

# **Comments to Other Agencies**

**Comptroller's Licensing Manual**

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Introduction .....	1
Application Process .....	1
General .....	1
Negative Comments .....	2
Holding Company Consideration.....	2
Procedures.....	4
Competitive Factors Report.....	4
Anti-money Laundering Requests (Section 327).....	6
Change in Control .....	8
Federal Reserve Filing.....	11
References .....	14

# Introduction

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This booklet should be used together with other booklets of the *Comptroller's Licensing Manual*. The principal users of this booklet are Licensing staff who should refer to the "[Business Combinations](#)" and the "[Change in Bank Control](#)" booklets for discussion of matters relevant to filings requiring comments to other agencies.

The Comptroller of the Currency (OCC) responds routinely to requests for comments from:

- The Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the Federal Reserve Board (FRB) on competitive factors in business combinations (bank mergers, consolidations, and purchase and assumptions).
- The FDIC, the OTS, and the FRB on anti-money laundering efforts of national banks involved in a merger.
- The FDIC, OTS, and the FRB on proposed acquirers of state banks or thrifts under the Change in Bank Control Act.
- The FRB on Regulation K<sup>1</sup> applications from national banks, acquisitions of national banks by existing bank holding companies, or proposed holding company formations by national banks.

## Application Process

### General

On behalf of the OCC, the appropriate district office or Headquarters Licensing (HQ LIC) normally responds to supervisory, anti-money laundering, and competitive concerns on all requests from federal regulatory agencies within 30 calendar days of the date on which the notice is sent. If the OCC cannot respond to the requesting agency within that time, it informs the agency by telephone that comments will be forthcoming.

The OCC will respond within 10 days of receipt of a request for competitive factor reports if the FRB, FDIC, or OTS declares an emergency requiring expeditious action.

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<sup>1</sup>Regulation K addresses foreign operations of FRB member banks and applications pertaining to the establishment of foreign branches. Edge Act and Agreement corporations, investments in foreign companies and subsidiaries, and requests to engage in new activities are not specifically authorized by the regulation.

## Negative Comments

The Deputy Comptroller for Licensing may make negative comments or provide comments to the requesting agency on matters that present a significant supervisory, CRA, or compliance concern or raise a significant legal or policy issue. The Deputy Comptroller also provides comments, if negative, on competitive factors, anti-money laundering efforts, and changes of control, as well as when recommending the FRB deny an acquisition of a national bank by a bank holding company. In addition to providing negative comments or recommending the denial of a holding company acquisition application, the OCC also may disapprove the application filed with the FRB. If the OCC indicates disapproval within 30 days of the FRB's request for comments, the FRB must hold a hearing on the application and decide whether to approve the application based on the information presented at the hearing.

Section 327 of the USA PATRIOT Act of 2001 (the Act) requires federal banking regulators to consider the effectiveness of a financial institution in combating money laundering activities (including overseas branches) in ruling on a merger application. The supervisory record concerning a particular financial institution that has been developed and maintained by the responsible federal regulator generally will contain sufficient anti-money laundering compliance information to satisfy the Act. Nonpublic OCC information, nonpublic third-party information and any other sensitive information shared with other federal banking regulators under the Act is not part of the public record.

Negative responses are general and indicate the nature of the concern, but do not include CAMELS ratings or other sensitive data.

## Holding Company Consideration

The OCC has a substantial and ongoing interest in filings made with the FRB to acquire, either directly or indirectly through another corporate entity, a national bank. If the acquiring group holds the stock through a separate corporate entity, that entity normally will be considered to be a bank holding company subject to FRB regulation and examination. A group proposing to control a national bank through a bank holding company must apply to the FRB for approval of a holding company application. The FRB provides the OCC with 30-days prior notice and opportunity to comment on the filing prior to the FRB's decision.

Sometimes an investor acquires a national bank through a holding company with the intent of changing the character of the bank's business; for example, substantially expanding into new types of lending or new geographics. In that instance, the comment on the proposal to the FRB is the only avenue the OCC may have to ensure that its fundamental supervisory concerns are addressed unless the bank is subject to a significant deviation condition or 12 CFR 5.53.

Additionally, if management wishes to substantially change the composition of the bank's assets or activities, it may need to submit to the OCC an [application](#), [business plan](#), revised [articles of association](#), or submit other materials for review prior to implementing the proposed change or acquisition. Refer to 12 CFR 5.53 and the OCC's guidance in the "[General Policies and Procedures](#)" booklet of the manual.

The OCC will review each FRB comment request carefully to determine if the filing contains plans to change the character or otherwise significantly alter the bank's operations. If so, the FRB and the OCC work closely together to obtain all necessary information about the filing, including conducting a joint field investigation.

At the OCC's request, the FRB normally will ask the holding company to commit to provide the OCC with a 30-day notice prior to implementing its Internet plan or otherwise significantly altering the existing bank's operations. This prior notice will ensure that the OCC has time to review the proposal, solicit any necessary information, and resolve issues or concerns. If a holding company commitment cannot be assured, the OCC may choose to issue adverse comments to the FRB or to disapprove the proposal. An OCC disapproval that the FRB receives within the 30-day timeframe automatically requires the FRB to hold a hearing. Accordingly, the OCC encourages filers to provide commitments that are satisfactory to the FRB and OCC.

# Procedures: Competitive Factors Report

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## Receipt of Request

### Licensing Staff

1. Receives a request for comments (request) with enclosed application from another federal regulatory agency.
2. Initiates and enters appropriate information into the Corporate Activities Information System (CAIS).
3. If the request involves a national bank, solicits comments by e-mail from the appropriate assistant deputy comptroller (ADC) and ADC analyst or large bank examiner-in-charge (EIC).
4. Establishes the official file to maintain all original documents.

## Review and Decision

5. Reviews the transaction to determine if the OCC should provide comments on competitive factors and:
  - As appropriate, reviews the file and all relevant information. Reviews any comments from the ADC and ADC analyst or large bank EIC and other OCC divisions, as appropriate. Prepares report, and forwards the official file to the appropriate official for decision. If a comment is *negative*, response must be referred to HQ LIC for reply because it is nondelegated.
  - If yes, telephones the requesting agency and advises that the OCC intends to provide an analysis on the competitive factors.
  - If no, stamps the agency's request as follows:

OCC – No Comments

Date

\_\_\_\_\_  
Signature of Delegated Official

Returns the stamped request to the requesting agency. Proceeds to step 7.

6. Sends the stamped request or negative response to the requesting agency within 30 days of agency's request (unless an emergency) and files a copy in the official file.

## **Close Out**

7. Makes appropriate CAIS entries.
8. If negative comments are provided, sends an e-mail to the appropriate ADC and ADC analyst or large bank EIC and advises of any concerns.
9. Destroys the confidential application from the requesting agency and retains the response and analysis in district files. If the response is negative or involves a national bank, files the response, analysis, and application in the official file and retains it in district files.

# Procedures: Anti-money Laundering Requests (Section 327)

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## Receipt of Request

### Licensing Staff

1. Receives a request for comments from another federal regulatory agency about a national bank's efforts to combat money laundering.
2. Initiates and enters appropriate information into the Corporate Activities Information System (CAIS).
3. If the request involves a national bank, solicits comments by e-mail from the appropriate assistant deputy comptroller (ADC) and ADC analyst or the large bank examiner-in-charge (EIC), using the OCC's [sample language](#).
4. Establishes the official file to maintain all original documents.

## Review and Decision

5. Reviews the supervisory comments. For cases with no issues, returns the original Request for Comment letter signed, dated, and stamped, "No Material Determination." If the request was by e-mail, includes this language in the return e-mail response. Goes to step 13.
6. If adverse comments are received, contacts Headquarters Licensing (HQ LIC) to determine if the comments are material in nature. If so, HQ LIC determines when to forward the notice to HQ LIC for processing. If not material, completes step 5.
7. Makes appropriate CAIS entries.

### HQ LIC

8. Makes appropriate CAIS entries.
9. Reviews the file and solicits comments from other OCC divisions (such as legal, compliance, supervision), as appropriate.
10. Reviews comments from other OCC divisions, makes recommendation, and forwards the official file to the appropriate official for decision.
11. Provides comments to the appropriate agency.
12. Makes appropriate CAIS entries.

## Close Out

### Licensing Staff

13. Makes appropriate CAIS entries.
14. If material adverse comments are provided, sends an e-mail to the appropriate ADC and ADC analyst or large bank EIC and advises of any concerns.
15. Destroys the confidential application from the requesting agency and retains the response and analysis in district files. If the response is negative or involves a national bank, files the response, analysis, and application in the official file and retains it in district files.

# Procedures: Change in Control

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## Receipt of Request

### Licensing Staff

1. Receives a request for comments (request) on an [Interagency Notice of Change in Bank Control](#) (notice) from another federal regulatory agency.
2. Initiates and enters appropriate information into the Corporate Activities Information System (CAIS).
3. Establishes the official file to maintain all original documents.

## Review

4. Within five days of receipt of request:
  - Reviews the request to determine if the acquirer reported an association with a national bank within the last five years.
  - If the change in control involves a national bank, reviews request to determine if the acquirer intends to change the character, asset composition, or otherwise significantly alter the bank's operation. If so, ensures that bank management filed appropriate materials (refer to "[General Policies and Procedures](#)" booklet and 12 CFR 5.53).
  - If a national bank relationship was reported, solicits comments from the appropriate assistant deputy comptroller (ADC) and ADC analyst or large bank examiner-in-charge (EIC) and other district divisions and requires preliminary responses by the 15th day after receipt of the request.
  - Checks the Enforcement Action Report System for any adverse information on the acquirer.
5. If at any time the request presents policy, legal, CRA, compliance, or supervisory issues (including adverse information), contacts Headquarters Licensing (HQ LIC) to decide if and when:
  - To forward the notice to HQ LIC for processing.
  - To prepare and forward to the requesting agency the [Request for Commitment](#) for 30-day Prior Notice of Change of Business Plan letter.
  - To forward specific issues to HQ LIC for action (while the district licensing staff continues to process the application).
6. Reviews comments and all other relevant materials.

7. Prepares a memorandum on findings if appropriate:
  - If negative comments are made about the filing, prepares an [advisory memorandum](#) or CAIS Application Comment to support your recommendation. Prepares written comments to the requesting agency.
  - If no negative comments were made about the filing, marks agency's request as follows:

OCC – No Comments

Date

\_\_\_\_\_  
Signature of Delegated Official

## Decision

8. Forwards the official file to the appropriate official for signature.
9. Sends comments or marked original request to the requesting agency.
10. If action cannot be taken under delegated authority, forwards the file and recommendation to HQ LIC for receipt at least seven days before the expiration of the comment period.
11. Makes appropriate CAIS entries.
12. Proceeds to step 20, if the district takes action.

## HQ LIC

13. Makes appropriate CAIS entries.
14. Reviews the district's advisory memorandum and the file, and solicits comments from other OCC divisions, as appropriate.
15. Reviews comments from other OCC divisions, makes recommendation, and forwards the official file to the appropriate official for decision.
16. Forwards a letter to the appropriate agency.
17. Makes appropriate CAIS entries.
18. Sends a copy of the letter to the director for district licensing at the appropriate district office and places a copy of the letter in the official file.
19. Sends an e-mail to the appropriate ADC and ADC analyst or large bank EIC if negative comments are provided and advises of any concerns.

## **Close Out**

### Licensing Staff

20. Destroys the confidential application from the requesting agency and retains the response and analysis in district files. If the response is negative or involves a national bank, files the response, analysis, and application in the official file and retains it in district files.
21. Makes appropriate CAIS entries.

# Procedures: Federal Reserve Filing

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## Request for Comments on Bank Holding Company or Regulation K Filing<sup>1</sup>

### Licensing

1. Receives request for comments from the Federal Reserve Bank (FRB).
2. Establishes the official file to maintain all original documents.
3. Initiates and enters appropriate information into the Corporate Activities Information System (CAIS).
4. Notifies the following OCC staff of receipt of the request:
  - Appropriate assistant deputy comptroller (ADC) and ADC analyst or large bank examiner-in-charge (EIC).
  - International Banking and Finance staff, if the bank holding company filing comes from a company that has foreign ownership or is engaged in international banking activities.
  - Headquarters Licensing (HQ LIC) staff for a Regulation K filing or request from an agency of a foreign government, involving a company that owns a national bank or federal branch or agency.

### Review

5. Reviews the request. Determines if the acquirer intends to change the character, asset composition, or otherwise significantly alter the bank's operation. If so, ensures that bank management filed appropriate materials (refer to "[General Policies and Procedures](#)" booklet and 12 CFR 5.53).
6. If at any time the request presents significant policy, legal, CRA, compliance, or supervisory issues (including adverse information), contacts HQ LIC to decide if and when:
  - To forward the request to HQ LIC for processing.
  - To conduct a joint field investigation with the FRB.
  - To prepare the [Request for Commitment](#) for 30-day Prior Notice of Change of Business Plan letter.

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<sup>1</sup>These procedures also apply to requests from agencies of foreign governments.

- To forward specific issues to HQ LIC for action (while the district licensing staff continues to process the application).
7. Solicits comments from the ADC and ADC analyst or large bank EIC and other district divisions and requires preliminary responses by the 15th day after receipt of request. Indicates if the acquirer intends to change the character or otherwise significantly alter the bank's operation.
  8. Forwards to the FRB the [Request for Commitment](#) for 30-Day Prior Notice of Change of Business Plan letter within the comment period, if the proposed change in operations could result in a change in character or otherwise significantly alter the bank's operations. Also notifies ADC of findings.
  9. Prepares an advisory [memorandum](#) or CAIS Application Comment discussing the findings and preparing a draft comment letter, if applicable.

## Decision

10. If no comment is made about the filing, marks the FRB's request for comment letter as follows:

OCC — No Comments

Date

\_\_\_\_\_  
Signature of Delegated Official

11. Forwards comments or the original letter marked in step 10 along with the official file to the appropriate official for signature. After signature, sends comments or the marked letter to the FRB.
12. If action cannot be taken under delegated authority, forwards the file and recommendation to HQ LIC for receipt at least seven days before the expiration of the comment period.
13. Makes appropriate CAIS entries.
14. If the district office takes action, goes to step 22.

## HQ LIC

15. Makes appropriate CAIS entries.
16. Reviews the file and solicits comments from other OCC divisions, as appropriate.
17. Reviews comments from other OCC divisions and prepares written comments on the findings.

- If negative comments are made about the filing, prepares an [advisory memorandum](#) or CAIS Application Comment discussing the supporting factors.
  - If OCC will disapprove the application, written response must be delivered to the FRB within the 30-day period for comment.
18. Forwards the comment letter to the FRB.
  19. Makes appropriate CAIS entries.
  20. Sends a copy of the letter to the director of district licensing at the appropriate district office and places a copy of the letter in the official file.
  21. If denial recommended or disapproval issued, notifies the appropriate ADC and ADC analyst or large bank EIC of the decision by sending an e-mail and advises of any concerns.

## **Close Out**

### Licensing Staff

22. Destroys the confidential application and retains the response and analysis in district files. If the response is negative or involves a national bank, files the response, analysis, and application in the official file and retains it in district files.
23. Makes appropriate CAIS entries.

## References

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<b>Bank Holding Company Formations and Acquisitions</b>	
Law	12 USC 1842
Regulation	12 CFR 225.15
<b>Bank Secrecy Act</b>	
Laws	31 USC 5311-5328
Regulations	12 CFR 21.21, 31 CFR 103
<b>Change in Asset Composition</b>	
Regulation	12 CFR 5.53
<b>Change in Control — Other Agency Opinion</b>	
Law	12 USC 1817(j)(11)
Regulation	12 CFR 225.43(f)(1)
<b>Competitive Factor Reports</b>	
Law	12 USC 1828(c)
Regulation	12 CFR 225.14
<b>Money Laundering</b>	
Regulation	12 CFR 5.33(e)(1)(v)
<b>Regulation K Applications</b>	
Regulation	12 CFR 211
<b>USA PATRIOT Act of 2001</b>	
Law	12 USC 1828(c)(11)