

Section 32 of the Federal Deposit Insurance Act and 12 C.F.R. § 563.550 require insured savings institutions and savings and loan holding companies to notify OTS at least 30 days before appointing or replacing any member of its board of directors, employing any person as a senior executive officer, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive position, if:

1. The savings institution:
 - (a) Does not comply with all minimum capital requirements under 12 C.F.R. § 567;
 - (b) Is in troubled condition; or
 - (c) Has been notified by OTS, in connection with its review of a capital restoration plan, that a notice is required
2. The savings and loan holding company is in troubled condition.

For purposes of this section, a director is an individual who serves on the board of directors of a savings institution or savings and loan holding company. This term does not include an advisory director who:

1. Is not elected by the shareholders;
2. Is not authorized to vote on any matters before the board of directors or any committee of the board of directors;
3. Provides only general policy advice to the board of directors or any committee of the board of directors; and,
4. Has not been identified by OTS in writing as an individual who performs the functions of a director, or who exercises significant influence over, or participates in, major policymaking decisions of the board of directors.

A senior executive officer is an individual who holds the title or performs the function of one or more of the following positions (without regard to title, salary, or compensation): president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer. A senior executive officer also includes any other person identified by OTS in writing as an individual who exercises significant influence over, or participates in, major policymaking decisions, whether or not hired as an employee.

The term troubled condition means:

1. A savings institution that has a composite rating of 4 or 5;
2. A savings and loan holding company that has an unsatisfactory rating under OTS's holding company rating system, or that is informed in writing by OTS that it has an adverse effect on its subsidiary savings institution;
3. A savings institution or savings and loan holding company that is subject to a capital directive, a cease-and-desist order, a consent order, a formal written agreement, or a prompt

corrective action directive relating to the safety and soundness or financial viability of the savings institution, unless otherwise informed in writing by OTS; or

4. A savings institution or savings and loan holding that is informed in writing by OTS that it is in troubled condition based on information available to OTS.

Waiver of Prior Notice Requirements

The Regional Office may waive the required notice period if it finds that: (1) a delay in the addition of a director or the employment of a senior executive officer would threaten the safety or soundness of the savings institution or savings and loan holding company; (2) a delay would not be in the public's interest; or (3) other extraordinary circumstances exist that justify waiver of prior notice. If a waiver is granted, a notice must be submitted within the time period specified by OTS.

In addition, an individual may serve as a director of a savings institution or savings and loan holding company before filing a notice if management did not nominate the individual and he/she submits a notice within seven days after election as a director.

FILING REQUIREMENTS

Delegated Authority

The Regional Director, or his/her designee, is authorized to approve or disapprove a notice of this type unless the notification raises significant issues of law or policy. See Delegation Section 040 of the handbook for discussion of the delegation process.

Expedited and Standard Processing Procedures

This notice is not subject to the expedited processing procedures set forth in 12 C.F.R. § 516.

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

The original and two conformed copies of the notice and all supporting documents are to be filed with the appropriate Regional Office at least 30 days prior to the effective date of the addition, hiring or promotion. For notices that are not delegated to the Regional Office, an additional three copies should be filed with the Applications Filing Room in Washington-DC. The notice should describe the institution's intended action, and include the following information:

1. A copy of the Interagency Notice of Change in Director or Senior Executive Officer (OTS Form 1624) and the Interagency Biographical and Financial Report (OTS Form 1623);

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2. An executed Application Certification Form RB 20;
 3. Legible fingerprints of the proposed director or senior executive officer. This individual is not required to file fingerprints if, within three years prior to the date of submission of the Notice, he/she provided legible fingerprints as part of a filing with OTS; and,
 4. Such other information required by OTS.

Confidentiality

The applicant must submit in writing, concurrently with the submission of the notice, any requests to keep specific portions of the notice confidential. In accordance with the Freedom of Information Act, the request should discuss the justification for the requested treatment and should specifically demonstrate the harm (e.g., to competitive position, invasion of privacy) that would result from the public release of information.

Information for which confidential treatment is requested should be: (i) specifically identified in the public portion of the notice by reference to the confidential section; (ii) separately bound; and (iii) labeled "confidential." The applicant should follow these same procedures when filing supplemental information to the notice. OTS will determine whether information designated as confidential must be made available to the public under the Freedom of Information Act. OTS will advise the applicant before it makes information designated as confidential available to the public.

REVIEW GUIDELINES**Processing Procedures and Time Frames**

Within five business days of receipt of the notice and fee, the Regional Office must notify the applicant of its receipt. The appropriate fee must accompany each notice in order for it to be considered filed. In addition, within such five business day period, the Regional Office will begin its background investigations on individuals who were required to submit such information in connection with the notice. Upon receipt, all FBI Fingerprint Cards must be submitted to OTS-Washington for processing. The background investigations should include, at a minimum, a search of the applicants in the Westlaw and CIIS databases. Further background investigations, as outlined in RB-20 should be conducted as appropriate. If appropriate, OTS should contact other regulatory agencies to seek additional comments on the applicants. This review may also require the OTS to request examination reports from another agency. All issues that are disclosed in the background check must be addressed directly with the individual. Results of all background checks should be addressed in the Regional Office's digest.

Within 30 days after the filing date of the notice, OTS will take one of the following actions:

- Request, in writing, any additional information necessary to supplement the notice. OTS will provide a reasonable time to respond to the additional information request. The Applicant must respond within the specified time period or request OTS to suspend processing. The 30-day review period will not begin until all requested information is received. Failure to

provide the requested information within the specified time period may result in OTS treating the notice as withdrawn, or it may choose to review the notice on the information requested.

- Approve the notice;
- Disapprove the notice; or
- For prior notices only, notify the applicant in writing that it is extending the 30-day review period for an additional period not to exceed 60 days. OTS is statutorily prohibited from extending the 30-day review period filed under the waiver of prior notice requirements.

Failure by OTS to act within 30 calendar days of receipt of the notice, or within any extended time period for review, shall result in the notice being accepted, and the proposed officer or director may begin service immediately.

Regulatory Criteria

OTS will disapprove a notice if it finds that the competence, experience, character, or integrity of the proposed director or senior executive officer indicates that it would not be in the best interests of the depositors of the savings institution or of the public to permit the individual to be employed by, or associated with, the savings institution or savings and loan holding company. If OTS disapproves the notice, it will issue a written notice that explains why OTS disapproved the notice. OTS will send the notice to the savings institution or savings and loan holding company and the individual.

Decision Guidelines

In determining whether to approve a notice, the following should be taken into consideration in the evaluation process:

1. Is the competence, experience, character, or integrity of the candidate such that it would not be in the best interests of the depositors of the institution or in the best interests of the public to permit the candidate to be employed by, or associated with, the institution or holding company?
2. Is the experience of the candidate considered adequate or appropriate considering
3. The duties and responsibilities that the person would assume?
4. Does the proposed notice present any supervisory or safety and soundness concerns?
5. Does the candidate have any outstanding loans with the subject and other financial institutions?
6. Does the candidate have a criminal or arrest record?
7. Has the candidate ever filed bankruptcy?
8. Does the candidate have the ability to meet present and any anticipated future financial obligations?
9. Has the candidate had dealings with other insured institutions?

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10. If the candidate has had any previous dealings or association with OTS or other regulatory agencies, has the individual complied with all conditions, commitments, and regulations in a safe and sound manner?
 11. Does the candidate have any association with related businesses such as real estate or insurance? If so, is a conflict of interest apparent?
 12. Does the candidate have any business affiliations with other directors of the institution or any other financial institution?
 13. Does the notice, combined with other recent notices, result in multiple or sequential changes in the directorate and a de facto change in control?
 14. Would the candidate's service trigger a management official interlock pursuant to 12 CFR Part 563f?
 15. Were there any items of concern noted with respect to the review of the RB 20 certification?
 16. Did the candidate fail or refuse to furnish information requested by the Regional Office?
and
 17. Are there any other factors that would indicate that it would not be in the best interests of the institution, its depositors, or the public for the individual to be associated with the institution?

Conditions

The OTS may not condition statutory notices. Any commitments from the candidate or institution should be addressed in the notification process.

RECORDKEEPING REQUIREMENTS

The OTS should 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 into public and confidential material, and clearly identified as such. The public and memorandum, and compliance material. The file copy must be organized and separated confidential sections must be arranged in chronological order.

MONITORING AND CONTROL

Appropriate staff responsible for the supervision and examination of the institution should be notified regarding the action taken on a notice. In addition, such staff should be provided with copies of the approval order or letter. If a notice is approved, the first examination of the institution following the approval should include a review of any changes in operations as a result of the transaction.

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

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

INFORMATION SOURCES

12 U.S.C. § 1831i
12 C.F.R. Part 516
12 C.F.R. §§ 563.550 – 563.590
12 C.F.R. Part 563f
12 C.F.R. Part 567
OTS RB-20
OTS TB 48 – 17

Forms

OTS Form 1624
OTS Form 1623
Application Certification Form RB-20