

# **Failure Acquisitions**

**Expansionary Activities**

## **Comptroller's Corporate Manual**

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<b><u>Introduction</u></b>	1
<u>Applicability</u>	1
<u>Definitions</u>	1
<u>Key Policies</u>	3
<u>General</u>	3
<u>Decision Criteria</u>	3
<u>Standards of Review</u>	4
<u>Specific Requirements</u>	4
<u>Public Notice</u>	4
<u>Competitive Factors</u>	5
<u>Background Investigations</u>	5
<u>Other Requests</u>	5
<u>Legal Considerations</u>	5
<u>Negative Premium Acquisitions</u>	6
<u>Branch Closings</u>	6
<u>Summary of Process</u>	6
<u>Bid List</u>	7
<u>Bid Information Meeting</u>	8
<u>Bid Submission</u>	9
<b><u>Documents</u></b>	13
<u>General Instructions</u>	13
<u>Instructions for New National Banks</u>	14
<u>Instructions for Purchase and Assumption</u>	17
<b><u>Procedures</u></b>	19
<b><u>References</u></b>	25



This booklet should be used together with other booklets of the *Comptroller's Corporate Manual* (manual). Users of this booklet should refer to the "[General Policies and Procedures](#)" (GPP) booklet for discussion of general filing instructions and procedures. They should also refer to the following booklets as appropriate: "[Charters](#)," "[Branches and Relocations](#)," "[Business Combinations](#)," "[Corporate Organization](#)," "[Background Investigations](#)," "[Investment in Bank Premises](#)," "[Investment in Subsidiaries and Equities](#)," "[Fiduciary Powers](#)," and "[Management Interlocks](#)."

## Applicability

The Comptroller of the Currency's (OCC) approval is required when the resulting bank in a failure acquisition is a national bank. Failure acquisitions may be structured in many ways; however, the procedures in this booklet apply to only two typical types of failure acquisitions, involving OCC-regulated banks. They are the:

- Purchase of assets and assumption of liabilities of an insured failed institution by an existing national bank.
- Establishment of a new national bank to purchase the assets and assume the liabilities of an insured failed institution.

Banks or other groups unfamiliar with this process should discuss their plans and any related questions with the licensing manager well in advance of submitting an application. This booklet does not apply to the creation and/or acquisition of a bridge bank pursuant to 12 USC 1821(n), or emergency combinations (see the "[Business Combinations](#)" booklet for further discussion).

## Definitions

A **clean purchase and assumption transaction** is a transaction in which the receiver keeps all known problem assets and provides the purchaser with specific options for recourse to the receiver on certain assets within specified periods of time.

A **deposit insurance transfer and asset purchase agreement (DITAPA)** is an agreement governing a transaction for the transfer by the receiver of insured deposits (e.g., deposits, including interest, of \$100,000 or less) and certain assets of a failed institution to the purchaser. The procedures for a purchase of assets and assumption of liabilities apply to this transaction. The purchaser

must honor the contract rate on deposits for a specified number of days, but can renegotiate rates thereafter to reflect market conditions.

A **failed institution** is a failed bank or savings association.

A **potential national bank bidder** is: (1) an existing national bank that has been approved preliminarily to bid on the acquisition of a failed institution; or, (2) a group that has been approved preliminarily to establish and organize a new national bank to bid to acquire a failed institution.

A **premium** generally is paid by the assuming bank to the receiver to purchase the assets and assume the liabilities of a failed institution. Depending upon the amount of the assuming bank's bid, a positive premium is paid by the acquiring bank (purchaser) to the receiver or a negative premium is paid by the receiver to the acquiring bank (purchaser). Negative premium acquisitions are discussed in greater detail later in this booklet.

The **primary regulator** is the banking agency responsible for regulating a depository institution. The OCC is the primary regulator of nationally chartered banks. The Office of Thrift Supervision (OTS) is the primary regulator of federally chartered thrifts. The appropriate state banking regulatory authority regulates its state-chartered institutions. In a bank failure transaction involving an insured bank, the OCC or the appropriate state banking regulatory authority notifies the Federal Deposit Insurance Corporation (FDIC) when the insured bank is in imminent danger of failing. The OCC, state authority, or FDIC in certain circumstances involving state banks, later determines that grounds for a receivership exists and appoints the FDIC as receiver.

A **purchase and assumption transaction (P&A)** in the context of failure acquisitions refers generally to the acquisition of a failed institution that the receiver structures as a purchase and assumption transaction. A P&A transaction is governed by a P&A agreement between the purchaser and the receiver that transfers certain assets and liabilities to the acquirer. If problem or classified assets are acquired, provisions in the executed agreement normally address resale to the receiver under certain specified conditions. In P&A transactions, deposit liabilities and other specified liabilities may be assumed. If the failed institution is a state bank in a depositor preference state, only deposit liabilities would be accepted. OCC approval of a national bank's acquisition of a failed institution is required under 12 USC 1828(c). Shareholders of the acquiring bank legally are not required to approve the transaction.

A **receiver** is a person or entity responsible for liquidating and winding up the affairs of a failing entity. The FDIC is appointed receiver for institutions insured by the Bank Insurance Fund (BIF) or the Savings Association Insurance Fund (SAIF).

## Key Policies

### General

The OCC appoints the FDIC as receiver of any closed insured national bank or insured federal branch of a foreign bank. OCC approval is required whenever an existing national bank, or a group organizing a national bank, seeks to acquire a failed institution.

### Decision Criteria

In reviewing a proposed transaction, the OCC considers:

- Promoting the safety and soundness of the banking system.
- Determining the acquiring bank's prospects for success following the transaction.
- Minimizing any negative effect on the affected community.

The type of failure acquisition used will determine the OCC's decision criteria. The OCC will apply the decision criteria used for charters when a new national bank is established and will use business combinations decision criteria when a new or an existing national bank seeks to acquire the failed institution.

In addition, the OCC will weigh other banking factors and normally will not approve a failure acquisition that will result in a bank with inadequate capital, unsatisfactory management, poor earnings prospects, or inadequate liquidity.

The OCC will also consider an existing national bank's performance in meeting the credit needs of its community, including low- and moderate-income neighborhoods. That record may cause the OCC to condition the bank's ability to bid to acquire a failed institution. In some instances, a bank's record of performance may result in the OCC prohibiting the bank from submitting a bid.

The OCC also will weigh the effects on competition in the markets affected by the proposed acquisition. The OCC may approve a proposed acquisition if it determines that a bidder's satisfaction of the previously mentioned decision criteria outweighs any adverse competitive effects of the proposed acquisition.

## Standards of Review

Acquisition proposals from experienced organizing groups or national banks in an economically strong area will be reviewed only to determine that they present reasonable business strategies for success. No further analysis normally is needed if the due diligence and market analyses are reasonable and the strategy is clear. If unprecedented or unusual banking services or corporate arrangements are proposed, the OCC may require additional information and may conduct a more extensive review.

Proposals sponsored by bank holding companies or persons affiliated with other banking organizations will be evaluated on the performance record of the bank holding company and/or affiliated institution(s). The OCC may review FR Y-6 reports, SEC 10-K reports, Annual Reports to Stockholders, reports of examination, financial statements, and any other information available to it in its supervisory capacity. In addition, a bank holding company's overall philosophy and plans, e.g., strategy, capital, management, and profitability, may be reviewed for consistency and compatibility with the proposal.

The strength of a parent company, combined with the direct support it offers to its bank subsidiaries, can mitigate concerns over capital, draft operating plans, or other supervisory matters. When the bank holding company or an affiliated institution serves as a substantial source of strength, proposals may be approved preliminarily, even in markets where economic conditions are weak and/or competitive conditions intense.

Conversely, the poor condition of a parent company and/or its affiliates or the absence of any evidence of the parent's support of its subsidiaries may result in negative action on the proposal, even though it may have merit. The review and analysis of holding company sponsored proposals will not be confined to the proposed acquisition alone. When the proposed bank is affiliated with institutions subject to special supervisory concern, the OCC may reject a proposal or approve it preliminarily subject to conditions.

## Specific Requirements

### Public Notice

When the OCC must approve an acquisition immediately (e.g., overnight) to resolve an actual or imminent failure of an insured institution, the acquiring bank does not need to publish a notice of the proposed transaction.

## Competitive Factors

When the OCC must approve an acquisition immediately (e.g., overnight) to resolve an actual or imminent failure of an insured institution, the OCC also need not request reports from the Attorney General, the FDIC, and the Federal Reserve Board (FRB) on the competitive factors.

## Background Investigations

New national bank organizing groups and their chief executive officers (CEOs) must have the experience, competence, and willingness to direct the bank's affairs in a safe, sound, and legal manner. Organizing groups that do not appear to meet those criteria will be denied permission to organize a bank. Organizers and CEOs, whose previous banking experience is tied to failed or problem financial institutions, will be scrutinized closely by the OCC to determine their ability to carry out their duties safely and adequately. Unless specifically waived by the OCC, each executive officer of a new national bank must complete and file with the OCC a Biographical Report and Financial Statement (see the "[Background Investigations](#)" booklet for further discussion).

Both newly established and existing national banks must assure the OCC that appropriate management and staff will be available when the acquired locations of the failed institution reopen.

## Other Requests

When a national bank acquires a failed national, or state bank, or thrift, other requests may be submitted with the application. Other types of requests filed with failure acquisition applications may include applications for investment in subsidiaries and equities, branches and relocations, and fiduciary powers. Each request should be responsive to the requirements discussed in other booklets of this manual.

## Legal Considerations

When the failed institution is not a national bank, the application should include a certification by an official of the applicant that the proposed transaction conforms with applicable federal laws and is not in contravention of applicable state laws. This certification also should indicate that any action required by law will be taken prior to consummation of the transaction. If the proposal presents novel or precedent-setting legal issues, an opinion from counsel should be provided.

## Negative Premium Acquisitions

Accounting for the acquisition of a failed institution follows the same accounting principles as are used in any other nonaffiliated business combination. Accordingly, the "[Business Combinations](#)" booklet provides guidance on these issues. Since certain contractual provisions may differ from those generally included in other business combinations, however, the following discussion highlights the appropriate accounting treatment for those provisions.

Cash received from the FDIC as a negative premium is considered an asset acquired in the acquisition and should be accounted for accordingly. It is not a capital injection and should not be included as capital.

In certain negative premium situations, the fair value of the assets acquired, including cash payments received from the FDIC, may exceed the liabilities assumed, creating negative goodwill. Generally accepted accounting principles require that the noncurrent assets, other than investments in marketable securities, be reduced proportionately by the negative goodwill. Non-current assets include bank premises. Any remaining negative goodwill is recorded as a liability and is not included as capital.

The negative premium proposal may include amounts designated as payments for core deposit intangibles or future tax benefits. For accounting purposes, those amounts should be considered as an element of the purchase price (goodwill or a reduction of negative goodwill). A core deposit intangible may be recorded only on the basis of a formal economic study to determine its value. Additionally, the core deposit intangible cannot exceed the actual premium paid on an acquisition. Therefore, in negative premium situations, core deposit intangibles generally would not be recorded.

If the applicant's contractual provisions differ from those discussed in this section, the applicant should consult with the OCC for further guidance.

## Branch Closings

An acquiring institution's decision not to purchase a branch from the FDIC after its temporary operation and during an option period does not constitute a branch closing requiring 90-day advance notice prior to closing (see the "[Branch Closings](#)" booklet for further discussion).

## Summary of Process

In anticipation of a receivership appointment for a failing insured bank, the OCC (in the case of insured nationally chartered banks) or the state banking regulatory authority (in the case of insured state-chartered banks and thrifts) or

the OTS (in the case of insured federally chartered thrifts) advises the receiver (FDIC) that an institution is in imminent danger of failing or otherwise is likely to fall below required minimum capital levels.

Failing institutions are not notified when the OCC or the state banking regulator has notified the FDIC to proceed with preliminary sale/liquidation procedures. Prior to the time and date of the appointment of the FDIC as receiver, ongoing efforts may be made to prevent the insured institution from failing.

After being notified of a potential insured bank failure, the FDIC compiles a preliminary list of banks, bank holding companies, persons, and chain banking groups that may be interested in acquiring the failed bank and that meet specific requirements established by the FDIC. This list is commonly referred to as the "bid list."

If the receiver is unable to sell the institution, it will pay off the depositors and liquidate the remaining assets. The net proceeds of the liquidation are distributed pursuant to a statutorily mandated order of priority.

## Bid List

The FDIC's criteria for compiling bid lists depend on the size and structure of the failing institution and the restrictions of state and national banking laws on expansionary activities that may affect the acquisition of a failed institution. However, the following criteria apply to most potential acquirers.

- **Banks and Holding Companies** ) Generally, banks and bank holding companies must have a record of safe, sound, and legal operations. Their management teams must be capable. The OCC also considers the size of potential acquiring banks and holding companies relative to that of the failing institution, as well as capital adequacy and antitrust factors. Bidding banks under administrative agreements with specific capital or management requirements must be able to comply with those requirements at the time of purchase. This should be discussed with the bidding bank's supervisory office and the licensing manager.
- **Persons and Chain Banking Groups** ) Only persons or chain banking groups (i.e., groups that control several banks, albeit not through a holding company structure), who have extensive banking experience and known financial and managerial resources, generally are included on the FDIC's bidder list. Because the winning bidder must open a bank the next business day, persons and groups with nominal banking experience and/or those absent from banking for even a short time are scrutinized closely and may be found ineligible to bid. In addition, groups composed of persons who have not worked together in the past may be subject to closer review, even though they have current

banking experience. Such close scrutiny of persons and groups assures the continuity of banking services to a failed institution's community.

Potential bidding groups that meet that criteria usually are included in the preliminary list prepared by the FDIC, whether or not they have expressed specific interest in acquiring the institution that is in imminent danger of failing. Some potential bidders notify the FDIC of their interest in institutions in a designated geographical area, but others may be included without request.

The FDIC circulates the preliminary bid list to the OCC, the OTS, the FRB, and the state banking regulator to obtain additional supervisory information about the prospective bidders. This process also enables the FDIC to discover those institutions or persons upon which the other regulators have placed conditions to bid (e.g., capital plan, management plan, CRA performance) or those they would not approve to bid. The FDIC retains the ultimate authority to include or exclude a potential bidder, although it would probably exclude a bidder if the appropriate bank regulatory agency objects to a potential bidder's inclusion on the list.

## Bid Information Meeting

Once a bid list is completed, the FDIC schedules a bid information meeting. The FDIC invites potential bidders to attend the meeting at least 24 hours in advance. The OCC, the OTS, the FRB, and the state banking regulator also are invited to send representatives.

The FDIC presides over the bid information meeting. Specific confidential information about the proposed transaction is communicated to the attendees. This includes, but is not limited to, information pertaining to the failing institution's:

- Assets and liabilities.
- Income and expenses.
- "Banking" headquarters and branch sites.
- Contracts.
- Litigation.
- Legal documents that will be executed with the FDIC by the winning bidder.
- Minimum dollar amounts and percentage levels of capitalization.

- Application procedures required by regulators.

The information does not include the failing institution's examination reports.

An invitation to attend the meeting does not mean that the potential bidder will be allowed to submit a bid. It merely permits the potential bidder to obtain confidential information about the institution that is in imminent danger of failing and to prepare an acquisition proposal, if so desired. The evaluation and analysis of the proposal by the appropriate regulatory agencies, including the resulting institution's primary supervisor, will determine whether the bid may be submitted to the receiver.

A representative from the OCC, the OTS, the FRB, and the state banking regulator will discuss the procedures to be followed to obtain his/her agency's approval(s) to consummate the transaction. Normally, the OCC representative outlines the requirements for a national bank to acquire the failed institution or to establish a new national bank for that purpose.

After the meeting is adjourned, national banks interested in bidding should talk to the OCC representative who attended the meeting generally to discuss short- and long-range effects of the transaction, current supervisory concerns, and other issues. Instructions are provided for filing the application(s) needed to acquire the failed institution. Potential national bank bidders should contact the appropriate licensing manager and supervisory office before submitting a bid.

## Bid Submission

In determining whether to approve the proposal, the OCC will evaluate the national bank's ability to meet the general requirements and to address supervisory and/or other concerns adequately. Potential bidders should be prepared to discuss their proposals thoroughly. While a written application must be submitted for all transactions, licensing managers or their designees may waive submission of certain portions of an application.

The FDIC will announce the specific date for the submission of bids after the bid information meeting. Questions about the proposed transaction should be resolved prior to the time set by the FDIC for the submission of bids. Failure to do so may disqualify a potential bid.

At least five days prior to the submission date, potential national bank bidders must send the OCC draft applications with appropriate attachments. The drafts will be reviewed for accuracy, completeness, and adherence to key policies and general requirements. Failure to meet the general guidelines, or submission of a proposal that may have an adverse supervisory effect on the acquiring national bank, may lead the OCC to withhold approval of the proposal.

OCC approval is based on the quality of the analysis by the bidder, rather than on the size of the bid. National bank bidders, to maintain maximum flexibility, may disclose a bid range in the proposals submitted to the OCC. Therefore, the bidder must provide a satisfactory risk assessment relative to its ability to manage the acquisition successfully. The OCC reserves the right to accept or reject any proposal submitted.

If approval is granted, the OCC will notify the potential national bank bidder informally that it is eligible to submit a bid to the FDIC. An ineligible national bank bidder will also be notified that it may not bid. Final OCC certification of the purchase and assumption is granted after a national bank bidder is notified by the FDIC that it is the winning bidder and a declaration of insolvency and court approval of the purchase and assumption transaction occurs.

Prior to accepting a bid, the FDIC will ask the appropriate regulatory agency(ies) for any objections to each proposal. Once the OCC completes its analysis of the proposal it will inform the FDIC of the proposal's acceptability. The OCC must approve the proposal before the FDIC may accept it. If the OCC approves a proposal preliminarily, the FDIC will be informed that the OCC will not object to the bidder's submission of a bid and will grant the necessary final certification to consummate the transaction if the bidder wins. If the OCC has decided not to grant the necessary approval(s), the group will not be permitted to participate in the bidding process as a national bank bidder.

Bids must satisfy pertinent legal requirements including, restrictions on entrance to a state by out-of-state bank holding companies, or state-tiered bidding requirements. Bids must also satisfy national banking laws applicable to acquisitions of failed institutions. In some communities that have a small number of banks, bids from local groups may be considered only after all others have been rejected because of potential antitrust concerns.

The FDIC reviews bids submitted and declares the winner. If the bids are unacceptable, the FDIC may negotiate with the bidders. The FDIC may also consider other bids, including those that were restricted because of state-tiered bidding requirements or antitrust concerns. After the FDIC's board has made its final decision, the winning bidder's name is communicated to the bidders and regulators. The amount of the winning bid is announced after the institution is declared insolvent. All bids submitted are available from the FDIC, in accordance with the Freedom of Information Act (FOIA).

If the winning bidder is a new or an established national bank, the OCC formally approves the bank's application, following its appointment of the

FDIC as receiver. At that time, the winning bidder also executes legal documents with the FDIC.

Consummation of most failure acquisition transactions occur within a few hours of the appointment of the FDIC as receiver. The purchasing group must accept the assets and liabilities it has purchased and assumed from the receiver and prepare to transact business with the failed bank's customers on the next business day.



## General Instructions

The following general instructions apply to all proposals submitted by potential national bank bidders for failed institutions.

### Where to File

An existing national bank or established holding company should address its bid proposal to the appropriate licensing manager. An independent organizing group should submit its bid to the licensing manager located in the district office that will have licensing responsibility for the resulting national bank.

### What to File

To acquire a failed institution, a copy of the bid proposal, the signed application, and a board resolution authorizing the transaction must be filed with the OCC. For an existing national bank, additional time should be allowed if management from outside the existing bank or affiliate(s) will assume an executive management role in the resulting national bank. An independent organizing group should allow four to six weeks for the OCC to perform requisite background investigations.

### Filing Fees

The OCC requires a filing fee, payable to the "Comptroller of the Currency," if the bid is the winning bid. The fees are based on the type of transaction and are subject to change effective each January 1.

### Additional Requests

Requests for other corporate powers associated with the acquisition of the failed institution may be made simultaneously with the charter and/or P&A application. (See other appropriate booklets of the *Comptroller's Corporate Manual* for guidance.)

## Instructions for New National Banks

The following is a brief discussion of special considerations for new national banks seeking to acquire a failed institution. For comprehensive guidance and specific filing instructions that involve the chartering of a new national bank, the applicant should refer to the "[Charters](#)" booklet.

The following information generally is required for new national banks:

- [Charter Application](#)
- [Interagency Biographical and Financial Report Form](#), unless specifically waived by the OCC.

### Organizing Group's Role

Groups seeking establishment of a new national bank as an acquisition vehicle must be composed of five or more persons. The group must identify a proposed CEO before filing the draft applications to establish a new national bank, which will purchase certain assets and assume certain liabilities of the failed institution. Management is especially critical to the success of a new bank established under those circumstances. Organizers must investigate thoroughly the background and qualifications of the candidate prior to submission of his/her name to the OCC and must involve the candidate in the decision to bid on the failed institution.

### Identification of CEO and Executive Officers

Selection of a CEO whom the OCC finds unqualified for the position, whether for prior unsatisfactory banking experience or for other reasons, could reflect negatively on the organizers, result in disapproval of the proposal, or preclude submission of a bid. Information on the proposed CEO received by the OCC will be treated in confidence, if requested, until the failure transaction is consummated.

Other executive officers with the experience, competence, and willingness to manage the bank as required by the operating plan must be identified in the draft application. If the operating plan contains proposals for specialized types of services, executive officers should have experience relevant to their development and administration.

The Depository Management Interlocks Act, 12 USC 3201, prohibits management interlocks between nonaffiliated depository organizations. The related regulation (12 CFR 26) allows the OCC to permit an otherwise prohibited interlock under limited circumstances. An interlock relationship may be allowed if one of the organizations involved is a newly chartered

bank, and the relationship is deemed "necessary to provide management or operating expertise to [the] organization." Specifically required information on the interlocking relationship should be submitted by the organizing group (see the "[Management Interlocks](#)" booklet for further discussion).

The OCC reviews and must have no objections to all directors and executive officers appointed during the first two years that a new national bank is open for business.

## Capital

The organizing group must plan to raise capital sufficient to support the risk-weighted balance sheet acquired from the receiver through the purchase and assumption transaction and the projected volume and type of business planned. Considerations for determining the adequacy of capital include:

- Organizing expenses.
- Earning prospects.
- Economic and competitive conditions in the community to be served.
- The experience and competence of management.
- The risk inherent in the expected asset and liability mix.
- The amount of fixed asset investment.
- The dependability of plans to raise, or the ability of the directors to supply, additional capital when needed.

Initial tangible Tier 1 capital, after organizing expenses are capitalized or charged to the bank's capital, must be adequate to implement successfully the proposed operating plan and compete effectively in the failed institution's market area. Organizers must justify to the OCC their proposed capital level. The OCC may determine that higher or lower amounts of capital from that proposed are necessary based on local market conditions or the operating plan of the organizing group.

Generally the OCC does not look favorably on new bank proposals that rely on debt or other instruments that require repayment of dividends during a new bank's initial years.

## Decision Criteria

In reaching its decision, the OCC considers whether the proposed bank:

- Is able to open immediately after the failed institution has been declared insolvent with no disruption in services.
- Has organizers who are familiar with national banking laws and regulations.
- Has a competent board of directors with ability and experience relevant to the type of services to be provided.
- Has competent management, and key employees, especially those needed to work out asset and/or liability problems inherent in the transaction.
- Has capitalization that is sufficient to support the projected volume and type of business.
- Can reasonably be expected to achieve and maintain profitability.
- Will be operated in a safe and sound manner and in compliance with applicable laws, policies, and procedures.

## Instructions for Purchase and Assumption (P&A)

The following documents typically must be provided to the OCC for its review prior to approval of a failed bank P&A:

- [Business Combination Application—Streamlined](#) or [Interagency Bank Merger Act Application](#)
- Certification of Compliance with Law
- Draft Purchase and Assumption Agreement
- List of Directors and Executive Officers
- Pro Forma Financial Statements, including Pro Forma Combined Balance Sheet, Projected Regulatory Capital Schedule, Financial Assumptions, Accounting Discussion, Material Contingent Liabilities, Capital Implications and Forecast and Estimates of Post-Merger Financial Results.

(Refer to the "[Business Combinations](#)" booklet for specific filing instructions.)



## Regulatory Planning

### Primary Regulator

1. Advises the FDIC (receiver) that an institution is in imminent danger of failing.

### FDIC

2. Prepares "bid list" and circulates it to the appropriate financial institution regulators (i.e., the OCC, the OTS, the FDIC, the FRB, and state regulator).

### Licensing Manager

3. Reviews bid list with other OCC staff, including the appropriate assistant deputy comptroller (ADC) or examiner-in-charge (EIC) and/or the portfolio manager, and provides the receiver with additional supervisory information about the prospective bidders. Advises the FDIC about institutions or persons that would not be approved to bid or who could bid subject to certain conditions (e.g., management plan and capital plan).

### FDIC

4. Invites regulators and potential bidders to the bid meeting after considering material from the regulators.

## Bid Meeting

5. Presides over the bid meeting and communicates confidential information about the transaction to groups attending or represented at the bid meeting.

### OCC Representative

6. Receives copies of draft agreements that may be used in resolution of the failing institution at the bid meeting.
7. Briefly discusses the necessary requirements for an existing national bank to acquire the failed institution or for a new national bank to be established to acquire the failed institution at the bid meeting.

## Potential Bidder

8. Meets with the OCC representative at the bid meeting to obtain information and/or express potential interest in acquiring the failed institution.

## OCC Representative

9. Provides a copy of pertinent application procedures and other information.

## Potential Bidder

10. Contacts the appropriate licensing manager to express potential interest in bidding on a specific failed institution. Submits a proposal in the form of a draft application at least five business days prior to bid submission to the FDIC, when possible.

## Interim Processing

### Licensing Staff

11. Establishes the official file to maintain all original documents relating to the application. Also provides Corporate Activities Information System (CAIS) control number. Initiates and enters appropriate information into CAIS. A winning bid is recorded as either a business combination or as a new national bank charter.
12. Reviews and analyzes the information supplied by the potential bidders.
13. Solicits comments from the appropriate ADC or EIC and/or portfolio manager and, as appropriate, other OCC divisions. If the proposal contains unusual, complex, or precedent-setting proposals, consults with Bank Organization and Structure.
14. Requests additional information about any aspect of the proposal that needs clarification or further analysis.
15. Reviews any additional information obtained.
16. Informally advises the receiver and potential bidders of the OCC's decision for each draft application reviewed.

## FDIC's Board of Directors

17. Selects a winning bidder. Advises winning bidder and regulators of the selection.

## Licensing Staff

18. When the winning bidder is a national bank, prepares and forwards a confidential memorandum and decision page to the appropriate decision maker.

## Decision Maker

19. Makes a decision under delegated authority.

## Licensing Staff

20. Advises the receiver, the ADC or EIC, and/or the appropriate portfolio manager of the OCC's decision.
21. Initiates and enters appropriate information into CAIS.

**(Newly established national banks go to step 22; existing national banks go to step 27.)**

## Organization of the National Bank

**(Steps 22-26 apply only to transactions involving the organization of a national bank (see the "[Corporate Organization](#)" booklet).)**

## Winning Bidder

22. Submits the [Organization Certificate](#) and [Articles of Association](#) for the national bank to licensing staff in the appropriate district office after receiving informal (i.e., verbal) notification that the OCC has found the proposal acceptable.

## Licensing Staff

23. Reviews the [Organization Certificate](#) and [Articles of Association](#) for accuracy and completeness.
24. Advises bidder that the [Articles of Association](#) and [Organization Certificate](#) have been accepted.

## Winning Bidder

25. Proceeds with other steps required to organize the new national bank as advised by the Licensing staff.
26. Once organization of the national bank is complete, forwards required corporate organization papers to the OCC.

## Final Processing

27. Submits any outstanding sections of the application, including an executed copy of the P&A Agreement and an appropriate filing fee.

## Licensing Staff

28. Forwards the correct filing fee and the deposit memorandum (Form 6043-01) to the Comptroller of the Currency, P. O. Box 73150, Chicago, IL 60673-7150. Retains a copy of the memorandum in the official file.
29. Prepares approval letter and letter notifying the Department of Justice (DOJ) of the decision.
30. Forwards approval letter and DOJ notification letter to the decision maker.

## Decision Maker

31. Signs approval letter, decision statement, and DOJ notification letter.

## Licensing Staff

32. Makes appropriate CAIS entries.
33. Sends letters and, if applicable, a [Satisfaction Survey](#) to the winning bidder.
34. For all approvals with special conditions, sends a copy of the confidential memorandum and decision page to the Quality Assurance Coordinator.

## Failed Institution Closing and Consummation

### Primary Regulator

35. Appoints FDIC as the receiver for the insured bank.

### FDIC

36. Consummates P&A transaction with the winning bidder.

### Licensing Staff

37. Prepares certification letter, including appropriate decisions on all corporate requests and charter certificates, if appropriate. Forwards it for signature.
38. Signs certification letter and, if applicable, delegated official signs [Charter Certificate](#).
39. Sends certification letter and, if applicable, Charter Certificate to the winning bidder.
40. Makes appropriate CAIS entries.

### Close Out

41. Reviews the official file for completeness and forwards it to Central Records. Bid lists, satisfactory proposals from unsuccessful bidders, and unsatisfactory proposals from potential bidders should be retained for six months and destroyed.



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<b>Assistance to Insured Depository Institutions</b>	
Laws	12 USC 1823, 1823(c)(1) and (2)(a), 12 USC 1823 (f)(2)(A)
<b>Authorization to Commence Banking Business</b>	
Law	12 USC 26
<b>Background Investigations</b>	
Regulations	28 CFR 16.34, 50.12
<b>Bank Protection Act</b>	
Regulation	12 CFR 21
<b>Bank Secrecy Act (BSA)</b>	
Regulation	31 CFR 103
<b>Branches</b>	
Law	12 USC 36
Regulation	12 CFR 5.30
<b>Capital Requirements</b>	
Law	12 USC 51
Regulation	12 CFR 3
<b>Capital Stock</b>	
Law	12 USC 52
<b>Capital Stock Required to Commence Business</b>	
Law	12 USC 53
<b>Capital Structure Change</b>	
Regulation	12 CFR 5.46
<b>Certificate</b>	
Law	12 USC 27
<i>Authorizing Transaction of Banking Business</i>	
Law	12 USC 1814
<i>Filing and Preservation</i>	
Law	12 USC 23
<b>Changes in Directors and Senior Executive Officers</b>	
Law	12 USC 1831i
Regulation	12 CFR 5.51

**Community Reinvestment Act of 1977**

Law 12 USC 2901-2907  
Regulation 12 CFR 25

**Corporate Powers and Investment Securities**

Law 12 USC 24

**Depository Institution Management Interlocks Act**

Law 12 USC 3201  
Regulation 12 CFR 26

**Directors***Citizenship Requirement*

Law 12 USC 72

*Convicted of a Crime*

Law 12 USC 1829

*Election*

Law 12 USC 71

Rulings 12 CFR 7.2003, 7.2006

*Engaged in Underwriting*

Law 12 USC 78

*Extensions of Credit*

Law 12 USC 375(b)

Regulation 12 CFR 215

*Residency*

Law 12 USC 72

**Examination of National Banks**

Law 12 USC 481

**FDIC Insurance**

Law 12 USC 222

**Federal Reserve Board**

Laws 12 USC 222, 12 USC 501a

**Fidelity Insurance**

Regulation 12 CFR 7.2013

**Fiduciary Powers**

Law 12 USC 92a

Regulation 12 CFR 5.26

**Filing Fees**

Regulation 12 CFR 5.5

<b>Independent External Audit</b>	
Law	12 USC 1831(m)
<b>Interbank Deposits as Compensating Balances for Loans to Individuals Connected with Depositing Bank</b>	
Law	12 USC 1972
<b>Investment in Bank Premises</b>	
Law	12 USC 371d
Regulation	12 CFR 7.3100
<b>Liquidation</b>	
Laws	12 USC 181, 182
Regulation	12 CFR 5.48
<b>Notice of Nonpublic Sale of Stock</b>	
Regulation	12 CFR 16.7
<b>Offering Circular</b>	
Regulation	12 CFR 16.3
<b>Organization Certificate</b>	
Law	12 USC 22
<b>Organization of National Bank</b>	
Law	12 USC 21
Regulation	12 CFR 5.20
<b>Place of Business</b>	
Law	12 USC 81
<b>Prohibited Activities</b>	
Law	12 USC 25
<b>Purchase and Assumption</b>	
Laws	12 USC 24(7), 1828c
Regulation	12 CFR 5.33
<b>Receivership and Conservatorship</b>	
Laws	12 USC 191, 1821, 1821(m)
<b>Securities Offering and Disclosure Rules</b>	
Regulation	12 CFR 16
<b>Shareholders' List</b>	
Law	12 USC 62

**Trust Bank**  
Laws  
Regulation

12 USC 27, 92a, 1841(c)(2)(D)  
12 CFR 9