

This handbook section provides information regarding the requirements and guidelines to be used in reviewing applications and notices filed by institutions to establish and invest in subordinate organizations.

A subordinate organization is any corporation, partnership, business trust, association, joint venture, pool, syndicate, or other similar business organization in which an institution has a direct or an indirect ownership interest.

12 C.F.R. Part 559 sets forth Office of Thrift Supervision (OTS) regulatory requirements regarding the establishment of subordinate organizations by institutions. Subpart A of Part 559 applies to federal institutions and Subpart B applies to both federal and state institutions. As discussed below, subordinate organizations are categorized as either operating subsidiaries or service corporations.

FILING REQUIREMENTS

Delegated Authority

Generally, applications and notices filed under this section may be processed by the Regional Office under delegated authority. However, certain situations may cause a filing to be nondelegated, including: (i) applications containing a significant issue of law or policy; (ii) service corporation applications involving activities not previously approved by OTS; and (iii) applications involving subordinate organizations that propose to engage in activities outside of the United States.

Expedited and Standard Processing Procedures

OTS processes applications using two procedures, expedited treatment and standard treatment. Applications filed under this section may qualify for expedited or standard treatment, depending on the type of investment or activity proposed by the subordinate organization.

Expedited Processing

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

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

If the institution qualifies for expedited processing, a notice is filed with the appropriate Regional Office. OTS considers a filing to be appropriately filed when sufficient information to evaluate the proposal was received from the applicant in its notice. Please refer to the Processing Procedures and Time Frames discussion of this section for more information on processing procedures and applicable time frames for notices.

Notices submitted by institutions eligible for expedited treatment are deemed “applications” for purposes of statutory and regulatory requirements referring to applications.

Standard Processing

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

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

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

Prefiling Meeting Requirements

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

Information and Form Requirements

All institutions (both Federal and State) must file either an application or a notice with OTS before commencing an activity in a new subordinate organization or before engaging in any new activity through an existing subordinate organization. The following institutions are exempt from these filing requirements: (i) any Federal savings bank that was chartered prior to October 15, 1982 as a savings bank under state law; or (ii) a institution that acquired its principal assets from an institution that was chartered prior to October 15, 1982 as a savings bank under state law. (See 12 C.F.R. § 559.11 and 12 USC § 1828(m)(5)).

If delegated, all applications and notices should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant should file the original and two copies of the application or notice with the appropriate Regional Office. The original filing, all copies, and all exhibits and other pertinent documents must be clearly marked and captioned as to the type of filing. One copy must contain original signatures on all executed documents. For applications that are not

delegated to the Regional Office, an additional three copies of the application should be filed with the Applications Filing Room in OTS-Washington.

Operating Subsidiaries

The filing is a 30-day notice, regardless of the treatment of the institution (expedited versus standard). An institution should file OTS Form 1579 prior to establishing an operating subsidiary. However, the notice may become an application with 30/60 day time frames under 559.11 if OTS notifies the applicant that the notice presents supervisory concerns or raises significant issues of law or policy.

Service Corporations*Expedited Filer*

An institution eligible for expedited treatment should file OTS Form 1466 or OTS Form 1562 for preapproved service corporation activities (as set forth in § 559.4) or securities brokerage activities through a service corporation, as applicable. In addition, § 559.11 requires that all notices include the information that the FDIC requires under 12 C.F.R. § 303.141. The notice can turn into an application with 30/60 day time frames under § 559.11 if OTS notifies the applicant that the notice presents supervisory concerns or raises significant issues or policy or law. If the activity is not preapproved, but is reasonably related to the activities of a financial institution, an application is required (559.3(e)(2)(i)).

Standard Filer

Standard filers can file a 30-day notice if the service corporation activity is one authorized to the parent thrift, except taking deposits. Again, the notice will become an application with 30/60 day time frames under § 559.11, if OTS notifies the applicant that the notice presents supervisory concerns, or raises significant issues of law or policy. Any application subject to 30/60 day time frames must be filed for activities reasonably related to the activities of financial institutions, and pre-approved activities listed in 559.4(b) through (i).

The information requested below will be required for all applications subject to standard processing filed under this section.

- Copy of the notice filed with the FDIC including the information required by 12 C.F.R. § 303.141;
- Copy of any agreement between the subordinate organization, the institution and/or any third party in conjunction with the transaction;
- Resolution by the institution's board of directors authorizing the establishment of the subsidiary organization;
- Name and address of the subordinate organization and, if newly organized, state of incorporation;
- Complete description of the proposed activities;

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- Copy of the institution's business plan regarding the conduct of the activity;
 - A description of the institution's expertise in the activity;
 - A brief description of the institution's policy and practice with regard to any anticipated involvement in the activity by a director, executive officer or principal shareholder of the institution or any related interest of such a person;
 - Citation to any applicable state statutory or regulatory authority regarding the conduct of the activity;
 - Amount of the institution's existing or proposed direct or indirect investment in the subsidiary organization, along with evidence of compliance with any applicable investment limitation or capital requirement;
 - The institution's proposed ownership percentage of the subsidiary organization. If it is less than 100 percent, the filing should identify the other owners and their respective ownership interests;
 - Three year income and expense projections for the subordinate organization;
 - Evidence that the institution and the subordinate organization will maintain separate existences pursuant to 12 C.F.R. § 559.10;
 - Articles of incorporation and bylaws of the subordinate organization; and
 - Copy of any other required regulatory approvals.

Notices or applications to participate in a joint venture through a subsidiary organization should also include the following additional information:

- The name and principal office of the joint venture;
- A detailed explanation of the financial arrangements between the participants;
- The most recent balance sheet and income statement of the joint venture; and
- Regulatory history of the other parties to the joint venture.

Securities Brokerage Activities

Notices or applications to engage in securities brokerage activities through a service corporation should also include a description of how the institution will comply with the requirements set forth in 12 C.F.R. § 545.74 and OTS Thrift Bulletin 23-2.

Exercise of Salvage Power

Under § 559.13, an institution may exercise its salvage power to make a contribution or a loan to its service corporation or a lower tier entity that exceeds the maximum amount otherwise permitted by law or regulation. A notice or an application filed under this section should demonstrate that: the salvage investment protects the institution's interest in the service corporation; the investment is

consistent with safety and soundness; and the institution considered alternatives to the salvage investment and determined that none of the alternatives was satisfactory.

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.

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

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

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

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

- Deem the application complete;
 - Request, in writing, any additional information necessary to deem the application complete;
- or

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- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

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

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

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

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

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

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

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

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

During the review period, OTS may request additional information if the information is necessary to resolve or clarify the issues presented in the application. OTS may also notify the applicant that the application is incomplete and require that the applicant submit additional information to complete the application. The review period can be extended an additional 30 calendar days if OTS determines

that additional time will be required to analyze the proposed transaction. In such cases, OTS must notify an applicant prior to the expiration of the period for review. In situations in which an application presents a significant issue of law or policy, OTS may extend the applicable period for review of such application beyond the time period for review. In these cases, written notice must be provided to an applicant no later than the expiration of the time period.

Under 12 C.F.R. § 516.290, if OTS has not acted on a pending application within two calendar years after the filing date, you 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.

Notices under Expedited Treatment

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

The applicant may engage in the proposed activities upon the expiration of 30 calendar days after the filing date of its notice, 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;
- Notifies the applicant that the notice is subject to standard treatment as it raises a supervisory concern, raises a significant issue of law or policy, or requires significant additional information; or
- Disapproves of the notice.

Failure by OTS to act within 30 calendar days of receipt of the notice for processing shall result in the filed notice's being accepted. If supplemental information is requested, the applicant will have 30 days to provide such information. The 30-day time frame will begin anew upon receipt of such information.

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

Regulatory Criteria*Service Corporations*

Under 12 C.F.R. Part 559, OTS may approve a service corporation application if the following requirements are met:

- A first tier service corporation may only be owned by institutions with home offices in the state where the applicant has its home office. (559.3(b)(2));
- A first tier service corporation must be organized under the laws of the state where the federal institution's home office is located. (559.3(d)(2));
- A service corporation may engage in preapproved activities listed in § 559.4 or activities reasonably related to the activities of financial institutions (with OTS approval). (559.3(e)(2)). If the institution is eligible for expedited treatment, its service corporation may be a depository institution; however, deposit taking is not a preapproved activity;
- A service corporation may invest in all types of lower tier entities as long as the lower tier entity is engaged solely in activities that are permissible for a service corporation. (559.3(f)(2));
- A federal institution may invest in the capital stock, obligations, or other securities of service corporations as long as the aggregate outstanding investment does not exceed three percent of assets. Any investment in excess of two percent of assets must serve primarily community, inner city, or community development purposes. Additional funds may be loaned by the institution to its service corporation subject to the restrictions discussed in § 559.5; and
- OTS may, at any time, limit an institution's investment in any of these entities, or may limit or refuse to permit any activities of any of these entities, for supervisory, legal, or safety and soundness reasons.

Operating Subsidiaries

Under 12 C.F.R. Part 559, OTS may approve an operating subsidiary application if the following requirements are met:

- More than 50 percent of the voting shares must be owned, directly or indirectly, by the federal institution and no other person or entity may exercise effective operating control. (559.3(c)(1));
- An operating subsidiary may only engage in activities permissible for a federal institution. (559.3(e)(1));
- An operating subsidiary may itself hold an operating subsidiary, and it may also invest in other types of lower tier entities. (559.3(f)(1));
- There are no limits on the amount that a federal institution may invest in an operating subsidiary, either separately or in the aggregate. In addition, there are no restrictions on the geographic location of an operating subsidiary; or

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- OTS may, at any time, limit an institution's investment in any of these entities, or may limit or refuse to permit any activities of any of these entities, for supervisory, legal, or safety and soundness reasons.

Decision Guidelines

The criteria for determining whether OTS should allow an institution to make an investment in a subordinate organization were developed to ensure that the activity or investment would not compromise the safe and sound operation of the institution. In that regard, the analysis should conclude that the proposed activity or investment and the level of investment is permissible under OTS statutes and regulations; that management has the expertise to implement the business plan of the subsidiary; that the business plan of the subsidiary is viable; and that there are no other supervisory reasons to object to the proposed investment or activity. To assist in this analysis, the following items should be provided and the following factors should be addressed:

- Name(s) and address(es) of the subsidiary and the parent institution.
- Name, location, and state of incorporation of the subsidiary.
- A statement regarding whether the subsidiary is to be wholly-owned by the parent company. If not, what percentage of the capital stock is to be owned by others and who are the other entities?
- Articles of incorporation and bylaws of the subsidiary.
- Resolution approving the activity submitted by the board of directors of the subsidiary or institution.
- A statement by the institution's attorney that the subsidiary is permitted to engage in the proposed activity, pursuant to applicable state laws.
- A statement that the proposed activity is a preapproved activity listed in § 599.4. If the activity is not preapproved, how is it related to the activities of financial institutions?
- A statement of qualifications and licensing requirements of personnel responsible for the proposed activity.
- A detailed description of the activity and the proposed operation.
- Income and expense projections of the activity for three years and the resulting effect on the institution's operations.
- The amount of investment in the proposed service corporation by the institution and whether the proposed activity will require the institution to increase its level of investment in the service corporation. If yes, include a discussion of the amount of proposed additional investment. Will the investment in a service corporation, when aggregated with existing investments in service corporations, comply with the percentage of assets limitation set forth in § 559.5?

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- For an operating subsidiary filing, provide a discussion of why the activity is permissible for a federal institution.
 - A well-supported statement that the insured institution and the subsidiary will have and maintain separate corporate existences.
 - Full disclosure of any interests and relationships, past, present, and proposed, of any affiliated person(s).
 - If the subsidiary will be engaged in insurance activities, has OTS consulted with the appropriate state insurance regulator as required by Section 307(c) of the Gramm-Leach-Bliley Act to obtain its views regarding the transaction?
 - If the subsidiary will be engaged in insurance activities, is the capital stock of the proposed insurance company nonassessable?
 - Can the proposed activity be conducted in a safe and sound manner?
 - Will the institution continue to comply with its investment limitations under 5(c) of HOLA and 12 C.F.R. Part 560 for the proposed operating subsidiary activity?
 - If a subsidiary will engage in activities outside of the United States, have the following items been addressed?
 - * What is the statutory or regulatory framework in the foreign country that would apply to the proposed foreign operations?
 - * Would the laws of the foreign country restrict OTS's access to, or enforcement authority over, the subsidiary?
 - * To what degree, if any, are the assets held by the subsidiary at greater risk of being subject to attachment in connection with claims that might arise from the subsidiary's foreign operations?
 - * How will the subsidiary make its books and records accessible to OTS examiners?
 - * If applicable, did the institution provide a private letter ruling or an opinion of an independent accountant confirming that the proposed activity would generate tax benefits to the institution?

Conditions

There are no standard conditions for these filings. OTS may condition its approval of subordinate organization applications to include nonstandard conditions. Any conditions imposed will be based on the individual circumstances surrounding the institution and the transaction itself. In circumstances where nonstandard conditions are involved, all nonstandard conditions must be supported with justification in the recommendation memorandum related to approval of the application. Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System records for the application.

Specifically, OTS may impose nonstandard conditions for applications involving foreign operations and reinsurance activities by subsidiaries. For applications involving foreign operations, OTS may impose the following conditions:

- The Operating Subsidiary must make available to the OTS such information as the OTS deems necessary from time to time to monitor the Operating Subsidiary's activities and the effect of those activities on the safe and sound operation of the Savings Bank. The Operating Subsidiary must maintain a duplicate set of records in the United States at the Savings Bank's home office, or, if satisfactory to the Regional Director, elsewhere in the United States.
- The Operating Subsidiary must maintain a registered agent in the Savings Bank's home office or, if satisfactory to the Regional Director, elsewhere in the United States to receive service of process on the subsidiary's behalf.
- The Operating Subsidiary must provide all financial statements in U.S. dollars in accordance with generally accepted accounting principles, including financial information required to be submitted quarterly in the Thrift Financial Report.
- The Savings Bank must promptly inform the Regional Director in writing of all changes in the directors, officers, and employees or managers of the Operating Subsidiary.
- The documents required by the following bullet items must be submitted to the Regional Director. Once these documents are submitted and the Regional Director indicates in writing that the documents are in acceptable form, the Operating Subsidiary may commence operations, subject to the foregoing conditions.
 - * The Savings Bank must establish and document internal controls that demonstrate adequate oversight of the Operating Subsidiary, and provide materials documenting the institution of such internal controls to the Regional Director.
 - * The Operating Subsidiary and any institution-affiliated party associated with the Operating Subsidiary must consent in writing to the jurisdiction of the U.S. over, and the applicability of U.S. law to, the Operating Subsidiary and its institution-affiliated parties for purposes of all claims made by, proceedings initiated by, or obligations to, the U.S., the OTS, and any U.S. governmental agency, department or division, and must consent in writing to the jurisdiction of the OTS over the Operating Subsidiary and its institution-affiliated parties for purposes of examination, supervision and enforcement. The Operating Subsidiary and its institution-affiliated parties must further agree in writing not to challenge the authority of any conservator/receiver appointed for the Savings Bank to control the Savings Bank and the Savings Bank's interests in the Operating Subsidiary.
 - * The Operating Subsidiary must submit a reasoned opinion of counsel in a form acceptable to the OTS indicating that there are no laws of _____ that would restrict OTS access to, or enforcement authority over, the Operating Subsidiary or its institution-affiliated parties.
 - * The Operating Subsidiary must consent in writing to the disclosure by the _____ governmental authorities to the OTS of such information on its operations and its

affiliates that the OTS deems necessary from time to time to determine and enforce compliance with applicable U.S. law.

- * The Operating Subsidiary and the Savings Bank must agree in writing to terminate operations of the Operating Subsidiary as soon as possible (but no later than 30 days) after being advised in writing that the OTS, in its sole discretion, has determined that such operations present undue risk.

For applications involving the formation of reinsurance subsidiaries, OTS may impose the following conditions:

- While the Service Corporation is a subsidiary of the Savings Bank, the portion of reinsurance risk assumed by the Service Corporation must be considered: (i) in determining the loan-to-value ratio for loans on the Savings Bank's books for purposes of determining whether such loans exceed the Supervisory Loan-to-Value Limits set forth in the Appendix to 12 C.F.R. § 560.101, and (ii) in determining whether such loans are "Qualifying Mortgage Loans" for risk-weighting purposes set forth in 12 C.F.R. Part 567.
- While the Service Corporation is a subsidiary of the Savings Bank, the Savings Bank, for purposes of calculating its regulatory capital as provided in 12 C.F.R. § 567.6(a)(2)(i)(C), must treat the amount of the Service Corporation's maximum reinsurance obligation on loans that the Savings Bank has sold as loans sold with recourse.

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

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

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

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

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

INFORMATION SOURCES

Statutes

12 USC § 1464(c)(4)(B)
12 USC § 1828(m)

Regulations

12 C.F.R. § 303.141
12 C.F.R. § 303.142
12 C.F.R. § 362.15
12 C.F.R. Part 516
12 C.F.R. § 545.74
12 C.F.R. Part 559
12 C.F.R. Part 560
12 C.F.R. § 567.1

OTS Bulletins

Thrift Bulletin 23-2
Thrift Bulletin 48

Thrift Activities Handbook Section 600
Thrift Activities Handbook Section 230

OTS Forms

Form 1466
Form 1562
Form 1579