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Change in Bank Control Act: What Triggers the Need?

By Linda Anderson

Under the Change in Bank Control Act, prior approval from the Federal Reserve is required when a person, alone or acting together with others, acquires “control” of a bank holding company, savings and loan holding company, or state member bank. What is control? A person or group controls an entity if the acquiring person or group will own, control, or hold with power to vote (e.g., a trustee) 25 percent or more of any class of a banking entity’s voting securities.

The Federal Reserve generally considers a person or group to control a banking entity if they will own, control, or hold with power to vote 10 percent or more of any class of voting securities and no other person will own, control, or hold with the power to vote a greater percentage of the class of voting securities.

A “person” includes an individual, trust or any other form of entity. “Acting in concert” includes a shareholder and his or her immediate family.

There are common issues that may not be intuitive to filers when they consider CIBCA filings. First, although estate planning trusts are generally permitted to hold shares, the Federal Reserve may require review of the agreement(s) governing any trust that is part of a control group, holds 10 percent or more of a banking entity’s outstanding voting securities, or may otherwise be subject to filing requirements. It’s also important for filers to understand and indicate who votes or otherwise exercises control over a trust’s voting securities, and what assets a trust holds.

Second, under CIBCA, the term “acquisition” is defined broadly and includes a purchase, assignment, transfer, pledge, or increase in percentage resulting from a stock redemption. Acquisitions of nonvoting shares can also trigger a CIBCA filing requirement if special voting rights are conferred on otherwise nonvoting shares or the nonvoting shares are immediately convertible to voting shares.

The Federal Reserve considers several issues in connection with CIBCA filings, including the competence, experience, integrity, and financial ability of each person named in a notice. In order to evaluate these factors, the Federal Reserve may conduct name checks and review Interagency Biographical and Financial Reports prepared by filers.

During the name check process, which is used for filers who will own more than 5 percent of a banking entity and in special situations, filers submit fingerprints to the Federal Reserve, and the Federal Reserve collects background information on an individual from other regulatory and investigative authorities. The Federal Reserve requires an IBFR from filers with an ownership interest of 2 percent or more. The IBFR must be submitted along with the Interagency Notice of Change in Control form.

Despite the general rules described above, the following transactions do not require notice:

- An acquisition by a person who has continuously controlled the bank holding company since it commenced business,
- An increase in ownership interest by a person previously authorized to control and who has continuously controlled the bank holding company,
- Acquisitions subject to approval under the Bank Holding Company Act or Bank Merger Act,
- Acquisition of the power to vote shares through receipt of a revocable proxy for a meeting, or
- A stock dividend or stock split if the proportional interest remains substantially the same.

In addition, for some types of transactions a post notice is required within 90 calendar days after the acquisition of control rather than before the acquisition. These transactions include: acquisition of voting securities through inheritance, acquisition of voting securities through a bona fide gift, and acquisition of voting securities in satisfaction of a debt previously contracted in good faith.

The statutory period for CIBCA filing review is at least 60 days. In order to minimize the time required for review, the Federal Reserve encourages filers to submit questions in advance to ensure that filings are complete.

Fed Notes is provided through a partnership the Bank Holding Company Association shares with the Federal Reserve Bank of Minneapolis.