution been contacted to determine if it has any objection to the rebuttal?
- Is the proposed acquiror currently in compliance with the provisions of 12 C.F.R. Part 574?
- Does the rebuttal involve an acquisition by an individual or a group of individuals acting in concert that does not constitute a company, as defined in 12 C.F.R. § 574.2(f)?
- Have all the appropriate persons filed?
- Is there any evidence that the acquiror is acting in concert with any other person who has not joined the rebuttal?
- Does the rebuttal contain the occupation of all acquirors?
- Do any of the acquirors participate in businesses similar to or in competition with the institution?
- Does the rebuttal contain a description of amounts of stock (including options) currently held by the acquirors?
- Does the rebuttal contain a description of the amount and type of stock the acquirors will acquire?
- Are the rights and convertibility features of the stock to be acquired described in the request?
- Are the rights and convertibility features of other classes of stock currently held by the acquiror described?
- Does the rebuttal outline how the acquiror proposes to acquire the stock?
- Does the rebuttal adequately explain how the acquiror intends to finance the acquisition of the stock?
- Is there any evidence that the acquiror has or will act in a manner inconsistent with the rebuttal request?
- Are there any affiliate transactions between the acquiror (or affiliates of the acquiror) and the institution? Would the transactions violate the rebuttal of control agreement?



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- Has the acquiror filed any Schedule 13Ds (Shareholder Reports of Beneficial Ownership) that reveal inconsistencies with the rebuttal?
  - Has the acquiror been checked through Westlaw? LEXIS/NEXIS? CIIS?
  - Has the acquiror been checked through the Suspicious Activity Report?
  - Is there any evidence or known fact that was disclosed in the background checks that is inconsistent with the information presented in the rebuttal?
  - Does the rebuttal disclose ownership interests in other thrifts?
  - Does the institution object to acceptance of the rebuttal filing or believe there exists certain control factors? If so, what is the basis for the objection?

*If a rebuttal of concerted action:*

- Are all relationships disclosed that would raise any of the presumptions of concerted action contained in 12 C.F.R. § 574.4(d)?
- If the presumption results from a family relationship, are the names and relationships fully disclosed?
- If the presumption results from a family relationship, are any of the filing parties minor children of a filing party? (Note: It is doubtful that a rebuttal of concerted action between a parent and minor child could be accepted.)
- Do other affiliations or associations exist between any of the family parties, e.g., father and adult child are business associates? (Note: If the presumption arises solely from the family relationship, and the filing clearly and convincingly demonstrates that the parties are not otherwise acting in concert, the rebuttal could be accepted.)
- Is there evidence that the filing parties have voted their shares of stock independently, such as voting differently on shareholder issues?
- Is there evidence that the filing parties purchased their stock as part of a group? (Note: For example, did each party purchase the same amount of stock at the same time?)
- Did any filing party lend money to another filing party for the purchase of stock?
- Is OTS aware of any current or prior family or business relationship among the acquirors that are not disclosed in the filing?
- Does the institution object to the acceptance to the rebuttal of concerted action filing? If so, what is the basis for the objection?

### Conditions

The letter issued by OTS regarding the acceptance of a rebuttal of control should require the acquiror to transmit a copy of the executed rebuttal agreement to the savings institution to which the rebuttal pertains. Additionally, evidence of the transmission of the agreement should be submitted to the Regional Office.

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OTS may condition its approval of the rebuttal of control or concerted action submission to include nonstandard conditions. If such nonstandard conditions are utilized, the Regional Office's digest must include appropriate justification for imposing such conditions.

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 any 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.

#### *Actions and Referrals*

OTS staff should review for deviations from the terms of rebuttal of control agreements or rebuttal of concerted action affidavits. If deviations are found, the OTS staff member should consult with Regional Counsel and may refer the matter to the Office of Enforcement. If a violation is found, the shareholder(s) under review is prohibited from (i) receiving dividends from the subject institution and

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(ii) voting on his/her stock, other than proportionately with other stockholders until the matter has been resolved.

OTS may take one or more of the following actions concerning deviations from the terms of rebuttal of control agreements or rebuttal of concerted action affidavits:

- Require the shareholder to divest his/her stock holdings below a control threshold.
- Impose one or more enforcement actions against the shareholder.

## **INFORMATION SOURCES**

### **Statutes**

12 U.S.C. § 1467a  
12 U.S.C. § 1817(j)

Savings and Loan Holding Company Act  
Change in Bank Control Act

### **Regulations**

12 C.F.R. Part 516  
12 C.F.R. Part 574

Applications Processing Guidelines  
Acquisition of Control of Savings Institutions

### **OTS Bulletins**

Regulatory Bulletin 20

Proper Investigation of Applicants and Increased  
Communications Between the OTS and Other Financial  
Institution Regulatory Agencies

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**Exhibit I**

## Rebuttal of Rebuttable Determination of Control under Part 574

## I. WHEREAS

- A. [ ] is the owner of [ ] shares (the “Shares”) of the [ ] stock, of [name and address of the institution], which Shares represent [ ] percent of a class of “voting stock” of [ ] as defined under the Acquisition of Control Regulations (“Regulations”) of the Office of Thrift Supervision (“Office”), 12 CFR part 574 (“Voting Stock”);
- B. [ ] is a “savings association” within the meaning of the Regulations;
- C. [ ] seeks to acquire additional shares of stock of [ ] (“Additional Shares”), such that [ ]’s ownership thereof will exceed 10 percent of a class of Voting Stock but will not exceed 25 percent of a class of Voting Stock of [ ]; [and/or] [ ] seeks to [ ], which would constitute the acquisition of a “control factor” as defined in the Regulations (“Control Factor”);
- D. [ ] does not seek to acquire the [Additional Shares or Control Factor] for the purpose or effect of changing the control of [ ] or in connection with or as a participant in any transaction having such purpose or effect;
- E. The Regulations require a company or a person who intends to hold 10 percent or more but not in excess of 25 percent of any class of Voting Stock of a savings association or holding company thereof and that also would possess any of the Control Factors specified in the Regulations, to file and obtain approval of an application (“Application”) under the Savings and Loan Holding Company Act (“Holding Company Act”), 12 U.S.C. 1467a, or file and obtain clearance of a notice (“Notice”) under the Change in Control Act (“Control Act”), 12 U.S.C. 1817(j), prior to acquiring such amount of stock and a Control Factor unless the rebuttable determination of control has been rebutted;
- F. Under the Regulations, [ ] would be determined to be in control, subject to rebuttal, of [ ] upon acquisition of the [Additional Shares or Control Factor];
- G. [ ] has no intention to manage or control, directly or indirectly, [ ];
- H. [ ] has filed on [ ], a written statement seeking to rebut the determination of control, attached hereto and incorporated by reference herein (these submissions referred to as the “Rebuttal”);
- I. In order to rebut the rebuttable determination of control, [ ] agrees to offer this Agreement as evidence that the acquisition of the [Additional Shares or Control Factor] as proposed would not constitute an acquisition of control under the Regulations.

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- II. The Office has determined, and hereby agrees, to act favorably on the Rebuttal, and in consideration of such a determination and agreement by the Office to act favorably on the Rebuttal, [ ] and any other existing, resulting or successor entities of [ ] agree with the Office that:
- A. Unless [ ] shall have filed a Notice under the Control Act, or an Application under the Holding Company Act, as appropriate, and either shall have obtained approval of the Application or clearance of the Notice in accordance with the Regulations, [ ] will not, except as expressly permitted otherwise herein or pursuant to an amendment to this Rebuttal Agreement:
1. Seek or accept representation of more than one member of the board of directors of [insert the name of the institution and any holding company thereof];
  2. Have or seek to have any representative serve as the chairman of the board of directors, or chairman of an executive or similar committee of [insert the name of the institution and any holding company thereof]'s board of directors or as president or chief executive officer of [insert the name of the institution and any holding company thereof];
  3. Engage in any intercompany transaction with [ ] or [ ]'s affiliates;
  4. Propose a director in opposition to nominees proposed by the management of [insert the name of the institution and any holding company thereof] for the board of directors of [insert the name of the institution and any holding company thereof] other than as permitted in paragraph A-1 of this Section II;
  5. Solicit proxies or participate in any solicitation of proxies with respect to any matter presented to the stockholders of [ ] other than in support of, or in opposition to, a solicitation conducted on behalf of management of [ ];
  6. Do any of the following, except as necessary solely in connection with [ ]'s representative's performance of duties as a member of [ ]'s board of directors:
    - (a) Influence or attempt to influence in any respect the loan and credit decisions or policies of [ ], the pricing of services, any personnel decisions, the location of any offices, branching, the hours of operation or similar activities of [ ];
    - (b) Influence or attempt to influence the dividend policies and practices of [ ] or any decisions or policies of [ ] as to the offering or exchange of any securities;
    - (c) Seek to amend, or otherwise take action to change, the bylaws, articles of incorporation, or charter of [ ];

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- (d) Exercise, or attempt to exercise, directly or indirectly, control or a controlling influence over the management, policies or business operations of [ ]; or
  - (e) Seek or accept access to any non-public information concerning [ ];
- B. [ ] is not a party to any agreement with [ ].
  - C. [ ] shall not assist, aid or abet any of [ ]'s affiliates or associates that are not parties to this Agreement to act, or act in concert with any person or company, in a manner which is inconsistent with the terms hereof or which constitutes an attempt to evade the requirements of this Agreement;
  - D. Any amendment to this Agreement shall only be proposed in connection with an amended rebuttal filed by [ ] with the Office for its determination;
  - E. Prior to acquisition of any additional shares of "Voting Stock" of [ ] as defined in the Regulations in excess of the Additional Shares, any required filing will be made by [ ] under the Control Act or the Holding Company Act and either approval of the acquisition under the Holding Company Act shall be obtained from the Office or any Notice filed under the Control Act shall be cleared in accordance with the Regulations;
  - F. At any time during which 10 percent or more of any class of Voting Stock of [ ] is owned or controlled by [ ], no action which is inconsistent with the provisions of this Agreement shall be taken by [ ] until [ ] files and either obtains from the Office a favorable determination with respect to either an amended rebuttal, approval of an Application under the Holding Company Act, or clearance of a Notice under the Control Act, in accordance with the Regulations;
  - G. Where any amended rebuttal filed by [ ] is denied or disapproved, [ ] shall take no action which is inconsistent with the terms of this Agreement, except after either (1) reducing the amount of shares of Voting Stock of [ ] owned or controlled by [ ] to an amount under 10 percent of a class of Voting Stock, or immediately ceasing any other actions that give rise to a conclusive or rebuttable determination of control under the Regulations; or (2) filing a Notice under the Control Act, or an Application under the Holding Company Act, as appropriate, and either obtaining approval of the Application or clearance of the Notice, in accordance with the Regulations;
  - H. Where any Application or Notice filed by [ ] is disapproved, [ ] shall take no action which is inconsistent with the terms of this Agreement, except after reducing the amount of shares of Voting Stock of [ ] owned or controlled by [ ] to an amount under 10 percent of any class of Voting Stock, or immediately ceasing any other actions that give rise to a conclusive or rebuttable determination of control under the Regulations;
  - I. Should circumstances beyond [ ]'s control result in [ ] being placed in a position to direct the management or policies of [ ], then [ ] shall either (1) promptly file an Application under the Holding Company Act or a Notice under the Control Act, as appropriate, and take no affirmative steps to enlarge that control pending either a final

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determination with respect to the Application or Notice, or (2) promptly reduce the amount of shares of [ ] Voting Stock owned or controlled by [ ] to an amount under 10 percent of any class of Voting Stock or immediately cease any actions that give rise to a conclusive or rebuttable determination of control under the Regulations;

- J. By entering into this Agreement and by offering it for reliance in reaching a decision on the request to rebut the presumption of control under the Regulations, as long as 10 percent or more of any class of Voting Stock of [ ] is owned or controlled, directly or indirectly, by [ ], and [ ] possesses any Control Factor as defined in the Regulations, [ ] will submit to the jurisdiction of the Regulations, including (1) the filing of an amended rebuttal or Application or Notice for any proposed action which is prohibited by this Agreement, and (2) the provisions relating to a penalty for any person who willfully violates or with reckless disregard for the safety or soundness of a savings association participates in a violation of the [Holding Company Act or Control Act] and the Regulations thereunder, and any regulation or order issued by the Office;
- K. Any violation of this Agreement shall be deemed to be a violation of the [Holding Company Act or Control Act] and the Regulations, and shall be subject to such remedies and procedures as are provided in the [Holding Company Act or Control Act] and the Regulations for a violation thereunder and in addition shall be subject to any such additional remedies and procedures as are provided under any other applicable statutes or regulations for a violation, willful or otherwise, of any agreement entered into with the Office.
- III. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one instrument representing the Agreement among the parties thereto. It shall not be necessary that any one counterpart be signed by all of the parties hereto as long as each of the parties has signed at least one counterpart.
- IV. This Agreement shall be interpreted in a manner consistent with the provisions of the Rules and Regulations of the Office.
- V. This Agreement shall terminate upon (i) the approval by the Office of [ ]'s Application under the Holding Company Act or clearance by the Office of [ ]'s Notice under the Control Act to acquire [ ], and consummation of the transaction as described in such Application or Notice, (ii) in the disposition by [ ] of a sufficient number of shares of [ ], or (iii) the taking of such other action that thereafter [ ] is not in control and would not be determined to be in control of [ ] under the Control Act, the Holding Company Act or the Regulations of the Office as in effect at that time.

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VI. IN WITNESS THEREOF, the parties hereto have executed this Agreement by their duly authorized officer.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

OFFICE OF THRIFT SUPERVISION

Dated: \_\_\_\_\_

By: \_\_\_\_\_