

intent to deny, by the acquiror or affiliates of the acquiror, of

(A) Any application relating to the organization of a financial institution,

(B) An application to acquire any financial institution or holding company thereof under the Savings and Loan Holding Company Act or the Bank Holding Company Act or otherwise,

(C) A notice relating to a change in control of any of the foregoing under the Control Act or

(D) An application or notice under a state holding company or change in control statute;

(iii) The acquiror or affiliates of the acquiror were placed in receivership or conservatorship during the preceding 10 years, or any management official of the acquiror was a management official or director (other than an official or director serving at the request of the OCC, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, or the former Federal Savings and Loan Insurance Corporation) or controlling shareholder of a company or savings association that was placed into receivership, conservatorship, or a management consignment program, or was liquidated during his or her tenure or control or within two years thereafter;

(iv) Felony conviction of the acquiror, an affiliate of the acquiror or a management official of the acquiror or an affiliate of the acquiror;

(v) Knowingly making any written or oral statement to the OCC or any predecessor agency (or its delegate) in connection with a notice or other filing under this part that is false or misleading with respect to a material fact or omits to state a material fact with respect to information furnished or requested in connection with such a notice or other filing;

(vi) Acquisition and retention at the time of submission of a notice, of stock in the savings association by the acquiror in violation of §174.3 or its predecessor sections.

(2) *Financial factors.* The following shall give rise to a rebuttable presumption that an acquiror may fail to satisfy the financial condition test of paragraph (d)(3) of this section:

(i) Liability for amounts of debt which, in the opinion of the OCC, cre-

ate excessive risks of default and pressure on the savings association to be acquired; or

(ii) Failure to furnish a business plan or furnishing a business plan projecting activities which are inconsistent with economical home financing.

#### §174.8 [Reserved]

#### APPENDIX A TO PART 174—REBUTTAL OF CONTROL AGREEMENT

##### Agreement

##### Rebuttal of Rebuttable Determination of Control Under Part 174

##### I. WHEREAS

A. [ ] is the owner of [ ] shares (the “Shares”) of the [ ] stock (the “Stock”) of [name and address of association], which Shares represent [ ] percent of a class of “voting stock” of [ ] as defined under the Acquisition of Control Regulations (“Regulations”) of the Office of the Comptroller of the Currency (“OCC”), 12 CFR part 174 (“Voting Stock”);

B. [ ] is a “savings association” within the meaning of the Regulations;

C. [ ] seeks to acquire additional shares of stock of [ ] (“Additional Shares”), such that [ ]’s ownership thereof will exceed 10 percent of a class of Voting Stock but will be less than 25 percent of a class of Voting Stock of [ ]; [and/or] [ ] seeks to [ ], which would constitute the acquisition of a “control factor” as defined in the Regulations (“Control Factor”);

D. [ ] does not seek to acquire the [Additional Shares or Control Factor] for the purpose or effect of changing the control of [ ] or in connection with or as a participant in any transaction having such purpose or effect;

E. The Regulations require a company or a person who intends to hold 10 percent or more but less than 25 percent of any class of Voting Stock of a savings association or holding company thereof and that also would possess any of the Control Factors specified in the Regulations, to file and obtain clearance of a notice (“Notice”) under the Change in Control Act (“Control Act”), 12 U.S.C. 1817(j), prior to acquiring such amount of stock and a Control Factor unless the rebuttable determination of control has been rebutted.

F. Under the Regulations, [ ] would be determined to be in control, subject to rebuttal, of [ ] upon acquisition of the [Additional Shares or Control Factor];

G. [ ] has no intention to manage or control, directly or indirectly, [ ];

H. [ ] has filed on [ ], a written statement seeking to rebut the determination of

control, attached hereto and incorporated by reference herein, (this submission referred to as the “Rebuttal”);

I. In order to rebut the rebuttable determination of control, [ ] agrees to offer this Agreement as evidence that the acquisition of the [Additional Shares or Control Factor] as proposed would not constitute an acquisition of control under the Regulations.

II. The OCC has determined, and hereby agrees, to act favorably on the Rebuttal, and in consideration of such a determination and agreement by the OCC to act favorably on the Rebuttal, [ ] and any other existing, resulting or successor entities of [ ] agree with the OCC that:

A. Unless [ ] shall have filed a Notice under the Control Act, or an Application under the Holding Company Act, as appropriate, and shall have obtained clearance of the Notice in accordance with the Regulations, [ ] will not, except as expressly permitted otherwise herein or pursuant to an amendment to this Rebuttal Agreement:

1. Seek or accept representation of more than one member of the board of directors of [insert name of association and any holding company thereof];

2. Have or seek to have any representative serve as the chairman of the board of directors, or chairman of an executive or similar committee of [insert name of association and any holding company thereof]’s board of directors or as president or chief executive officer of [insert name of association and any holding company thereof];

3. Engage in any intercompany transaction with [ ] or [ ]’s affiliates;

4. Propose a director in opposition to nominees proposed by the management of [insert name of association and any holding company thereof] for the board of directors of [insert name of association and any holding company thereof] other than as permitted in paragraph A-1;

5. Solicit proxies or participate in any solicitation of proxies with respect to any matter presented to the stockholders [ ] other than in support of, or in opposition to, a solicitation conducted on behalf of management of [ ];

6. Do any of the following, except as necessary solely in connection with [ ]’s performance of duties as a member of [ ]’s board of directors:

(a) Influence or attempt to influence in any respect the loan and credit decisions or policies of [ ], the pricing of services, any personnel decisions, the location of any offices, branching, the hours of operation or similar activities of [ ];

(b) Influence or attempt to influence the dividend policies and practices of [ ] or any decisions or policies of [ ] as to the offering or exchange of any securities;

(c) Seek to amend, or otherwise take action to change, the bylaws, articles of incorporation, or charter of [ ];

(d) Exercise, or attempt to exercise, directly or indirectly, control or a controlling influence over the management, policies or business operations of [ ];

(e) Seek or accept access to any non-public information concerning [ ].

B. [ ] is not a party to any agreement with [ ].

C. [ ] shall not assist, aid or abet any of [ ]’s affiliates or associates that are not parties to this Agreement to act, or act in concert with any person or company, in a manner which is inconsistent with the terms hereof or which constitutes an attempt to evade the requirements of this Agreement.

D. Any amendment to this Agreement shall only be proposed in connection with an amended rebuttal filed by [ ] with the OCC for its determination;

E. Prior to acquisition of any shares of “Voting Stock” of [ ] as defined in the Regulations in excess of the Additional Shares, any required filing will be made by [ ] under the Control Act or the Holding Company Act and either approval of the acquisition under the Holding Company Act or any Notice filed under the Control Act shall be cleared in accordance with applicable regulations;

F. At any time during which 10 percent or more of any class of Voting Stock of [ ] is owned or controlled by [ ], no action which is inconsistent with the provisions of this Agreement shall be taken by [ ] until [ ] files and either obtains a favorable determination with respect to either an amended rebuttal, approval of an Application under the Holding Company Act, or clearance of a Notice under the Control Act in accordance with applicable regulations;

G. Where any amended rebuttal filed by [ ] is denied or disapproved, [ ] shall take no action which is inconsistent with the terms of this Agreement, except after either (1) reducing the amount of shares of Voting Stock of [ ] owned or controlled by [ ] to an amount under 10 percent of a class of Voting Stock, or immediately ceasing any other actions that give rise to a conclusive or rebuttable determination of control under the Regulations; or (2) filing a Notice under the Control Act or an Application under the Holding Company Act, as appropriate, and either obtaining clearance of the Notice or approval of the Application, in accordance with applicable regulations;

H. Where any Notice filed by [ ] is disapproved, [ ] shall take no action which is inconsistent with the terms of this Agreement, except after reducing the amount of shares of Voting Stock of [ ] owned or controlled by [ ] to an amount under 10 percent of any class of Voting Stock, or immediately ceasing any other actions that give rise to a

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conclusive or rebuttable determination of control under the Regulations;

I. Should circumstances beyond [ ]'s control result in [ ] being placed in a position to direct the management or policies of [ ], then [ ] shall either (1) promptly file a Notice under the Control Act or an Application under the Holding Company Act, as appropriate, and take no affirmative steps to enlarge that control pending either a final determination with respect to the Notice or Application, or (2) promptly reduce the amount of shares of [ ] Voting Stock owned or controlled by [ ] to an amount under 10 percent of any class of Voting Stock or immediately cease any actions that give rise to a conclusive or rebuttable determination of control under the Regulations;

J. By entering into this Agreement and by offering it for reliance in reaching a decision on the request to rebut the presumption of control under the Regulations, as long as 10 percent or more of any class of Voting Stock of [ ] is owned or controlled, directly or indirectly, by [ ], and [ ] possesses any Control Factor as defined in the Regulations, [ ] will submit to the jurisdiction of the Regulations, including (1) the filing of an amended rebuttal or Notice for any proposed action which is prohibited by this Agreement, and (2) the provisions relating to a penalty for any person who willfully violates or with reckless disregard for the safety or soundness of a savings association participates in a violation of the Control Act and the Regulations thereunder, and any regulation or order issued by the OCC.

K. Any violation of this Agreement shall be deemed to be a violation of the [Control Act or Holding Company Act] and the Regulations, and shall be subject to such remedies and procedures as are provided in the [Control Act or Holding Company Act], as appropriate and the Regulations for a violation thereunder and in addition shall be subject to any such additional remedies and procedures as are provided under any other applicable statutes or regulations for a violation, willful or otherwise, of any agreement entered into with the OCC.

III. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one instrument representing the Agreement among the parties thereto. It shall not be necessary that any one counterpart be signed by all of the parties hereto as long as each of the parties has signed at least one counterpart.

IV. This Agreement shall be interpreted in a manner consistent with the provisions of the Rules and Regulations of the OCC.

V. This Agreement shall terminate upon (i) clearance by the OCC of [ ]'s Notice under the Control Act to acquire [ ], and consummation of the transaction as described in

such Notice, (ii) in the disposition by [ ] of a sufficient number of shares of [ ], or (iii) the taking of such other action that thereafter [ ] is not in control and would not be determined to be in control of [ ] under the Control Act or the Regulations of the OCC as in effect at that time.

VI. IN WITNESS THEREOF, the parties thereto have executed this Agreement by their duly authorized officer.

\_\_\_\_\_  
[Acquiror]  
Office of the Comptroller of the Currency  
Date: \_\_\_\_\_  
By: \_\_\_\_\_

**PART 190—PREEMPTION OF STATE USURY LAWS**

- Sec.
- 190.1 Authority, purpose, and scope.
- 190.2 Definitions.
- 190.3 Operation.
- 190.4 Federally-related residential manufactured housing loans—consumer protection provisions.
- 190.100 Status of Interpretations issued under Public Law 96-161.
- 190.101 State criminal usury statutes.

AUTHORITY: 12 U.S.C. 1735f-7a, 5412(b)(2)(B).  
SOURCE: 76 FR 49151, Aug. 9, 2011, unless otherwise noted.

**§ 190.1 Authority, purpose, and scope.**

(a) *Authority.* This part contains regulations issued under section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221, 94 Stat. 161.

(b) *Purpose and scope.* The purpose of this permanent preemption of state interest-rate ceilings applicable to Federally-related residential mortgage loans is to ensure that the availability of such loans is not impeded in states having restrictive interest limitations. This part applies to loans, mortgages, credit sales, and advances, secured by first liens on residential real property, stock in residential cooperative housing corporations, or residential manufactured homes as defined in § 190.2 of this part.

**§ 190.2 Definitions.**

For the purposes of this part, the following definitions apply:

(a) *Loans* mean any loans, mortgages, credit sales, or advances.