

This handbook section provides information regarding the requirements and procedures to be used in reviewing filings by an institution to combine with a national or state bank in which the thrift institution does not survive.

12 C.F.R. § 563.22(b)(1)(i) sets forth Office of Thrift Supervision (OTS) regulatory requirements with respect to such combination filings. Details of the regulatory criteria and the factors that OTS should consider prior to taking action on a combination filing are discussed below.

FILING REQUIREMENTS

Delegated Authority

Notifications for these transactions may be processed by the Regional Office under delegated authority. See Delegation Section (Section 040) of the handbook for further information.

Processing Procedures

All filings made under this section are subject to a 30-day notification. A notification should be 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 notification. Please refer to the Processing Procedures and Time Frames discussion of this section for more information on processing procedures and applicable time frames for notification.

Notifications submitted by institutions are deemed “applications” for purposes of statutory and regulatory requirements referring to 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 notifications should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant should file the original and two copies of the notification with the application filing fee with the appropriate Regional Office. The original filing, all copies, and all exhibits and other pertinent documents must be clearly marked and captioned as to the type of filing. One copy must contain original signature on all executed documents.

All institutions proposing to combine with a national or state bank under this section should file OTS Form 1585 – Notification of Intention to Convert to or Combine with a Bank.

In addition, the filing should include:

-
- A copy of the filing made with the federal or state regulatory agency that must approve the combination.
 - A statement that the resulting institution will assume the liquidation account of the applicant institution, if applicable.
 - Information to demonstrate compliance with applicable stockholder or accountholder approval requirements.

Confidentiality

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

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

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

The applicant may consummate the transaction upon the expiration of 30 calendar days after the filing date of its notification, unless OTS requests in writing any additional information necessary to supplement the notification.

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

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

Regulatory Criteria

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

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

Decision Guidelines

The primary federal regulator is responsible for administering the provisions of the Bank Merger Act, and ensuring the transaction meets all applicable statutory and regulatory requirements, i.e., competitive, legal, or financial. OTS considers this type of transaction as a business decision of the savings institution. However, in the event that supervisory concerns are present with respect to the operations of the savings institution, OTS should contact the primary regulator for the resulting institution to discuss such concerns and any current or potential enforcement actions. In evaluating the notification, OTS should take into consideration the following:

- Are there any pending or potential supervisory concerns or enforcement actions involving the savings institution? If so, has the regulatory agency for the resulting institution been notified of the concerns or enforcement actions?
- Has the applicant demonstrated compliance with applicable stockholder or accountholder approval requirements?
- Has the applicant confirmed that any liquidation account will be assumed by the resulting financial institution?

Conditions

Generally, OTS, in acknowledging the notification, will advise the institution that:

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

RECORDKEEPING REQUIREMENTS

OTS is required to consolidate all correspondence related to the processing of the notification or application into a file copy to be sent to a central file. The file copy must include a copy of the

original filing including all exhibits, all amendments, all internal and external correspondence between interested parties, and all documentation associated with the review and analysis of the filing. The file copy must be organized and separated into public and confidential material, and clearly identified as such. The public and confidential sections must be arranged in chronological order.

MONITORING AND CONTROL

The Regional Office 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 letter.

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

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

INFORMATION SOURCES

Statutes

Section 5(d)(2) and (3) FDIA (12 USC § 1815)
Section 18(c) FDIA (12 USC § 1828(c))

Regulations

12 C.F.R. Part 516
12 C.F.R. § 552.13
12 C.F.R. § 563.22

OTS Bulletins

Thrift Bulletin 48-17

OTS Forms

Form 1585