

## § 5.10

confidential treatment be afforded information submitted to the OCC pursuant to paragraph (c) of this section.

(c) *Confidential treatment.* The applicant or an interested person submitting information may request that specific information be treated as confidential under the Freedom of Information Act, 5 U.S.C. 552 (see 12 CFR 4.12(b)). A submitter should draft its request for confidential treatment narrowly to extend only to those portions of a document it considers to be confidential. If a submitter requests confidential treatment for information that the OCC does not consider to be confidential, the OCC may include that information in the public file after providing notice to the submitter. Moreover, at its own initiative, the OCC may determine that certain information should be treated as confidential and withhold that information from the public file. A person requesting information withheld from the public file should submit the request to the Disclosure Officer, Communications Division, under the procedures described in 12 CFR part 4, subpart B. That request may be subject to the predisclosure notice procedures of 12 CFR 4.16.

### § 5.10 Comments.

(a) *Submission of comments.* During the comment period, any person may submit written comments on a filing to the appropriate district office.

(b) *Comment period—(1) General.* Unless otherwise stated, the comment period is 30 days after publication of the public notice required by § 5.8(a).

(2) *Extension.* The OCC may extend the comment period if:

(i) The applicant fails to file all required publicly available information on a timely basis to permit review by interested persons or makes a request for confidential treatment not granted by the OCC that delays the public availability of that information;

(ii) Any person requesting an extension of time satisfactorily demonstrates to the OCC that additional time is necessary to develop factual information that the OCC determines is necessary to consider the application; or

(iii) The OCC determines that other extenuating circumstances exist.

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(3) *Applicant response.* The OCC may give the applicant an opportunity to respond to comments received.

### § 5.11 Hearings and other meetings.

(a) *Hearing requests.* Prior to the end of the comment period, any person may submit to the appropriate district office a written request for a hearing on a filing. The request must describe the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation of those issues or facts to the OCC. A person requesting a hearing shall simultaneously submit a copy of the request to the applicant.

(b) *Action on a hearing request.* The OCC may grant or deny a request for a hearing and may limit the issues to those it deems relevant or material. The OCC generally grants a hearing request only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise benefit the decisionmaking process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.

(c) *Denial of a hearing request.* If the OCC denies a hearing request, it shall notify the person requesting the hearing of the reason for the denial.

(d) *OCC procedures prior to the hearing—(1) Notice of Hearing.* The OCC issues a Notice of Hearing if it grants a request for a hearing or orders a hearing because it is in the public interest. The OCC sends a copy of the Notice of Hearing to the applicant, to the person requesting the hearing, and anyone else requesting a copy. The Notice of Hearing states the subject and date of the filing, the time and place of the hearing, and the issues to be addressed.

(2) *Presiding officer.* The OCC appoints a presiding officer to conduct the hearing. The presiding officer is responsible for all procedural questions not governed by this section.

(e) *Participation in the hearing.* Any person who wishes to appear (participant) shall notify the appropriate district office of his or her intent to participate in the hearing within ten days from the date the OCC issues the Notice of Hearing. At least five days before the hearing, each participant shall

submit to the appropriate district office, the applicant, and any other person the OCC requires, the names of witnesses, and one copy of each exhibit the participant intends to present.

(f) *Transcripts.* The OCC arranges for a hearing transcript. The person requesting the hearing generally bears the cost of one copy of the transcript for his or her use.

(g) *Conduct of the hearing—(1) Presentations.* Subject to the rulings of the presiding officer, the applicant and participants may make opening statements and present witnesses, material, and data.

(2) *Information submitted.* A person presenting documentary material shall furnish one copy to the OCC, and one copy to the applicant and each participant.

(3) *Laws not applicable to hearings.* The Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Federal Rules of Evidence (28 U.S.C. appendix), the Federal Rules of Civil Procedure (28 U.S.C. Rule 1 *et seq.*), and the OCC's Rules of Practice and Procedure (12 CFR part 19) do not apply to hearings under this section.

(h) *Closing the hearing record.* At the applicant's or participant's request, the OCC may keep the hearing record open for up to 14 days following the OCC's receipt of the transcript. The OCC resumes processing the filing after the record closes.

(i) *Other meetings—(1) Public meetings.* The OCC may arrange for a public meeting in connection with an application, either upon receipt of a written request for such a meeting which is made during the comment period, or upon the OCC's own initiative. Public meetings will be arranged and presided over by a presiding officer.

(2) *Private meetings.* The OCC may arrange a meeting with an applicant or other interested parties to an application, or with an applicant and other interested parties to an application, to clarify and narrow the issues and to facilitate the resolution of the issues.

[61 FR 60363, Nov. 27, 1996, as amended at 64 FR 60098, Nov. 4, 1999]

#### § 5.12 Computation of time.

In computing the period of days, the OCC includes the day of the act (*e.g.*,

the date an application is received by the OCC) from which the period begins to run and the last day of the period, regardless of whether it is a Saturday, Sunday, or legal holiday.

#### § 5.13 Decisions.

(a) *General.* The OCC may approve, conditionally approve, or deny a filing after appropriate review and consideration of the record. In deciding an application under this part, the OCC may consider the activities, resources, or condition of an affiliate of the applicant that may reasonably reflect on or affect the applicant.

(1) *Conditional approval.* The OCC may impose conditions on any approval, including to address a significant supervisory, CRA (if applicable), or compliance concern, if the OCC determines that the conditions are necessary or appropriate to ensure that approval is consistent with relevant statutory and regulatory standards and OCC policies thereunder and safe and sound banking practices.

(2) *Expedited review.* The OCC grants eligible banks expedited review within a specified time after filing or commencement of the public comment period, including any extension of the comment period granted pursuant to § 5.10, as described in applicable sections of this part.

(i) The OCC may extend the expedited review process for a filing subject to the CRA up to an additional 10 days if a comment contains specific assertions concerning a bank's CRA performance that, if true, would indicate a reasonable possibility that:

(A) A bank's CRA rating would be less than satisfactory, institution-wide, or, where applicable, in a state or multistate MSA; or

(B) A bank's CRA performance would be less than satisfactory in an MSA, or in the non-MSA portion of a state, in which it seeks to expand through approval of an application for a deposit facility as defined in 12 U.S.C. 2902(3).

(ii) The OCC will remove a filing from expedited review procedures, if the OCC concludes that the filing, or an adverse comment regarding the filing, presents a significant supervisory, CRA (if applicable), or compliance concern, or raises a significant legal or