

12 C.F.R. Parts 544 and 552 provide the standard requirements and permissible language for the charters and bylaws of insured federal savings institutions. These regulations ensure that the operations of an institution comply with Section 5 of the Home Owners' Loan Act (HOLA) and applicable laws, rules, and regulations governing federally chartered savings institutions. In addition to providing the standards governing charters and bylaws, 12 C.F.R. Parts 544 and 552 also describe the procedures for the filing and/or approval of charter and bylaw amendments, by notice or application, consistent with the preapproved provisions in the regulations.

Existing Charters

Federal institutions existing prior to September 15, 1983, may retain their old charters such as B, B(Rev), K(Rev), N(Rev), and L for mutual institutions, and S or T for stock institutions. If an institution proposes to adopt a new charter, or a portion thereof, however, it must adopt it in its entirety. This requirement prevents the intermingling of old and new charter provisions. Each institution may adopt its own form of bylaws. The bylaws, however, must contain provisions that comply with all requirements under 12 C.F.R. § 544.5 for mutual institutions and 12 C.F.R. §§ 552.5 through 552.6-4 for stock institutions. Model language for charter and bylaws may be found as an exhibit to this section.

Legal Opinions

A legal opinion is not required for preapproved charter or bylaw provisions. However, OTS may request a reasoned legal opinion if there are any concerns about whether a proposed amendment complies with certain laws. Such an opinion must address the permissibility of the amendment under the laws of the state where the institution's home office is located, or, if state law is unclear or silent, under Delaware's corporation laws. (12 C.F.R. §§ 544.2(a)(2)(i), 544.5(c)(1)(i), 552.4 (a)(2)(i) and 552.5(b)(i).)

Improperly Adopted Amendments

Charter: A charter amendment may be deemed invalid if it was submitted under the assumption that it is a properly adopted "preapproved" provision, but does not conform to regulatory provisions. In such instances, there are two alternatives: 1) if the discrepancy between the preapproved provision and the adopted version is minor (e.g., some variation in wording that does not alter the intent or meaning), the institution may be deemed to have adopted the provision as stated in the regulations, provided it properly discloses the impact of the amendment to members/stockholders; or 2) if the variation is such that the adopted provision conveys a different meaning, or could be subject to misinterpretation, the amendment will be treated as a request for approval of a nonconforming provision and processed accordingly.

Bylaws: In cases where OTS subsequently determines that a bylaw amendment is inconsistent with the regulations, despite the presence of a legal opinion and the acknowledgment of the filing by the Regional Director, then the amendment is rendered ineffective. The amendment will be treated as a request for approval of a nonconforming provision and processed accordingly.

Indemnification Provisions

Current OTS policy is to deny indemnification provisions that are broader than those provided by 12 C.F.R. § 545.121. Specific indemnification provisions may be included in bylaws, but indemnification provisions are not permitted in charters. Approval of an indemnification provision for an institution's bylaws may be granted under delegated authority if the provision is a verbatim citation of the regulation. Except for the use of the institution's name, where appropriate, any deviation in the language of 12 C.F.R. § 545.121 requires action by OTS.

Note: The provision of 12 C.F.R. § 545.121(f), which states that an institution having a bylaw relating to indemnification shall be governed solely by that bylaw provision is, in effect, a grandfathering provision. The intent of 12 C.F.R. § 545.121(f) is to allow those institutions having indemnification provisions in effect at the time the regulation was enacted in 1978 to continue to indemnify to the extent allowed by the institution's preexisting bylaw provision.

Anti-takeover Provisions

An anti-takeover provision is any amendment to the institution's bylaws, or in some cases to the charter, that renders more difficult or discourages a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the institution's stock, or the removal of incumbent management. The Director of OTS, or her designee, will act on all anti-takeover amendments, except those preapproved in the regulations for newly converted institutions. Anti-takeover provisions that have been found acceptable by the OTS are listed in an exhibit to this section.

Annual Meeting/Fiscal Closing: Bylaw Considerations

Although only stock institutions are required to specify their fiscal year in their bylaws, a change in the fiscal year for either a mutual or stock institution may require an amendment to the annual meeting provision of the bylaws. (A change in the annual meeting provision may also require a change in the institution's fiscal year end, whether or not the institution has a fiscal closing bylaw provision.) As the time span between annual meetings may not exceed 15-½ months, a change in the fiscal closing date may require the institution to conduct two annual meetings within the specified time period.

Publication/Notice Requirements

As charter amendments require a vote of the members/stockholders, such a vote is usually taken at an annual or special meeting. The publication and/or notice requirements for the two types of meetings are provided in the institution's bylaws and in 12 C.F.R. §§ 544.5(b)(2) and (3), and 552.6(b). Notices for the two types of meetings differ in that a special notice is required to state the subject matter of the meeting.

Approval by Members or Stockholders of Charter and/or Bylaw Amendments*Mutual Institutions*

Charter amendments of a federal mutual savings institution must be submitted to and approved by the savings institution's members at a legal meeting. (12 C.F.R. § 544.1 Section 9.) Bylaw amendments of a federal mutual savings institution must be made in accordance with the savings institution's bylaws and approved by a majority vote of the authorized board of directors (trustees) OR by a vote of the members of the savings institution. (12 C.F.R. § 544.5 Section 15.)

Stock Institutions

Charter amendments of a federal stock savings institution must be first submitted to and approved by the board of directors of the savings institution and approved by a majority of the total voters eligible to vote at a legal meeting of the shareholders of the savings institution. (12 C.F.R. § 552.3 Section 8.) Bylaw amendments of a federal stock savings institution must be made in accordance with the savings institution's bylaws and approved by a majority of the board of directors OR by a majority of the shareholders of the savings institution. (12 C.F.R. § 552.5(a).)

If a savings institution seeks to change its charter or bylaws, the Regional Office must determine whether any corresponding change(s) needs to be made to the related provisions of the bylaws or charter, respectively. A determination must be made that the appropriate changes have been or will be made.

FILING AND PROCESSING REQUIREMENTS**Information and Form Requirements**

An institution must either file a notice or an application to amend its charter and/or bylaws, depending on the nature of the amendment. The institution must file the original and two copies of each notice or application, and the appropriate processing fee, with the Regional Office of the Region in which the principal office of the institution is located. In addition to the copies filed with the Region, the applicant may also be required to file three copies with the Applications Filing Room in Washington, D.C. for those applications or notices that require concurrent processing by OTS-Washington and Regional staff. All copies are to be clearly marked as to the type of filing and should contain all exhibits and other pertinent documents. Specific filing requirements are set forth below.

*Charter Amendments**Application Filing*

If the proposed charter amendment would render more difficult or discourage a merger, proxy contest, tender offer (applicable to a stock institution), the assumption of control by a mutual accountholder of the institution (applicable to a mutual institution), the assumption of control by a holder of a block of the institution's stock (applicable to a stock institution), remove incumbent

management, or involve significant issues of law or policy, the institution must file an application requesting the prior written approval of the OTS. These types of applications are nondelegated and will be processed concurrently with the OTS Washington office. In support of an application for approval of the amendment, the institution should file the following information:

- One original and two copies of the proposed amendment, as approved by the board of directors, and certified by the institution's secretary or assistant secretary;
- A discussion of the basis for the amendment; and
- A copy of the amendment “marked” to show how the proposed charter provision varies from the current provision.

These applications will be processed in accordance with the provisions of 12 C.F.R. Part 516 (see processing procedures and time frames). In evaluating a request to adopt such an amendment, OTS will take into consideration the following:

- Has a similar provision previously received approval by OTS?
- If deemed necessary, has an opinion of legal counsel been submitted?
- Would the adoption of the amendment result in any impairment of the ability of management and/or directors to properly oversee the operations of the institution?

If the amendment is approved, it will be conditioned upon the following:

- The proposed amendments must be submitted to members/shareholders for their approval pursuant to the requirements of the institution's charter;
- The proposed amendments are described in the institution's proxy statement for the next meeting of shareholders for stock institutions;
- The full text of the proposed amendment(s) is annexed to the proxy statement; and
- The institution must submit materials that verify compliance with the above conditions to the appropriate Regional Office for review prior to issuance of final approval.

Notice Filing

If a proposed amendment does not involve a provision that would cause an application to be submitted, and is permissible under all applicable laws, rules and regulations, the institution must submit a notice of the proposed amendment to the Regional Office at least 30 days prior to the effective date of the amendment. The amendment shall automatically be approved within 30 days of the filing, provided the institution follows the requirements of its charter in adopting the amendment. The automatic approval does not apply if, prior to the expiration of the 30-day period, the Regional Office notifies the institution that the amendment is rejected, or deemed to be filed as an application. The institution should submit the following information in support of its notice:

- One signed and two conformed copies of the proposed amendment;

-
- Directors' resolution adopting the amendment and stating the text of the amendment;
 - A discussion of how the amendment deviates from the standard provision; and
 - If applicable, a legal opinion that confirms that the proposed amendment is in compliance with all laws, rules and regulations.

In evaluating a request to adopt such an amendment, OTS will take into consideration the following:

- Has a similar provision previously received approval by OTS?
- If applicable, has an opinion of legal counsel been submitted?
- Would the adoption of the amendment result in any impairment of the ability of management and/or directors to properly oversee the operations of the institution?
- Is the amendment consistent with the provisions of the regulations and the institution's charter?

If the amendment is approved, it will be conditioned upon the following:

- The proposed amendments must receive approval pursuant to the requirements of the institution's charter; and
- The institution must submit materials that set forth the effective date of the amendment, and verifies that the amendment was properly adopted.

Notification

If an institution proposes to adopt the standard form of charter set forth in 12 C.F.R. § 544.2 (for mutual institutions) or 12 C.F.R. § 555.4 (for stock institutions), or any of the charter amendments set forth in 12 C.F.R. § 544.2(b)1-4 (for mutual institutions), or 12 C.F.R. § 552.4(b)1-8 (for stock institutions), such amendments shall be effective and deemed approved at the time of adoption, if the amendment is filed with the Regional Office within 30 days after adoption and the institution follows the requirements of its charter in adopting such amendments. The institution must submit the following information within the 30-day period:

- OTS Form 1563;
- One signed and two conformed copies of the amendment; and
- Certification by the institution evidencing adoption of the proposed amendment by the board of directors and the date and vote of adoption of the proposed amendment by the members/stockholders, if applicable.

The Regional Office should review the amendment to ensure that it conforms to the required regulatory provisions and that it has been adopted in accordance with its charter and bylaws. An acknowledgement of the amendment's receipt by the Region should be sent to the institution after the review confirms that such amendment is in conformance with regulatory requirements. If the review

finds that the language of the proposed amendment does not conform to regulatory requirements, the Regional Office should promptly notify the institution that the amendment is subject to a thirty day review, or the application requirements, as discussed above.

Bylaw Amendments*Application Filing*

If the proposed amendment would render it more difficult or discourage a merger, proxy contest, tender offer (applicable to a stock institution), the assumption of control by a mutual accountholder of the institution (applicable to a mutual institution), the assumption of control by a holder of a block of the institution's stock (applicable to a stock institution), or removal of incumbent management, or be inconsistent with applicable laws, rule or regulations or the institution's charter, or involve a significant issue of law or policy, including indemnification, conflicts of interest, and limitations on director or officer liability, an application requesting the prior written approval from OTS must be filed. Furthermore, for stock institutions, the applicant must file an application if the amendment is inconsistent with the provisions of 12 C.F.R. §§ 552.6, 552.6-1, 552.6-2 and 552.6-3. The following should be submitted in support of an application:

- One original and two copies of the proposed amendment, as approved by the board of directors, and certified by the institution's secretary or assistant secretary;
- A discussion of the basis for the amendment; and
- A copy of the amendment "marked" to show how the proposed bylaw provision varies from the current provision.

These applications will be processed in accordance with the provisions of 12 C.F.R. Part 516 (see processing procedures and time frames). In evaluating a request to adopt such an amendment, OTS will take into consideration the following:

- Has a similar provision previously received approval by OTS?
- If necessary, has an opinion of legal counsel been submitted? A legal opinion may be required since many of the nonconforming amendments tend to restrict member/stockholder rights in favor of the existing board of directors and/or management.
- Would the adoption of the amendment result in any impairment of the ability of management and/or directors to properly oversee the operations of the institution?

If the amendment is approved, it will be conditioned upon the following:

- The proposed amendment must be submitted to members/shareholders for their approval pursuant to the requirements of the institution's charter;
- The proposed amendments are described in the institution's proxy statement for the next meeting of shareholders for stock institutions;
- The full text of the proposed amendment(s) is annexed to the proxy statement; and

-
- The institution must submit materials that verify compliance with the above conditions to the appropriate Regional Office for review prior to issuance of final approval.

Notice Filing

If a proposed bylaw amendment does not involve a provision that would cause an application to be submitted, and is permissible under all applicable laws, rules and regulations, the institution must submit a notice of the proposed amendment to the Region Office at least 30 days prior to the effective date of the amendment. This bylaw amendment shall automatically be approved within 30 days of the filing of the amendment, provided the institution follows the requirements of its charter in adopting the amendment. The automatic approval does not apply if, prior to the expiration of the 30-day period, the Regional Office notifies the institution that the amendment is rejected, or deemed to be filed as an application. The institution should submit the following information in support of its notice:

- One signed and two conformed copies of the proposed amendment;
- Directors' resolution adopting the amendment and stating the text of the amendment;
- A discussion of how the amendment deviates from the standard provision;
- The proposed date of the institution's special or annual meeting to consider the amendment; and
- If applicable, a legal opinion that confirms that the proposed amendment is in compliance with all laws, rules and regulations. A legal opinion may be required since many of the nonconforming amendments tend to restrict member/stockholder rights in favor of the existing board of directors and/or management.

In evaluating a request to adopt such an amendment, OTS will take into consideration the following:

- Has a similar provision previously received approval by OTS?
- If applicable, has an opinion of legal counsel been submitted?
- Would the adoption of the amendment result in any impairment of the ability of management and/or directors to properly oversee the operations of the institution?

If the amendment is approved, it will be conditioned upon the following:

- The proposed amendments must receive approval pursuant to the requirements of the institution's charter and bylaws; and
- The institution must submit materials that sets forth the effective date of the amendment, and verifies that the amendment was properly adopted.

Notification

If an institution proposes to adopt the language of the model bylaws, or any of the optional bylaws, set forth as exhibits to this section, such amendment shall be effective and deemed approved at the time of adoption, if the amendment is filed with the Regional Office within 30 days after adoption and the institution follows the requirements of its charter in adopting such amendment. The institution must submit the following information within the 30-day period:

- OTS Form 1563;
- One signed and two conformed copies of the amendment; and
- Certification by the institution evidencing adoption of the proposed amendment by the board of directors and the date and vote of adoption of the proposed amendment by the members/stockholders.

The Regional Office should review the amendment to ensure that it conforms to the required regulatory provisions and that it has been adopted in accordance with its charter. An acknowledgement of the amendment's receipt by the Region should be sent to the institution after the review confirms that such amendment is in conformance with regulatory requirements. If the review finds that the language of the proposed amendment does not conform to regulatory requirements, the Regional Office should promptly notify the institution that the amendment is subject to a thirty day review, or the application requirements, as discussed above.

Corporate Governance Procedures

A mutual institution may elect to follow the corporate governance procedures of the laws of the state where the main office of the institution is located, provided that such procedures may be elected only to the extent not inconsistent with applicable federal statutes, regulations, and safety and soundness, and such procedures do not include anti-takeover provisions, or include provisions that involve significant issues of law or policy. If an institution makes this election, it must designate in its bylaws the provision(s) from the body of law selected for its corporate governance procedures, and must file a copy of such bylaws, which are effective upon adoption, within 30 days after adoption, with OTS. The filing must indicate, where not obvious, why the bylaw provision(s) meet the requirements for adoption. Any bylaw amendment filed in accordance with these procedures will automatically be effective 30 days from the date of the filing, provided that the institution follows the requirements of its charter and bylaws in adopting the amendment. This automatic effective date does not apply if, prior to the expiration of the 30-day period, OTS notifies the institution that amendment is rejected or the amendment has been deemed an application.

Stock institutions may also elect to follow the corporate governance procedures of the laws of the state where the main office of the institution is located; the laws of the state where the institution's holding company, if any, is incorporated or chartered; Delaware General Corporation law; or The Model Business Corporation Act, provided that such procedures may be elected only to the extent not inconsistent with applicable federal statutes, regulations, and safety and soundness, and such procedures do not include anti-takeover provisions, or include provisions that involve significant issues of law or policy. All other filing requirements and procedures for adoption are the same as those for mutual institutions.

Processing Procedures and Time Frames*Applications*

As indicated, if this application does not qualify for processing under delegated authority, it will be processed concurrently with OTS-Washington staff. As a general matter, correspondence from OTS regarding applications will be transmitted from OTS-Washington.

Within five business days of receipt of the application and the application fee, the Regional Office must notify the applicant of the application's receipt. The appropriate application fee must accompany each application in order for it to be considered filed. The application will not be considered filed until received by both OTS-Washington and the Regional Office.

Within 30 calendar days of receipt of a properly submitted application, OTS shall take the following actions.

- Deem the application complete;
- Request, in writing, any additional information necessary to deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient.

Failure by OTS to act within 30 calendar days of receipt of the application for processing shall result in the filed application being deemed complete, commencing the period for review.

OTS must timely review all requests for a waiver of an application requirement that certain information be supplied. Unless OTS requests, in writing, additional information about the waiver request, or denies the waiver request, the waiver request shall be deemed granted.

If additional information is requested, a response must be submitted within 30 calendar days of the letter requesting such information. The applicant may, in writing, request a brief extension of the 30-calendar day period for responding to a request for additional information, prior to the expiration of the 30-calendar day time period. OTS, at its option, may grant the applicant a limited extension of time in writing. Failure to respond to a written request for additional information within 30 calendar days of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial or disapproval of the application.

After the timely filing of additional information in response to any initial or subsequent request by OTS for additional information, OTS has 15 calendar days to review the additional information for completeness or appropriateness and take one of the following actions:

- Request, in writing, any additional information necessary to deem the application complete;
- Deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient.

The 15-day review period commences when OTS receives a response that purports to respond to all questions in the information request. OTS may extend the 15-day review period for an additional 15 calendar days, if OTS requires the additional time to review the response. OTS will notify the applicant that it has extended the period before the end of the initial 15-day period.

Failure by OTS to act within 15 calendar days of receipt of the additional information shall result in the filed application being deemed complete, commencing the period for review.

Once the application has been deemed complete, there is a 60-calendar day review period during which time OTS will take into consideration all factors present in the application and render a decision thereon. If, upon expiration of the 60-day review period, assuming no extension has been granted, OTS has failed to act, the application is deemed approved automatically, and the applicant may thereafter consummate the transaction. If multiple applications are submitted in connection with one transaction, the applicable review period for all applications is the review period for the application with the longest review period, subject to statutory review periods.

During the review period, OTS may request additional information if the information is necessary to resolve or clarify the issues presented in the application. OTS may also notify the applicant that the application is incomplete and require that the applicant submit additional information to complete the application. The review period can be extended an additional 30 calendar days if OTS determines that additional time will be required to analyze the proposed transaction. In such cases, OTS must notify an applicant prior to the expiration of the period for review. In situations in which an application presents a significant issue of law or policy, OTS may extend the applicable period for review of such application beyond the time period for review. In these cases, written notice must be provided to an applicant no later than the expiration of the time period.

Under 12 C.F.R. § 516.290, if OTS has not acted on a pending application within two calendar years after the filing date, the application will be deemed withdrawn unless OTS determines that the applicant is actively pursuing a final determination on the application. Applications that are subject to this withdrawal provision are those that have failed to timely take action such as filing required additional information, or OTS has suspended processing of an application based on circumstances that are, in whole or in part, within the applicant's control and the applicant has failed to take reasonable steps to resolve these circumstances.

For purposes of calculating processing time frames, OTS does not include the day of the act or event, in determining the date the time period commences. In determining the conclusion of a time period, when the last day of the time period is a Saturday, Sunday, or a Federal holiday, the last day will become the next day that is not a Saturday, Sunday, or Federal holiday.

RECORDKEEPING REQUIREMENTS

OTS is required to 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 memorandum, and compliance material. The file copy must be organized and separated into public and confidential material, and clearly identified as such.

MONITORING AND CONTROL

If the amendment is processed as a notice, a review of the amendment and documentation may be necessary to ensure that the final language as approved was, in fact, properly adopted. If this review is necessary, the Regional Director, or their designee, may date stamp the amendment upon receipt to show its filing and effectiveness and send it to the institution, accompanied by an acknowledgment letter. If the Regional Office uses a stamp that acknowledges the filing, no formal cover letter is required. If at any point it is determined that an amendment has been improperly adopted, the institution must be notified immediately and informed of the proper procedures to follow.

If the amendment is processed as an application, the approval order or letter may include conditions of approval. The Regional Office will monitor compliance with all conditions imposed in connection with an application's approval. The applicant must submit evidence of satisfaction of the conditions included in the approval order or letter to the Regional Office within the stated time frames.

The appropriate staff responsible for the supervision and examination of the institution should be notified of the action taken on an application. In addition, they should be provided with copies of the approval order or letter. If an application is approved, the first examination of the institution following the approval should include a review of compliance with all conditions of approval and any changes in operations as a result of the transaction.

A review of the application 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 application in the Regional Office, including a review of the documentation maintained in the application file.

INFORMATION SOURCES

Statutes

12 U.S.C. § 1464

Home Owners' Loan Act of 1933, Section (5)

Regulations

Federal Stock Institutions

12 C.F.R. § 545.121

12 C.F.R. § 552.3

12 C.F.R. § 552.4

Indemnification of Officers, Directors and Employees
Charters for Federal Stock Institutions
Charter Amendments (preapproved)

12 C.F.R. § 552.5	Federal Stock Savings Institution Bylaws
12 C.F.R. § 552.6 through 6-3	

Federal Mutual Institutions

12 C.F.R. § 544.1	Federal Mutual Charter
12 C.F.R. § 544.2	Charter Amendments (preapproved)
12 C.F.R. § 544.5	Federal Mutual Savings Institution Bylaws

General

12 C.F.R. Part 516	Application Processing Guidelines and Procedures
12 C.F.R. § 543.1	Corporate Title
12 C.F.R. § 545.95	Change of Office Location and Redesignation of Office

Exhibits

Examples of anti-takeover amendments the OTS has found acceptable.

Forms

OTS Form 1502-E	OTS Model Charter for Stock Institutions
OTS Form 1502-F	OTS Model Charter for Mutual Institutions
OTS Form 1518	OTS Model Bylaws for Stock Institutions
OTS Form 1577	OTS Model Bylaws for Mutual Institutions

Optional Bylaw Provisions

Integrity of Directors

Exhibit - Anti-takeover Charter and Bylaw Provisions

The following are examples of anti-takeover amendments that have been found acceptable by the OTS.

Approved Amendments

1. Introduction of new business at the annual meeting – notification to the Secretary at least 20 days prior to the annual meeting. (5 days is current requirement)
2. Nominations for directors – must be submitted in writing at least 20 days in advance of meeting or if notice is mailed 30 days or less, then at least 10 days prior to the meeting. (5 days is current requirement)
3. Qualifying director shares – deleting completely/or increasing number of shares required. (100 shares is in model bylaws, but is not a requirement)
4. Board of directors vacancies – filled only by 80% (or some lesser supermajority) of the directors then in office. (a majority of directors voting may fill vacancy under current requirements)
5. Special meetings of the stockholders – called at the request of either 80% (or some lesser supermajority) of whole board or 20% of the voting shares (board of directors or 10% of the shareholders may call special meeting under current requirement)
6. Amendments to bylaws – only by 80% (or some lesser supermajority) of whole board or 80% (or some lesser supermajority) of the shareholders. (majority of whole board or majority of shareholders can amend the bylaws under current requirements.)
7. Amendments to charter – only by 80% (or some lesser supermajority) of whole board and affirmative vote of 80% (or some lesser supermajority) of the shareholders. (majorities of both are currently required.)
8. Shareholder approval for issuance of common stock exceeding 15% of outstanding stock – eliminate.
9. Fair price amendments – requiring supermajority vote prior to entering into certain business combinations.
10. Calling special meetings – increasing the requirement to 50% of shareholders. (currently 10%)
11. Changing the number of directors – only by supermajority vote of whole board or shareholders. (board may increase number of directors until the next election of directors under current requirements)
12. Removal of directors – by cause by a majority of shareholders, without cause by a supermajority of shareholders. (removal for cause only by a majority of shareholders. No removal without cause under current requirements)
13. 563(b)(3)(i) Protection – for five years (in conjunction with a mutual to stock conversion.)

**Exhibit – Model Charter – Stock
OTS Form 1502-E**

**Office of Thrift Supervision
Federal Stock Association Charter**

Section 1. Corporate title. The full corporate title of the association is _____.

Section 2. Office. The home office shall be located in _____
_____ [city, state].

Section 3. Duration. The duration of the association is perpetual.

Section 4. Purpose and Powers. The purpose of the association is to pursue any or all of the lawful objectives of a Federal savings association chartered under section 5 of the Home Owners' Loan Act and to exercise all of the express, implied and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Office of Thrift Supervision (Office).

Section 5. Capital Stock. The total number of shares of all classes of the capital stock that the association has the authority to issue is _____, all of which shall be common stock of par [or if no par is specified then shares shall have a stated] value of _____ per share. The shares may be issued from time to time as authorized by the board of directors without the approval of its shareholders, except as otherwise provided in this Section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the association. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted to the association), labor, or services actually performed for the association, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the association, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the retained earnings of the association that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance.

Except for shares issued in the initial organization of the association or in connection with the conversion of the association from the mutual to stock form of capitalization, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association other than as part of a general public offering or as qualifying shares to a director, unless the issuance or the plan

under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

The holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors, unless the charter provides that there shall be no such cumulative voting. Subject to any provision for a liquidation account, in the event of any liquidation, dissolution, or winding up of the association, the holders of the common stock shall be entitled, after payment or provision for payment of all debts and liabilities of the association, to receive the remaining assets of the association available for distribution, in cash or in kind. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

Section 6. Preemptive rights. Holders of the capital stock of the association shall not be entitled to preemptive rights with respect to any shares of the association, which may be issued.

Section 7. Directors. The association shall be under the direction of a board of directors. The authorized number of directors, as stated in the association's bylaws, shall not be fewer than five nor more than fifteen except when a greater or lesser number is approved by the Director of the Office, or his or her delegate.

Section 8. Amendment of charter. Except as provided in Section 5, no amendment, addition, alteration, change or repeal of this charter shall be made, unless such is proposed by the board of directors of the association, approved by the shareholders by a majority of the votes eligible to be cast at a legal meeting, unless a higher vote is otherwise required, and approved or preapproved by the Office.

Attest: _____

Secretary of the Association

By: _____

President or Chief Executive Officer of the Association

Attest: _____

Secretary of the Office of Thrift Supervision

By: _____

Director of the Office of Thrift Supervision

Effective Date: _____

**Exhibit – Model Charter – Mutual
OTS Form 1502-F**

**Office of Thrift Supervision
Federal Mutual Association Charter**

Federal mutual savings banks should substitute the term “savings bank” for “association” throughout.

Section 1. Corporate title. The full corporate title of the Federal savings association is _____.

Section 2. Office. The home office shall be located in _____ [city, state].

Section 3. Duration. The duration of the association is perpetual.

Section 4. Purpose and Powers. The purpose of the association is to pursue any or all of the lawful objectives of a Federal mutual savings association chartered under section 5 of the Home Owners' Loan Act and to exercise all the express, implied and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Office of Thrift Supervision (Office).

Section 5. Capital. The association may raise capital by accepting payments on savings and demand accounts and by any other means authorized by the Office.

Section 6. Members. All holders of the association's savings, demand or other authorized accounts are members of the association. In the consideration of all questions requiring action by the members of the association, each holder of an account shall be permitted to cast one vote for each \$100, or fraction thereof, of the withdrawal value of the member's account. No member, however, shall cast more than 1000 votes. All accounts shall be nonassessable.

Section 7. Directors. The association shall be under the direction of a board of directors. The authorized number of directors shall not be fewer than five nor more than fifteen persons, as fixed in the association's bylaws, except that the number of directors may be decreased to a number less than five or increased to a number greater than fifteen with the prior approval of the Director of the Office or his or her delegate.

Section 8. Capital, surplus, and distribution of earnings. The association shall maintain for the purpose of meeting losses the amount of capital required by section 5 of the Home Owners' Loan Act and by regulations of the Office. The association shall distribute net earnings on its accounts on such basis and in accordance with such terms and conditions as may from time to time be authorized by the Director of the Office: **Provided**, that the association may establish minimum-balance requirements for accounts to be eligible for distribution of earnings. All holders of accounts of the

association shall be entitled to equal distribution of assets, **pro rata** to the value of their accounts, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association. Moreover, in any such event, or in any other situation in which the priority of such accounts is in controversy, all such accounts shall, to the extent of their withdrawal value, be debts of the association having the same priority as the claims of general creditors of the association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association.

Section 9. Amendment of charter. Adoption of any preapproved charter amendment shall be effective after such preapproved amendment has been approved by the members at a legal meeting. Any other amendment, addition, change, or repeal of this charter must be approved by the Office prior to approval by the members at a legal meeting, and shall be effective upon filing with the Office in accordance with regulatory procedures.

Attest: _____

Secretary of the Association

By: _____

President or Chief Executive Officer of the Association

Attest: _____

Secretary of the Office of Thrift Supervision

By: _____

Director of the Office of Thrift Supervision

Effective Date: _____

**Exhibit – Model Bylaws – Stock
OTS Form 1518****OFFICE OF THRIFT SUPERVISION
Model Bylaws for Stock Associations**

The bylaws for a Federal stock savings bank may substitute the term “savings bank” for “association.”

Article I - Home Office

The home office of the association shall be at _____ [set forth the full address] in the County of _____, in the State of _____.

Article II - Shareholders

Section 1. Place of Meetings. All annual and special meetings of shareholders shall be held at the home office of the association or at such other convenient place as the board of directors may determine.

Section 2. Annual Meeting. A meeting of the shareholders of the association for the election of directors and for the transaction of any other business of the association shall be held annually within 150 days after the end of the association's fiscal year on the ___ of ___ if not a legal holiday, and if a legal holiday, then on the next day following which is not a legal holiday, at ___, or at such other date and time within such 150-day period as the board of directors may determine.

Section 3. Special Meetings. Special meetings of the shareholders for any purpose or purposes, unless otherwise prescribed by the regulations of the Office of Thrift Supervision (Office), may be called at any time by the chairman of the board, the president, or a majority of the board of directors, and shall be called by the chairman of the board, the president, or the secretary upon the written request of the holders of not less than one-tenth of all of the outstanding capital stock of the association entitled to vote at the meeting. Such written request shall state the purpose or purposes of the meeting and shall be delivered to the home office of the association addressed to the chairman of the board, the president, or the secretary.

Section 4. Conduct of Meetings. Annual and special meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order unless otherwise prescribed by regulations of the Office or these bylaws or the board of directors adopts another written procedure for the conduct of meetings. The board of directors shall designate, when present, either the chairman of the board or president to preside at such meetings.

Section 5. Notice of Meetings. Written notice stating the place, day, and hour of the meeting and the purpose(s) for which the meeting is called shall be delivered not fewer than 20 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, or the secretary, or the directors calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be

delivered when deposited in the mail, addressed to the shareholder at the address as it appears on the stock transfer books or records of the association as of the record date prescribed in section 6 of this article II with postage prepaid. When any shareholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. It shall not be necessary to give any notice of the time and place of any meeting adjourned for less than 30 days or of the business to be transacted at the meeting, other than an announcement at the meeting at which such adjournment is taken.

Section 6. Fixing of Record Date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of shareholders. Such date in any case shall be not more than 60 days and, in case of a meeting of shareholders, not fewer than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment.

Section 7. Voting Lists. At least 20 days before each meeting of the shareholders, the officer or agent having charge of the stock transfer books for shares of the association shall make a complete list of the shareholders of record entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address and the number of shares held by each. This list of shareholders shall be kept on file at the home office of the association and shall be subject to inspection by any shareholder of record or the shareholder's agent at any time during usual business hours for a period of 20 days prior to such meeting. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to inspection by any shareholder of record or any shareholder's agent during the entire time of the meeting. The original stock transfer book shall constitute prima facie evidence of the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders. In lieu of making the shareholder list available for inspection by shareholders as provided in the preceding paragraph, the board of directors may elect to follow the procedures prescribed in § 552.6(d) of the Office's regulations as now or hereafter in effect.

Section 8. Quorum. A majority of the outstanding shares of the association entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. If less than a majority of the outstanding shares is represented at a meeting, a majority of the shares so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to constitute less than a quorum. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number of shareholders voting together or voting by classes is required by law or the charter. Directors, however, are elected by a plurality of the votes cast at an election of directors.

Section 9. Proxies. At all meetings of shareholders, a shareholder may vote by proxy executed in writing by the shareholder or by his or her duly authorized attorney in fact. Proxies may be given

telephonically or electronically as long as the holder uses a procedure for verifying the identity of the shareholder. Proxies solicited on behalf of the management shall be voted as directed by the shareholder or, in the absence of such direction, as determined by a majority of the board of directors. No proxy shall be valid more than eleven months from the date of its execution except for a proxy coupled with an interest.

Section 10. Voting of Shares in the Name of Two or More Persons. When ownership stands in the name of two or more persons, in the absence of written directions to the association to the contrary, at any meeting of the shareholders of the association any one or more of such shareholders may cast, in person or by proxy, all votes to which such ownership is entitled. In the event an attempt is made to cast conflicting votes, in person or by proxy, by the several persons in whose names shares of stock stand, the vote or votes to which those persons are entitled shall be cast as directed by a majority of those holding such and present in person or by proxy at such meeting, but no votes shall be cast for such stock if a majority cannot agree.

Section 11. Voting of Shares by Certain Holders. Shares standing in the name of another corporation may be voted by any officer, agent, or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine. Shares held by an administrator, executor, guardian, or conservator may be voted by him or her, either in person or by proxy, without a transfer of such shares into his or her name. Shares standing in the name of a trustee may be voted by him or her, either in person or by proxy, but no trustee shall be entitled to vote shares held by him or her without a transfer of such shares into his or her name. Shares held in trust in an IRA or Keogh Account, however, may be voted by the association if no other instructions are received. Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer into his or her name if authority to do so is contained in an appropriate order of the court or other public authority by which such receiver was appointed. A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred. Neither treasury shares of its own stock held by the association nor shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the association, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for purposes of any meeting. [If charter authorizes cumulative voting, the following Section 12 shall apply, otherwise renumber Sections 13 - 16 as Sections 12 - 15.]

Section 12. Cumulative Voting. Every shareholder entitled to vote at an election for directors shall have the right to vote, in person or by proxy, the number of shares owned by the shareholder for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote, or to cumulate the votes by giving one candidate as many votes as the number of such directors to be elected multiplied by the number of shares shall equal or by distributing such votes on the same principle among any number of candidates.

Section 13. Inspectors of Election. In advance of any meeting of shareholders, the board of directors may appoint any person other than nominees for office as inspectors of election to act at such meeting or any adjournment. The number of inspectors shall be either one or three. Any such appointment shall not be altered at the meeting. If inspectors of election are not so appointed, the

chairman of the board or the president may, or on the request of not fewer than 10 percent of the votes represented at the meeting shall, make such appointment at the meeting. If appointed at the meeting, the majority of the votes present shall determine whether one or three inspectors are to be appointed. In case any person appointed as inspector fails to appear or fails or refuses to act, the vacancy may be filled by appointment by the board of directors in advance of the meeting or at the meeting by the chairman of the board or the president. Unless otherwise prescribed by regulations of the Office, the duties of such inspectors shall include: determining the number of shares and the voting power of each share, the shares represented at the meeting, the existence of a quorum, and the authenticity, validity and effect of proxies; receiving votes, ballots, or consents; hearing and determining all challenges and questions in any way arising in connection with the rights to vote; counting and tabulating all votes or consents; determining the result; and such acts as may be proper to conduct the election or vote with fairness to all shareholders.

Section 14. Nominating Committee. The board of directors shall act as a nominating committee for selecting the management nominees for election as directors. Except in the case of a nominee substituted as a result of the death or other incapacity of a management nominee, the nominating committee shall deliver written nominations to the secretary at least 20 days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the association. No nominations for directors except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by shareholders are made in writing and delivered to the secretary of the association at least five days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the association. Ballots bearing the names of all persons nominated by the nominating committee and by shareholders shall be provided for use at the annual meeting. However, if the nominating committee shall fail or refuse to act at least 20 days prior to the annual meeting, nominations for directors may be made at the annual meeting by any shareholder entitled to vote and shall be voted upon.

Section 15. New Business. Any new business to be taken up at the annual meeting shall be stated in writing and filed with the secretary of the association at least five days before the date of the annual meeting, and all business so stated, proposed, and filed shall be considered at the annual meeting; but no other proposal shall be acted upon at the annual meeting. Any shareholder may make any other proposal at the annual meeting and the same may be discussed and considered, but unless stated in writing and filed with the secretary at least five days before the meeting, such proposal shall be laid over for action at an adjourned, special, or annual meeting of the shareholders taking place 30 days or more thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of reports of officers, directors, and committees; but in connection with such reports, no new business shall be acted upon at such annual meeting unless stated and filed as herein provided.

Section 16. Informal Action by Shareholders. Any action required to be taken at a meeting of the shareholders, or any other action which may be taken at a meeting of shareholders, may be taken without a meeting if consent in writing, setting forth the action so taken, shall be given by all of the shareholders entitled to vote with respect to the subject matter.

Article III - Board of Directors

Section 1. General Powers. The business and affairs of the association shall be under the direction of its board of directors. The board of directors shall annually elect a chairman of the board and a president from among its members and shall designate, when present, either the chairman of the board or the president to preside at its meetings.

Section 2. Number and Term. The board of directors shall consist of ___ [not fewer than five nor more than fifteen] members, and shall be divided into three classes as nearly equal in number as possible. The members of each class shall be elected for a term of three years and until their successors are elected and qualified. One class shall be elected by ballot annually.

Section 3. Regular Meetings. A regular meeting of the board of directors shall be held without other notice than this bylaw following the annual meeting of shareholders. The board of directors may provide, by resolution, the time and place, for the holding of additional regular meetings without other notice than such resolution. Directors may participate in a meeting by means of a conference telephone or similar communications device through which all persons participating can hear each other at the same time. Participation by such means shall constitute presence in person for all purposes.

Section 4. Qualification. Each director shall at all times be the beneficial owner of not less than 100 shares of capital stock of the association unless the association is a wholly owned subsidiary of a holding company.

Section 5. Special Meetings. Special meetings of the board of directors may be called by or at the request of the chairman of the board, the president, or one-third of the directors. The persons authorized to call special meetings of the board of directors may fix any place, within the association's normal lending territory, as the place for holding any special meeting of the board of directors called by such persons. Members of the board of directors may participate in special meetings by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person for all purposes.

Section 6. Notice. Written notice of any special meeting shall be given to each director at least 24 hours prior thereto when delivered personally or by telegram or at least five days prior thereto when delivered by mail at the address at which the director is most likely to be reached. Such notice shall be deemed to be delivered when deposited in the mail so addressed, with postage prepaid if mailed, when delivered to the telegraph company if sent by telegram, or when the association receives notice of delivery if electronically transmitted. Any director may waive notice of any meeting by a writing filed with the secretary. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the board of directors need be specified in the notice of waiver of notice of such meeting.

Section 7. Quorum. A majority of the number of directors fixed by section 2 of this article III shall constitute a quorum for the transaction of business at any meeting of the board of directors; but if less

than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time. Notice of any adjourned meeting shall be given in the same manner as prescribed by section 5 of this article III.

Section 8. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the Office or by these bylaws.

Section 9. Action Without a Meeting. Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

Section 10. Resignation. Any director may resign at any time by sending a written notice of such resignation to the home office of the association addressed to the chairman of the board or the president. Unless otherwise specified, such resignation shall take effect upon receipt by the chairman of the board or the president. More than three consecutive absences from regular meetings of the board of directors, unless excused by resolution of the board of directors, shall automatically constitute a resignation, effective when such resignation is accepted by the board of directors.

Section 11. Vacancies. Any vacancy occurring on the board of directors may be filled by the affirmative vote of a majority of the remaining directors although less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the shareholders. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

Section 12. Compensation. Directors, as such, may receive a stated salary for their services. By resolution of the board of directors, a reasonable fixed sum, and reasonable expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the board of directors. Members of either standing or special committees may be allowed such compensation for attendance at committee meetings as the board of directors may determine.

Section 13. Presumption of Assent. A director of the association who is present at a meeting of the board of directors at which action on any association matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention shall be entered in the minutes of the meeting or unless he or she shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the association within five days after the date a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 14. Removal of Directors. At a meeting of shareholders called expressly for that purpose, any director may be removed only for cause by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against the removal would be sufficient to elect a director if then cumulatively voted at an election of the class of directors of which such director is a part. [If cumulative voting has been deleted, the preceding sentence should be deleted.] Whenever the holders

of the shares of any class are entitled to elect one or more directors by the provisions of the charter or supplemental sections thereto, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

Article IV - Executive and Other Committees

Section 1. Appointment. The board of directors, by resolution adopted by a majority of the full board, may designate the chief executive officer and two or more of the other directors to constitute an executive committee. The designation of any committee pursuant to this Article IV and the delegation of authority shall not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

Section 2. Authority. The executive committee, when the board of directors is not in session, shall have and may exercise all of the authority of the board of directors except to the extent, if any, that such authority shall be limited by the resolution appointing the executive committee; and except also that the executive committee shall not have the authority of the board of directors with reference to: the declaration of dividends; the amendment of the charter or bylaws of the association, or recommending to the shareholders a plan of merger, consolidation, or conversion; the sale, lease, or other disposition of all or substantially all of the property and assets of the association otherwise than in the usual and regular course of its business; a voluntary dissolution of the association; a revocation of any of the foregoing; or the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest.

Section 3. Tenure. Subject to the provisions of section 8 of this article IV, each member of the executive committee shall hold office until the next regular annual meeting of the board of directors following his or her designation and until a successor is designated as a member of the executive committee.

Section 4. Meetings. Regular meetings of the executive committee may be held without notice at such times and places as the executive committee may fix from time to time by resolution. Special meetings of the executive committee may be called by any member thereof upon not less than one day's notice stating the place, date, and hour of the meeting, which notice may be written or oral. Any member of the executive committee may waive notice of any meeting and no notice of any meeting need be given to any member thereof who attends in person. The notice of a meeting of the executive committee need not state the business proposed to be transacted at the meeting.

Section 5. Quorum. A majority of the members of the executive committee shall constitute a quorum for the transaction of business at any meeting thereof, and action of the executive committee must be authorized by the affirmative vote of a majority of the members present at a meeting at which a quorum is present.

Section 6. Action Without a Meeting. Any action required or permitted to be taken by the executive committee at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members of the executive committee.

Section 7. Vacancies. Any vacancy in the executive committee may be filled by a resolution adopted by a majority of the full board of directors.

Section 8. Resignations and Removal. Any member of the executive committee may be removed at any time with or without cause by resolution adopted by a majority of the full board of directors. Any member of the executive committee may resign from the executive committee at any time by giving written notice to the president or secretary of the association. Unless otherwise specified, such resignation shall take effect upon its receipt; the acceptance of such resignation shall not be necessary to make it effective. No notice of any meeting need be given to any member thereof who attends in person. The notice of a meeting of the executive committee need not state the business proposed to be transacted at the meeting.

Section 9. Procedure. The executive committee shall elect a presiding officer from its members and may fix its own rules of procedure, which shall not be inconsistent with these bylaws. It shall keep regular minutes of its proceedings and report the same to the board of directors for its information at the meeting held next after the proceedings shall have occurred.

Section 10. Other Committees. The board of directors may by resolution establish an audit, loan, or other committee composed of directors as they may determine to be necessary or appropriate for the conduct of the business of the association and may prescribe the duties, constitution, and procedures thereof.

Article V - Officers

Section 1. Positions. The officers of the association shall be a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The offices of the secretary and treasurer or comptroller may be held by the same person and a vice president may also be either the secretary or the treasurer or comptroller. The board of directors may designate one or more vice presidents as executive vice president or senior vice president. The board of directors may also elect or authorize the appointment of such other officers as the business of the association may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

Section 2. Election and Term of Office. The officers of the association shall be elected annually at the first meeting of the board of directors held after each annual meeting of the shareholders. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as possible. Each officer shall hold office until a successor has been duly elected and qualified or until the officer's death, resignation, or removal in the manner hereinafter provided. Election or appointment of an officer, employee, or agent shall not of itself create contractual rights. The board of directors may authorize the association to enter into an employment contract with any officer in accordance with regulations of the Office; but no such contract shall impair the right of the board of directors to remove any officer at any time in accordance with section 3 of this article V.

Section 3. Removal. Any officer may be removed by the board of directors whenever in its judgment the best interests of the association will be served thereby, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the board of directors for the unexpired portion of the term.

Section 5. Remuneration. The remuneration of the officers shall be fixed from time to time by the board of directors.

Article VI - Contracts, Loans, Checks, and Deposits

Section 1. Contracts. To the extent permitted by regulations of the Office, and except as otherwise prescribed by these bylaws with respect to certificates for shares, the board of directors may authorize any officer, employee, or agent of the association to enter into any contract or execute and deliver any instrument in the name of and on behalf of the association. Such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the association and no evidence of indebtedness shall be issued in its name unless authorized by the board of directors. Such authority may be general or confined to specific instances.

Section 3. Checks; Drafts. etc. All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the association shall be signed by one or more officers, employees or agents of the association in such manner as shall from time to time be determined by the board of directors.

Section 4. Deposits. All funds of the association not otherwise employed shall be deposited from time to time to the credit of the association in any duly authorized depositories as the board of directors may select.

Article VII - Certificates for Shares and Their Transfer

Section 1. Certificates for Shares. Certificates representing shares of capital stock of the association shall be in such form as shall be determined by the board of directors and approved by the Office. Such certificates shall be signed by the chief executive officer or by any other officer of the association authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the association itself or one of its employees. Each certificate for shares of capital stock shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the association. All certificates surrendered to the association for transfer shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares has been surrendered and canceled, except that in the case of a lost or destroyed certificate, a new certificate

may be issued upon such terms and indemnity to the association as the board of directors may prescribe.

Section 2. Transfer of Shares. Transfer of shares of capital stock of the association shall be made only on its stock transfer books. Authority for such transfer shall be given only by the holder of record or by his or her legal representative, who shall furnish proper evidence of such authority, or by his or her attorney authorized by a duly executed power of attorney and filed with the association. Such transfer shall be made only on surrender for cancellation of the certificate for such shares. The person in whose name shares of capital stock stand on the books of the association shall be deemed by the association to be the owner for all purposes.

Article VIII--Fiscal Year

The fiscal year of the association shall end on the _____ of _____ of each year. The appointment of accountants shall be subject to annual ratification by the shareholders.

Article IX - Dividends

Subject to the terms of the association's charter and the regulations and orders of the Office. The board of directors may, from time to time, declare, and the association may pay, dividends on its outstanding shares of capital stock.

Article X - Corporate Seal

The board of directors shall provide an association seal, which shall be two concentric circles between which shall be the name of the association. The year of incorporation or an emblem may appear in the center.

Article XI - Amendments

These bylaws may be amended in a manner consistent with regulations of the Office and shall be effective after: (i) approval of the amendment by a majority vote of the authorized board of directors, or by a majority vote of the votes cast by the shareholders of the association at any legal meeting, and (ii) receipt of any applicable regulatory approval. When an association fails to meet its quorum requirements, solely due to vacancies on the board, then the affirmative vote of a majority of the sitting board will be required to amend the bylaws.

**Exhibit – Model Bylaws – Mutual
OTS Form 1577****OFFICE OF THRIFT SUPERVISION
Model Bylaws for Mutual Savings Associations**

The bylaws for a Federal mutual savings bank may substitute the term “savings bank” for “association.” The term “trustees” may be substituted for the term “directors.”

- 1. Annual meeting of members.** The annual meeting of the members of the association for the election of directors and for the transaction of any other business of the association shall be held, as designated by the board of directors, at a location within the state that constitutes the principal place of business of the association, or at any other convenient place the board of directors may designate, at (insert date and time within 150 days after the end of the association's fiscal year, if not a legal holiday, or if a legal holiday then on the next succeeding day not a legal holiday). At each annual meeting, the officers shall make a full report of the financial condition of the association and of its progress for the preceding year and shall outline a program for the succeeding year.
- 2. Special meetings of members.** Special meetings of the members of the association may be called at any time by the president or the board of directors and shall be called by the president, a vice president, or the secretary upon the written request of members of record, holding in the aggregate at least one-tenth of the voting capital of the association. Such written request shall state the purpose of the meeting and shall be delivered at the principal place of business of the association addressed to the president. For purposes of this section, “voting capital” means FDIC-insured deposits as of the voting record date. Annual and special meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order or any other set of written procedures agreed to by the board of directors.
- 3. Notice of meeting of members.** Notice of each meeting shall be either published once a week for the two successive calendar weeks (in each instance on any day of the week) immediately prior to the week in which such meeting shall convene, in a newspaper printed in the English language and of general circulation in the city or county in which the principal place of business of the association is located, or mailed postage prepaid at least (insert number no less than 15) days and not more than (insert number not more than 45) days prior to the date on which such meeting shall convene, to each of its members of record at the last address appearing on the books of the association. Such notice shall state the name of the association, the place of the meeting, the date and time when it shall convene, and the matters to be considered. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such meeting shall convene. If any member, in person or by authorized attorney, shall waive in writing notice of any meeting of members, notice thereof need not be given to such member. When any meeting is adjourned for 30 days or more, notice of the adjournment and reconvening of the meeting shall be given as in the case of the original meeting.

-
4. **Fixing of record date.** For the purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose, the board of directors shall fix in advance a record date for any such determination of members. Such date shall be not more than 60 days nor fewer than 10 days prior to the date on which the action, requiring such determination of members, is to be taken. The member entitled to participate in any such action shall be the member of record on the books of the association on such record date. The number of votes which each member shall be entitled to cast at any meeting of the members shall be determined from the books of the association as of such record date. Any member of such record date who ceases to be a member prior to such meeting shall not be entitled to vote at that meeting. The same determination shall apply to any adjourned meeting.
 5. **Member quorum.** Any number of members present and voting, represented in person or by proxy, at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of the members shall determine any question, unless otherwise required by regulation. Directors, however, are elected by a plurality of the votes cast at an election of directors. At any adjourned meeting any business may be transacted which might have been transacted at the meeting as originally called. Members present at a duly constituted meeting may continue to transact business until adjournment.
 6. **Voting by proxy.** Voting at any annual or special meeting of the members may be by proxy pursuant to the rules and regulations of the Office, provided, that no proxies shall be voted at any meeting unless such proxies shall have been placed on file with the secretary of the association, for verification, prior to the convening of such meeting. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the member. All proxies with a term greater than eleven months or solicited at the expense of the association must run to the board of directors as a whole, or to a committee appointed by a majority of such board. Accounts held by an administrator, executor, guardian, conservator or receiver may be voted in person or by proxy by such person. Accounts held by a trustee may be voted by such trustee either in person or by proxy, in accordance with the terms of the trust agreement, but no trustee shall be entitled to vote accounts without a transfer or such accounts into the trustee name. Accounts held in trust in an IRA or Keogh Account, however, may be voted by the association if no other instructions are received. Joint accounts shall be entitled to no more than 1000 votes, and any owner may cast all the votes unless the association has otherwise been notified in writing.
 7. **Communication between members.** Communication between members shall be subject to any applicable rules or regulations of the Office. No member, however, shall have the right to inspect or copy any portion of any books or records of a Federal mutual association containing: (i) a list of depositors in or borrowers from such association; (ii) their addresses; (iii) individual deposit or loan balances or records; or (iv) any data from which such information could reasonably be constructed.
 8. **Number of directors, membership.** The number of directors shall be ___[not fewer than five nor more than fifteen], except where authorized by the Office. Each director shall be a member of the association. Directors shall be elected for periods of one to three years and until their successors are elected and qualified, but if a staggered board is chosen, provision

-
- shall be made for the election of approximately one-third or one-half of the board each year, as appropriate [State-chartered savings banks converting to Federal savings associations may include alternative provisions for the election and term of office of directors so long as such provisions are authorized by the Office.]
9. **Meetings of the board.** The board of directors shall meet regularly without notice at the principal place of business of the association at least once each month at an hour and date fixed by resolution of the board, provided that the place of meeting may be changed by the directors. Special meetings of the board may be held at any place specified in a notice of such meeting and shall be called by the secretary upon the written request of the chairman or of three directors. All special meetings shall be held upon at least 24 hours written notice to each director unless notice is waived in writing before or after such meeting. Such notice shall state the place, date, time, and purposes of such meeting. A majority of the authorized directors shall constitute a quorum for the transaction of business. The act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board. Action may be taken without a meeting if unanimous written consent is obtained for such action. The board may also permit telephonic participation at meetings. The meetings shall be under the direction of a chairman, appointed annually by the board, or in the absence of the chairman, the meetings shall be under the direction of the president.
10. **Officers, employees, and agents.** Annually at the meeting of the board of directors of the association following the annual meeting of the members of the association, the board shall elect a president, one or more vice presidents, a secretary, and a treasurer or comptroller: Provided, that the offices of president and secretary may not be held by the same person and a vice president may also be the treasurer or comptroller. The board may appoint such additional officers, employees, and agents as it may from time to time determine. The term of office of all officers shall be one year or until their respective successors are elected and qualified. Any officer may be removed at any time by the board with or without cause, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed. In the absence of designation from time to time of powers and duties by the board, the officers shall have such powers and duties as generally pertain to their respective offices. Any indemnification by the association of the association's personnel is subject to any applicable rules or regulations of the Office.
11. **Vacancies, resignation or removal of directors.** Members of the association shall elect directors by ballot: Provided, that in the event of a vacancy on the board between meetings of members, the board of directors may, by their affirmative vote, fill such vacancy, even if the remaining directors constitute less than a quorum. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the members. Any director may resign at any time by sending a written notice of such resignation to the association delivered to the secretary. Unless otherwise specified therein such resignation shall take effect upon receipt by the secretary. More than three consecutive absences from regular meetings of the board, unless excused by resolution of the board, shall automatically constitute a resignation, effective when such resignation is accepted by the board. At a meeting of members called expressly for that purpose, directors or the entire board may be removed, only with cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

-
12. **Powers of the board.** The board of directors shall have the power: (a) By resolution, to appoint from among its members and remove an executive committee, which committee shall have and may exercise the powers of the board between the meetings of the board, but no such committee shall have the authority of the board to amend the charter or bylaws, adopt a plan of merger, consolidation, dissolution, or provide for the disposition of all or substantially all the property and assets of the association. Such committee shall not operate to relieve the board, or any member thereof, of any responsibility imposed by law; (b) To appoint and remove by resolution the members of such other committees as may be deemed necessary and prescribe the duties thereof; (c) To fix the compensation of directors, officers, and employees; and to remove any officer or employee at any time with or without cause; (d) To extend leniency and indulgence to borrowing members who are in distress and generally to compromise and settle any debts and claims; (e) To limit payments on capital which may be accepted; (f) To reject an application for an account or membership; and (g) To exercise any and all of the powers of the association not expressly reserved by the charter to the members.
13. **Execution of instruments, generally.** All documents and instruments or writings of any nature shall be signed, executed, verified, acknowledged, and delivered by such officers, agents, or employees of the association or any one of them and in such manner as from time to time may be determined by resolution of the board. All notes, drafts, acceptances, checks, endorsements, and all evidences of indebtedness of the association whatsoever shall be signed by such officer or officers or such agent or agents of the association and in such manner as the board may from time to time determine. Endorsements for deposit to the credit of the association in any of its duly authorized depositories shall be made in such manner as the board may from time to time determine. Proxies to vote with respect to shares or accounts of other associations or stock of other corporations owned by, or standing in the name of, the association may be executed and delivered from time to time on behalf of the association by the president or a vice president and the secretary or an assistant secretary of the association or by any other persons so authorized by the board.
14. **Nominating committee.** The chairman, at least 30 days prior to the date of each annual meeting, shall appoint a nominating committee of three persons who are members of the association. Such committee shall make nominations for directors in writing and deliver to the secretary such written nominations at least 15 days prior to the date of the annual meeting, which nominations shall then be posted in a prominent place in the principal place of business for the 15-day period prior to the date of the annual meeting, except in the case of a nominee substituted as a result of death or other incapacity. Provided such committee is appointed and makes such nominations, no nominations for directors except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by members are made in writing and delivered to the secretary of the association at least 10 days prior to the date of the annual meeting, which nominations shall then be posted in a prominent place in the principal place of business for the 10-day period prior to the date of the annual meeting, except in the case of a nominee substituted as a result of death or other incapacity. Ballots bearing the names of all persons nominated by the nominating committee and by other members prior to the annual meeting shall be provided for use by the members at the annual meeting. If at any time the chairman shall fail to appoint such nominating committee, or the nominating committee shall fail or refuse to act at least 15 days prior to the annual

-
- meeting, nominations for directors may be made at the annual meeting by any member and shall be voted upon.
15. **New business.** Any new business to be taken up at the annual meeting, including any proposal to increase or decrease the number of directors of the association, shall be stated in writing and filed with the secretary of the association at least 30 days before the date of the annual meeting, and all business so stated, proposed, and filed shall be considered at the annual meeting; but no other proposal shall be acted upon at the annual meeting. Any member may make any other proposal at the annual meeting and the same may be discussed and considered; but unless stated in writing and filed with the secretary 30 days before the meeting, such proposal shall be laid over for action at an adjourned, special, or regular meeting of the members taking place at least 30 days thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of the reports of officers and committees, but in connection with such reports no new business shall be acted upon at such annual meeting unless stated and filed as herein provided.
16. **Seal.** The seal shall be two concentric circles between which shall be the name of the association. The year of incorporation, the word "Incorporated" or an emblem may appear in the center.
17. **Amendment.** Adoption of any bylaw amendment pursuant to § 544.5 of the Office's regulations, as long as consistent with applicable law, rules and regulations, and which adequately addresses the subject and purpose of the stated by law section, shall be effective after (i) approval of the amendment by a majority vote of the authorized board, or by a vote of the members of the association at a legal meeting; and (ii) receipt of any applicable regulatory approval. When an association fails to meet its quorum requirement solely due to vacancies on the board, the bylaws may be amended by an affirmative vote of a majority of the sitting board.
18. **Age limitations.** [Bylaws on age limitations must comply with all Federal laws, such as the Age Discrimination in Employment Act and the Employee Retirement Income Security Act.]
(a) Directors. No person ___ years of age shall be eligible for election, reelection, appointment, or reappointment to the board of the association. No director shall serve as such beyond the annual meeting of the association immediately following the director becoming ___ (fill in age used above), except that a director serving on ___ (fill in bylaw adoption date) may complete the term as director. This age limitation does not apply to an advisory director.
(b) Officers. No person __ years of age shall be eligible for election, reelection, appointment, or reappointment as an officer of the association. No officer shall serve beyond the annual meeting of the association immediately following the officer becoming _ (fill in age used above), except that an officer serving on ___ (fill in bylaw adoption date) may complete the term. However, an officer shall, at the option of the board, retire at age ___ if the officer has served in an executive or high policy-making post for at least two years immediately prior to retirement and is immediately entitled to nonforfeitable annual retirement benefits of at least ____.

Exhibit – Optional Bylaws*Integrity of Directors*

A person is not qualified to serve as a director if he or she: (1) is under indictment for, or has ever been convicted of, a criminal offense involving dishonesty or breach of trust and the penalty for such offense could be imprisonment for more than one year, or (2) is a person against who a banking agency has, within the past ten years, issued a cease and desist order for conduct involving dishonesty or breach of trust and that order is final and subject to appeal, or (3) has been found either by a regulatory agency whose decision is final and not subject to appeal or by a court to have (i) breached a fiduciary duty involving personal profit or (ii) committed a willful violation of any law, rule or regulation governing banking, securities, commodities or insurance, or any final cease and desist order issued by a banking, securities, commodities or insurance regulatory agency.

Section: Conversion of OTS Regulated Savings Institution To A Federal Charter

Section 420

This handbook section provides guidance regarding the requirements and procedures to implement a conversion of an OTS regulated State-chartered savings institution to a Federally chartered savings institution.

With the approval of OTS, an OTS regulated State-chartered savings institution may convert directly to a Federal stock savings institution pursuant to 12 C.F.R. § 552.2-6, or to a Federal mutual charter under 12 C.F.R. §§ 543.8 through .10. To convert to a Federal savings institution, the institution, upon conversion, must have its deposits insured by the FDIC and must comply with all applicable state and federal statutes, OTS regulations and policies, and must obtain all necessary regulatory, shareholder, and/or member approvals.

FILING REQUIREMENTS

Delegated Authority

Generally, the Regional Office may process applications filed under this section under delegated authority. However, certain situations may cause a filing to be nondelegated, including applications that raise a significant issue of law or policy, or that seek regulatory waivers. See Delegation Section 040 of the handbook for further information on the delegation process.

Expedited and Standard Procedures

The application is not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. Accordingly, the application will be processed utilizing the procedures set forth in 12 C.F.R. §§ 516.210-516.290.

Prefiling Meeting Requirement

The applicant must contact the Regional Office in a reasonable time period in advance of filing the application, to discuss whether a prefiling meeting is required prior to submission of the application contact the Regional Office. Since the existing savings institution is typically well known to OTS, a prefiling meeting generally will not be required. The purpose of a meeting, when required, is to permit OTS and the applicant to identify any legal or policy issues before submission of the application, and to enable the applicant to address these issues early in the process. The Regional Office will coordinate with the applicant to determine a schedule and forum for a meeting. The forum for the meeting will usually be in person at the Regional Office, although the Regional Office may consider meetings by telephone or video conferencing at its discretion on a case-by-case basis. OTS may decide not to accept a submitted application until the prefiling meeting requirements in 12 C.F.R. Part 516 are met.

When a meeting is required, the applicant should contact the Regional Office to determine which representatives from the applicant should attend the meeting, and what information will need to be provided in advance of the meeting. These individuals will be expected to discuss the salient aspects of the proposed transaction. The applicant may be required to submit a draft business plan to the

Section: Conversion of OTS Regulated Savings Institution To A Federal Charter

Section 420

Regional Office prior to the meeting in a time frame in advance of the meeting acceptable to the Regional Office. When a business plan is required, the plan at a minimum should include:

- A clear and complete description of the projected operations and activities;
- Financial projections for a three-year period stating all significant assumptions used in preparing the projections;
- A discussion of the associated risks and impact of the transaction on the institution;
- Identification of all or a majority of the proposed director and key senior executive officers with documentation to support that these individuals have the required qualifications and experience to prudently oversee operations; and
- A discussion to demonstrate how the charter will serve the credit and lending needs in its target market.

Information and Form Requirements

All applications should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant should file the original and two copies of the application, and application fee with the appropriate Regional Office. The original filing, all copies, and all exhibits and other pertinent documents must be clearly marked and captioned as to the type of filing. One copy must contain original signatures on all executed documents. For applications that are not delegated to the Regional Office, an additional three copies of the application should be filed with the Applications Filing Room in OTS-Washington.

The applicant must submit OTS Form 1582 and its required information (outlined below) when seeking to convert from a State-chartered, OTS-regulated savings institution to a Federal savings institution.

For All Converting Institutions

- A copy of the Plan of Conversion approved by a majority of the board of directors or trustees;
- A legal opinion that the transaction is permissible under state law;
- A copy of the converting institution's current charter and bylaws, including amendments;
- A copy of the proposed Federal savings institution's charter and bylaws; and
- If the proposed charter and/or bylaws differ from the pre-approved language set forth by regulation, submission of a justification for the need for such provisions and a discussion regarding the effect on the institution if the non-conforming provisions are denied.

Section: Conversion of OTS Regulated Savings Institution To A Federal Charter

Section 420

Additional Requirements For Converting Stock Institutions

- A detailed description of the types and classes of stock issued. Provide a listing and discussion of stockholders' rights; dividends rights; redemption and conversion features; preemption; approval of new issues; approval of mergers and acquisitions; liquidation and dissolution; and other preferences or distinctions between types and classes of stock;
- A detailed description of the terms of the exchange involving the existing types and classes of stock for stock in the proposed Federal savings institution. Compare the variations in shareholders' rights between the rights available with the State charter, and rights available with the Federal charter. Any variations in the pre-approved language for the proposed Federal stock charter must be underlined and clearly highlighted;
- Legal opinions that the submissions and descriptions filed regarding stock characteristics and stockholders' rights are legally accurate under applicable law; and
- A legal certification that the proposed form of charter and bylaws are permissible for a Federal stock savings institution.

Additional Requirements for Converting Mutual Institutions

- Additional materials required by 12 C.F.R. §§ 543.8 through .10.

Confidentiality

The applicant must submit in writing, concurrently with the submission of the application, any requests to keep specific portions of the application 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., competitive position, invasion of privacy) that would result from the public release of information. OTS will not treat as confidential the portion of an application describing the plan to meet the Community Reinvestment Act objectives.

Information for which confidential treatment is requested should be: (i) specifically identified in the public portion of the application 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 application. 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.

SPECIAL CONSIDERATIONS

Publication Requirements

Public notice is not required for applications involving the conversion of a State-chartered, OTS-regulated savings institution to a Federal savings institution.

Asset Composition

Section 5(c) of HOLA discusses permissible loans and investments for federal savings institutions and limits certain types of lending to a percentage of assets or capital. Investment limitations under State law may permit higher investment limitations or permit investments not authorized for a Federal savings institution. In these cases, OTS may permit a converted institution to retain the assets in excess of the limitations for a period of two years following the conversion, based on an acceptable business plan evidencing that the asset composition will be brought into compliance with the limitations of Section 5(c) in a safe and sound manner. Extension periods in excess of two years will be granted on a limited and case-by-case basis, upon submission of compelling justification for the longer time frame. All requests for extensions exceeding a two year period will require the filing to be processed on a nondelegated basis. A request for approval of the exception must be submitted with the application.

Federal Home Loan Bank Membership

The Gramm-Leach-Bliley Act (Section 603) amended Section 5(f) of HOLA to give a Federal savings institution the option of becoming a member of the FHLB.

REVIEW GUIDELINES

Processing Procedures and Time frames

As noted in the Delegated Authority section, certain applications are not subject to delegated authority and are processed concurrently with OTS-Washington staff. As a general matter, correspondence from OTS regarding applications that are nondelegated will be transmitted from OTS-Washington. Correspondence on delegated applications will generally come from the Regional Office.

Within five business days of receipt of the application and the application fee, the Regional Office must notify the applicant of the application's receipt. The appropriate application fee must accompany each application in order for it to be considered filed. For nondelegated applications, the application will not be considered filed until received by both OTS-Washington and the Regional Office.

Within 30 calendar days of receipt of a properly submitted application, OTS shall take the following actions.

Section: Conversion of OTS Regulated Savings Institution To A Federal Charter

Section 420

-
- Deem the application complete;
 - Request, in writing, any additional information necessary to deem the application complete; or
 - Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

Failure by OTS to act within 30 calendar days of receipt of the application for processing shall result in the filed application being deemed complete, commencing the period for review.

OTS must timely review all requests for a waiver of an application requirement that certain information be supplied. Unless OTS requests, in writing, additional information about the waiver request, or denies the waiver request, the waiver request shall be deemed granted.

If additional information is requested, a response must be submitted within 30 calendar days of the letter requesting such information. The applicant may, in writing, request a brief extension of the 30-calendar day period for responding to a request for additional information, prior to the expiration of the 30-calendar day time period. OTS, at its option, may grant the applicant a limited extension of time in writing. Failure to respond to a written request for additional information within 30 calendar days of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial or disapproval of the application.

After the timely filing of additional information in response to any initial or subsequent request by OTS for additional information, OTS has 15 calendar days to review the additional information for completeness or appropriateness and take one of the following actions:

- Request, in writing, any additional information necessary to deem the application complete;
- Deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

The 15-day review period commences when the OTS receives a response that purports to respond to all questions in the information request. OTS may extend the 15-day review period for an additional 15 calendar days, if OTS requires the additional time to review the response. OTS will notify the applicant that it has extended the period before the end of the initial 15-day period.

Failure by OTS to act within 15 calendar days of receipt of the additional information shall result in the filed application being deemed complete, commencing the period for review.

Once the application has been deemed complete, there is a 60-calendar day review period during which time OTS will take into consideration all factors present in the application and render a decision thereon. If, upon expiration of the 60-day review period, assuming no extension has been granted, OTS has failed to act, the application is deemed approved automatically, and the applicant may thereafter consummate the transaction. If multiple applications are submitted in connection with one

Section: Conversion of OTS Regulated Savings Institution To A Federal Charter

Section 420

transaction, the applicable review period for all applications is the review period for the application with the longest review period, subject to statutory review periods.

During the review period, OTS may request additional information if the information is necessary to resolve or clarify the issues presented in the application. OTS may also notify the applicant that the application is incomplete and require that the applicant submit additional information to complete the application. The review period can be extended an additional 30 calendar days if OTS determines that additional time will be required to analyze the proposed transaction. In such cases, OTS must notify an applicant prior to the expiration of the period for review. In situations in which an application presents a significant issue of law or policy, OTS may extend the applicable period for review of such application beyond the time period for review. In these cases, written notice must be provided to an applicant no later than the expiration of the time period.

Under 12 C.F.R. § 516.290, if OTS has not acted on a pending application within two calendar years after the filing date, OTS may deem the application withdrawn unless OTS determines that the applicant is actively pursuing a final determination on the application. Applications that are subject to this withdrawal provision are those that have failed to timely take action such as filing required additional information, or OTS has suspended processing of an application based on circumstances that are, in whole or in part, within the applicant's control and have failed to take reasonable steps to resolve these circumstances.

For purposes of calculating processing time frames, OTS does not include the day of the act or event, in determining the date the time period commences. In determining the conclusion of a time period, when the last day of the time period is a Saturday, Sunday, or a Federal holiday, the last day will become the next day that is not a Saturday, Sunday, or Federal holiday.

Regulatory Criteria

OTS will consider the application and any information submitted with the application, and may approve the application in accordance with Section 5(e) of HOLA and 12 C.F.R. § 543.2(g)(1). Converting institutions that have been in existence less than three years will be subject to all approval criteria and other requirements applicable to de novo Federal savings institutions.

The application can be approved provided:

- All required information and all documents have been properly executed;
- The application is not contested by the State chartering authority or other regulatory agency, including any protest to an associated application related to the conversion application;
- The provisions in the plan of conversion are acceptable; and
- The transaction poses no supervisory or legal concerns.

Section: Conversion of OTS Regulated Savings Institution To A Federal Charter

Section 420

There are no specific regulatory criteria for denial of the application. If the application does not involve a related application, the denial may be based upon objection to due to supervisory reasons, legal reasons, or objections expressed by other regulatory agencies.

Decision Guidelines

OTS considers a charter conversion transaction to be a business decision of the converting institution. In general, the analysis should conclude that the converted institution will be operated in compliance with the laws, rules and regulations applicable to a Federal savings institution, and that the institution will receive the required shareholder/member and regulatory approvals required to consummate the transaction. The following factors should be considered in analyzing the application to determine if the transaction satisfies the applicable statutory and regulatory criteria for approval:

- Did the applicant submit the following forms and information:
 - * OTS Form 1582?
 - * Evidence that the conversion proposal was adopted by a majority of the directors/trustees?
 - * Current Charter and Bylaws, including all amendments?
 - * Proposed Charter and Bylaws in conformance with OTS regulations, or with justification for any modifications to the pre-approved language?
 - * Legal opinion regarding compliance with State law requirements?
 - * Listing of specific types of investments and activities requested to be grandfathered?
- Does the proposed charter conform to the requirements of 12 C.F.R. §§ 544.1 and .2 (OTS Form 1502-F), or 12 C.F.R. §§ 552.3 and .4 (OTS Form 1502-E)?
- Do the proposed bylaws conform to the requirements of 12 C.F.R. § 544.5 (OTS Form 1577), or 12 C.F.R. §§ 552.6 through .6-3 (OTS Form 1518)?
- Have the procedures for charter and bylaw amendments been followed and appropriate documentation been provided by the applicant with regard to non-conforming charter or bylaw provisions?

Conditions

Generally, the following conditions will be imposed on any approval for an OTS-regulated, State-chartered depository institution that will convert to a Federal savings institution.

- A resolution from the institution's board of directors which indicates that all investments, capital accounts or activities not permitted by the HOLA shall be disposed of or discontinued at the earliest possible date without material loss to the applicant, or on any other date which may be determined by OTS;

Section: Conversion of OTS Regulated Savings Institution To A Federal Charter

Section 420

-
- The applicant must receive all required regulatory and shareholder/member approvals for the proposed transaction and submit copies of all such approvals to the Regional Office prior to consummation of the proposed transaction;
 - The applicant must consummate the proposed transaction within one hundred and twenty (120) calendar days from the date of approval, unless extended by the Regional Director for good cause; and
 - The applicant must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed transaction: (a) of the effective date of the proposed transaction; and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the applications, and the approval.

Nonstandard Conditions

There generally are no nonstandard conditions issued for the subject application. However, in circumstances where nonstandard conditions are imposed, all nonstandard conditions must be supported with justification in the recommendation memorandum related to approval of the application. Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application.

RECORDKEEPING REQUIREMENTS

All correspondence related to the processing of the notice or application must be consolidated 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 any 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 memorandum, and compliance material. The file copy must be organized and separated into public and confidential material, and clearly identified as such. The public and confidential sections must be arranged in chronological order.

MONITORING AND CONTROL

The Regional Office will monitor compliance with all conditions imposed in connection with an application's approval. The applicant must submit evidence of satisfaction of the conditions included in the approval order or letter to the Regional Office within the stated time frames.

The Regional Office should notify the appropriate staff responsible for the supervision and examination of the savings institution regarding the action taken on an application, and provide staff with copies of the approval order or letter. If an application is approved, the first examination of the savings institution following the approval should include a review of compliance with all conditions of approval and any changes in operations as a result of the transaction.

Section: Conversion of OTS Regulated Savings Institution To A Federal Charter

Section 420

A review of the application 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 application in the Regional Office, including a review of the documentation maintained in the application file.

INFORMATION SOURCES

Statutes

12 U.S.C. § 1464	HOLA Section 5(b); Deposits and Related Powers
12 U.S.C. § 1464	HOLA Section 5(c); Loans and Investments
12 U.S.C. § 1464	HOLA, Section 5(e) Character and Responsibility
12 U.S.C. § 1464	HOLA, Section 5(i) Conversion to a Federal Charter
12 U.S.C. § 1464	HOLA, Section 5(r) Out-of-State Branches

Regulations

12 C.F.R. Part 516	Applications Processing Guidelines
12 C.F.R. § 543.1	Corporate Titles of Federally Chartered Institutions
12 C.F.R. § 543.8 through .14	Conversion from State Mutual to Federal Mutual
12 C.F.R. § 544.1 through .5	Charter and Bylaws for Federal Mutual
12 C.F.R. § 552.2-6	Conversion from State Stock to Federal Stock
12 C.F.R. § 552.3 through 6.3	Charter and Bylaws for Federal Stock
12 C.F.R. Part 560	Lending and Investment Limitations

Other

Regulatory Bulletin 20	Background Investigations
Regulatory Bulletin 27-a	Executive Compensation and Employment Contracts
Regulatory Bulletin 32-5	Qualified Thrift Lender Test
Thrift Bulletin 48-(current)	Fees and Assessments
23A and 23B of the Federal Reserve Act	Transactions with Affiliates

Application Forms

OTS Form 1582	Application for Conversion From a State-Chartered Stock or Mutual Association into a Federal Stock or Mutual Savings Association or Savings Bank
---------------	--

This handbook section provides guidance regarding the conversion of a non-OTS-regulated depository institution to a Federally chartered savings institution. This section addresses the following types of charter conversions: (a) non-OTS-regulated State savings bank converting to a Federal thrift; (b) commercial bank converting to Federal thrift; and (c) credit union converting to a Federal thrift.

With the approval of OTS, any depository institution may convert directly to a Federal stock savings institution pursuant to 12 C.F.R. § 552.2-6, or to a Federal mutual charter under 12 C.F.R. §§ 543.8 through .10. To convert to a Federal thrift charter, the institution, upon conversion, must have its deposits insured by the FDIC and must comply with all applicable State and Federal statutes, OTS regulations and policies, and obtain all necessary regulatory, shareholder and/or member approvals.

OTS may also approve the indirect conversion of a stock depository institution to a Federal stock savings institution pursuant to 12 C.F.R. §§ 552.2-1, 552.13 and 563.22(a), through the merger of the stock depository institution into an interim Federal stock savings institution. Depository institution is defined in 12 C.F.R. § 552.13(b)(4) as “any commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank or a credit union, chartered in the United States and having its principal office located in the United States.”

In order to convert directly to a Federal savings institution, the converting depository institution must be authorized to engage in a direct conversion under its existing statutes and regulations. A National Bank has authority pursuant to 12 C.F.R. § 5.24(f) to engage in a direct conversion to a Federal savings institution. Other depository institutions are not necessarily authorized to engage in a direct conversion under their existing charter and therefore must provide a legal opinion describing how the proposed structure is authorized under Federal and State laws.

Credit unions are not authorized to convert directly to a Federal stock savings institution. A credit union may convert to a Federal stock savings institution subsequent to its conversion to a Federal mutual savings institution, pursuant to 12 C.F.R. Part 563b. OTS will generally require the converted credit union to operate as a Federal mutual savings institution for at least one year before entertaining an application to convert to the stock form of organization.

FILING REQUIREMENTS

Delegated Authority

Generally, the Regional Office under delegated authority may process applications filed under this section, with the exception of applications involving State chartered trust companies and credit unions. An application proposing the conversion of a State chartered trust company or a credit union to a Federal savings institution charter is not eligible for delegated processing. Certain situations may cause any delegated filing to be non-delegated, including applications that raise a significant issue of law or policy or that seek regulatory waivers. See Delegation Section 040 of the handbook for further information on the delegation process.

Expedited and Standard Procedures

The application is not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. Accordingly, the application will be processed utilizing the procedures set forth in 12 C.F.R. §§ 516.210-516.290.

Meetings

The applicant must contact the appropriate Regional Office prior to submission of the application to discuss the need for meetings related to its application to convert to a Federal savings institution. Depending upon the circumstances of the proposal, multiple meetings may be required in advance of the conversion to a Federal savings institution.

Prefiling Meeting Requirement

The applicant must meet with the Regional Office for at least one prefiling meeting if the proposal involves a conversion of either a commercial bank or a credit union to a Federal savings institution. For transactions involving a conversion to a Federal savings institution from a State-chartered savings bank regulated by the Federal Deposit Insurance Corporation (FDIC), the Regional Office, at its discretion, may require a prefiling meeting. In any case, it is the applicant's responsibility to contact the Regional Office in a reasonable time period in advance of filing the application to discuss prefiling meeting requirements. The purpose of the meeting is to permit OTS and the applicant to identify any legal or policy issues before submission of the application, and to enable the applicant to address these issues early in the process. The Regional Office will coordinate with the applicant to determine a schedule and forum for a meeting. The forum for the meeting will usually be in person at the Regional Office, although the Regional Office may consider meetings by telephone or video conferencing at its discretion on a case-by-case basis. OTS may decide not to accept a submitted application until the prefiling meeting requirements in 12 C.F.R. Part 516 are met.

When a meeting is required, the applicant should contact the Regional Office to determine which representatives from the applicant should attend the meeting, and what information will need to be provided in advance of the meeting. These individuals will be expected to discuss the salient aspects of the proposed transaction. The applicant may be required to submit a draft business plan to the Regional Office prior to the meeting in a time frame in advance of the meeting acceptable to the Regional Office. At a minimum, the plan should include:

- A clear and complete description of the projected operations and activities;
- Financial projections for a three-year period;
- A discussion of the associated risks and impact of the transaction on the institution;
- Identification of all or a majority of the proposed director and key senior executive officers with documentation to support that these individuals have the required qualifications and experience to prudently oversee operations; and

- A discussion to demonstrate how the charter will serve the credit and lending needs in its target market.

Preopening Meeting

In transactions covered by this section, the applicant will generally be required to meet with the Regional Office for a “preopening” meeting following approval of the application, but prior to its conversion to a Federal savings institution. The Regional Office will contact the applicant to discuss the forum for the meeting and who should attend. Regional Office staff will discuss the following with the applicant: satisfaction of conditions of approval; supervision and examination process; responsibility and fiduciary duty of the board of directors and management; and, any regulatory issues germane to the successful operation of the savings institution.

Information and Form Requirements

All applications should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant should file the original and two copies of the application, and application fee with the appropriate Regional Office. The original filing, all copies, and all exhibits and other pertinent documents must be clearly marked and captioned as to the type of filing. One copy must contain original signatures on all executed documents. For applications that are not delegated to the Regional Office, an additional three copies of the application should be filed with the Applications Filing Room in OTS-Washington.

No specific application form or instructions exist for applications by a non-OTS-regulated financial institution to convert to a Federal savings institution. The filing requirements vary depending upon the structure of the transaction, i.e. whether the transaction is proposed as a direct conversion, or involves an indirect conversion using a newly-chartered Federal savings institution in a merger or a purchase and assumption transaction. Set forth below are the basic filing requirements for these types of applications (additional information may be required on a case-by-case basis):

General Information

- Legal name of applicant(s), including name of holding company, if applicable;
- Complete address of home office and any branch offices;
- Name, telephone number and address of contact person(s) for the application;
- Complete list and description of all subsidiaries of the bank or credit union;
- Summary of proposed transaction and reasons for conversion;
- Discussion of deposit insurance for the resulting savings institution;
- Proposed charter and bylaws conforming to 12 C.F.R. §§ 552.3 and 552.5 (stock) or 12 C.F.R. §§ 544.1 and 544.5 (mutual). Copies of a model charter and model bylaws are available in the Applications Handbook, which is contained on the OTS Website. Certain

variations from the models are set forth in the regulations and considered preapproved. OTS must specifically approve any other variations; and

- Board of directors' resolution authorizing the transaction.

Opinions

- A legal opinion describing how the proposed transaction is permissible under Federal and State laws; and
- A tax opinion describing the consequences of the proposed transaction.

Financial Information

- Three-year business plan meeting OTS requirements;
- Call reports for the last three years of operation for depository institutions without independent audit reports;
- Copies of the three most recent independent audit reports of the converting depository institution, if applicable;
- Copies of financial reports filed with the existing principal regulator and the Securities and Exchange Commission, if applicable, for the holding company(ies) or depository institution since the date of the last independent audit;
- A capital reconciliation showing compliance with OTS capital requirements and a discussion of any differences between the applicant's accounting standards and the standards required by OTS. OTS Schedule CCR and the instructions, as well as information on capital adequacy, should be reviewed in preparing this reconciliation;
- A general description of the deposit, investment and lending activity of the institution, including an approximate percentage of assets each type of investment and loan represents; and
- A summary of deposits and assets attributable to each office location.

Director and Senior Management Information

- Each director and senior executive officer of the applicant that will continue in his/her position at the resulting Federal savings institution, must submit the following:
 - * Name and Position;
 - * An executed Interagency Biographical and Financial Report (OTS Form 1623);
 - * An executed RB-20 Certification;
 - * Two completed FBI fingerprint cards (with OTS nomenclature) for each individual (plus a \$23 processing fee per individual set);

-
- * For each director, submit an executed Oath of Director of FDIC-Insured Institution;
 - * Copies of any existing or proposed employment contracts. The agreements must comply with OTS guidelines set forth in RB 27a and 12 C.F.R. §§ 563.39 and 563.161; and
 - * For a converting stock depository institution, a listing of all entities owning or controlling more than 10% of the stock, directly or indirectly, alone or acting in concert.
- OTS policy requires background investigations to be completed in accordance with the guidance in RB-20. RB-20 authorizes OTS to request supplemental information from applicants if the information is useful in completing a thorough background investigation. Applicants can request a waiver from filing portions of this information by providing justification stating why this information is unduly burdensome or unnecessary. For those individuals who have been previously reviewed and approved by the appropriate bank regulatory authority, OTS will typically grant a waiver of the biographical and financial report and fingerprint card. For directors and officers who have been associated with the existing bank for a sufficient amount of time to assess their effectiveness (typically involving tenures in excess of one year or through one examination cycle), a waiver of these documents may also be granted. For all other individuals, the Regional Office will conduct a background investigation in compliance with RB-20. Individuals must be fingerprinted by an independent third party unrelated to the individual or companies affiliated with the individual on fingerprint cards bearing the OTS identification number. Results of all background checks should be addressed in the Regional Office's digest.

For Existing Bank Holding Companies that will not become Savings and Loan Holding Companies, submit the following items of Application H-(e):

- Cover page and signature page;
- Item 110 - Details of Proposed Acquisition;
- Item 120 - Regulatory Issues;
- Item 220 - Controlling Shareholders/Affiliates; and
- Item 410 - Management Officials.

For Stock chartered institutions, submit the following items:

- Form of stock certificate, which must include any required restrictive legends; and
- All documents pertinent to the purchase and distribution of stock, including stock warrants and option plans.

Other Information

- Copies of applications submitted to other agencies and, upon their receipt, approval letters;

-
- Copies of the three most recent safety and soundness examination reports prepared by the principal regulator;
 - Copies of the most recent compliance, CRA, and/or specialty examination report prepared by the principal regulator;
 - Copies of all current formal enforcement actions relating to the applicant, its holding company(ies), controlling persons, subsidiaries and affiliates;
 - A description of the investment and lending activity of the existing depository institution, including the total amount of each type of investment and loan, as well as the percent of assets each category constitutes. To the extent that any particular investment or loan category exceeds the percentage of assets limitations imposed by Section 5(c) of HOLA, identify the assets and provide a plan, including time frames, to meet such limitations. Requests for a grace period permitted under Section 5(c)(5)(A) of HOLA should be submitted as part of the application;
 - A completed QTL worksheet as of the most recent quarter, and a schedule that projects the proposed savings institution's QTL performance over the three year business plan. For institutions with interstate branch networks (i.e., branches outside the state in which the institution's home office is located), the converting institution must also demonstrate compliance with Section 5(r) of HOLA. If none of the exceptions in Section 5(r)(2) apply, the proposed savings institution must separately demonstrate QTL in each state where it operates an interstate branch or branches. To the extent that the savings institution will fail to comply with its minimum QTL requirement, the applicant must provide a plan, including time frames, to meet such limitations. Requests for a QTL waiver should be submitted as part of the application. Applications requesting a QTL waiver are non-delegated;
 - Copies of the financial depository institution's current charter and bylaws;
 - Identify EDP servicers used by the applicant or describe the extent of EDP work performed in-house;
 - If the converting institution operates a transactional web site, information describing the web site, its activities, and security and testing procedures should be provided;
 - In a direct conversion, copies of the executed OTS Form 1582. Any sections that do not apply should be marked "Not Applicable" with an explanation provided;
 - In transactions involving indirect conversions, the applicant is required to submit OTS Form 1495 to establish the savings institution for the merger with the existing depository institution;
 - If the applicant currently operates service corporations or subsidiaries and plans to continue the proposed activities, it must file a service corporation application or an operating subsidiary application pursuant to 12 C.F.R. Part 559. Application must be made with OTS, as well as the FDIC pursuant to 12 U.S.C. § 303.141 (see Subordinate Organizations Section 605 of the Handbook for additional information); and
 - If the applicant currently operates a trust department and plans to continue to engage in trust activities, it must file a trust application under 12 C.F.R. Part 550. See Trust Powers Section 620 of the Handbook for further information regarding trust activities.

Community Reinvestment Act

- A detailed discussion of the CRA plan for the institution and how the savings institution will satisfy its obligations pursuant to 12 C.F.R. Part 563e.

Holding Company and Controlling Shareholder Information

If the converting depository institution has a holding company that will become a savings and loan holding company in the transaction, a holding company application must be filed pursuant to 12 C.F.R. Part 574 (see Holding Companies Section 500 of the Handbook for additional information). If the resulting savings institution is controlled directly by one or more individuals, or by persons acting in concert to control the savings institution, a Change of Control Notice may be necessary pursuant to 12 C.F.R. Part 574 (see Control Section 300 of the handbook for additional information).

Confidentiality

The applicant must submit in writing, concurrently with the submission of the application, any requests to keep specific portions of the application 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. OTS will not treat as confidential the portion of an application describing the plan to meet the Community Reinvestment Act objectives.

Information for which confidential treatment is requested should be: (i) specifically identified in the public portion of the application 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 application. 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.

SPECIAL CONSIDERATIONS

Publication Requirements

OTS requires publication under 12 C.F.R. Section 543.2(d) for applications involving a direct conversion of an existing depository institution to a Federal savings institution. OTS requires publication of a notice for the formation of a Federal savings institution for an indirect conversion, but permits such publication to occur simultaneously with the public notice required in 12 C.F.R. § 563.22 and 12 U.S.C. § 1828(c) for the merger or purchase and assumption transaction (see Combinations Section 200 and Bank Merger Act Transmittal Forms Section 030 of the Handbook for additional information). Additional public notice requirements may apply for transactions involving change in control applications filed pursuant to 12 C.F.R. § 574.3, involving either a holding company(ies) (see Holding Companies Section 500 of the Handbook for additional information), or where the converting

depository institution is controlled by one or more individuals (see Control Section 300 of the Handbook for additional information).

- Comment Procedures

Any person may submit a written comment to the Regional Office supporting or opposing a charter conversion application within 25 days after the filing date of the application. OTS will not consider any late filed comments unless: the commenter demonstrates good cause for why they could not submit a timely comment, or, OTS concludes that the comment addresses a significant regulatory concern and will assist in the disposition of the application. OTS can extend the 25 day comment period with demonstrated good cause for why a commenter was unable to submit a timely comment. The duration of an extension request is subject to the discretion of OTS on a case-by-case basis, after consideration of the unique circumstances of each extension request.

The comment should recite relevant facts, including any demographic economic or financial data supporting the commenter's position. If the commenter opposes the application, the comment should also: 1) address at least one reason for denial based upon regulatory criteria for denial; 2) support the reason for denial with relevant facts and supporting data; and, 3) address how the approval of the application is harmful to the community or the commenter. While OTS will accept and consider all comments, including those that do not meet all of the content criteria, commenters are encouraged to include all relevant information and arguments. The commenter may also request an informal meeting pursuant to 12 C.F.R. §§ 516.120 and 516.170 with their comment, along with a description of the issues and facts to be discussed and justification for why written submissions are insufficient to adequately address those facts or issues.

If the commenter has filed a written request for a meeting and the request contains the required information set forth in 12 C.F.R. 516.120(b), OTS will arrange a meeting. If an informal meeting is requested, the commenter must simultaneously send a copy of the written request to the applicant. OTS will generally provide an applicant an appropriate opportunity and period of time to respond to submitted comments.

OTS will facilitate the informal meeting between the applicant, the commenter(s) and any other interested person(s). OTS has discretion to determine the format of the meeting, including telephone conference or face-to-face meetings. OTS will inform the applicant and commenters requesting an informal meeting of its decision on a request for a meeting, or of its decision to hold an informal meeting on its own initiative. OTS may also invite any other interested persons to attend. OTS will inform the participants of the date, time, location and format for the meeting in reasonable time in advance. OTS anticipates that informal meetings will be sufficient to facilitate the resolution of issues in most cases.

If an informal meeting fails to facilitate the resolution of issues to the satisfaction of any participant in an informal meeting, OTS may proceed to conduct a formal meeting before a presiding officer upon the filing of a request. Any participant requesting a formal meeting

pursuant to 12 C.F.R. §§ 516.170 and .180, should submit a request to OTS within three days after the informal meeting, and provide copies of its request to the other participants of the informal meeting. The request must describe the nature of the issues or facts to be presented and must demonstrate that material issues or facts have not been adequately addressed by the informal meeting, and that a formal meeting is necessary to develop a record sufficient to support a determination on those facts or issues. OTS will not arrange an informal meeting where a request is clearly frivolous or clearly lacking a factual basis. OTS may elect to hold a formal meeting on its own initiative if deemed necessary to assist in the disposition of the application or issues raised by the application.

OTS will issue a Notice of Formal Meeting if it decides to hold a formal meeting, and send the notice to the applicant, to any person requesting a formal meeting, and to any interested person, in its discretion, it desires to invite. Any person receiving the Notice of Formal Meeting must notify OTS within ten days of receipt of the notice of their intent to participate in the meeting. All participants in the formal meeting must provide the names of their presenters and copies of proposed exhibits to OTS, to the applicant, and to any other person designated by OTS, no later than five days before the date of the formal meeting. All presenters of documentary material must furnish copies of the material to OTS and to each other participant. OTS will arrange for a transcript of the meeting, with each participant bearing the cost of any copies of the transcript it requests for its use.

OTS anticipates that most formal meetings will follow an informal meeting. Accordingly, OTS will not grant a request for a formal meeting unless an informal meeting has occurred. However, OTS has the authority to conduct a formal meeting without holding an informal meeting if the meeting is beneficial to the review process and will facilitate a resolution of the issues raised by application.

If OTS has arranged an informal or formal meeting, the processing time frames for the application are suspended until OTS determines that a sufficient record has been developed to address the issues raised in the comments.

Transition Period For Corporate Governance

12 C.F.R. § 543.11(c) provides that a six-year plan of governance may be submitted by a State-chartered mutual savings bank, in circumstances where the converting institution has not previously provided for the election of its governing board (trustees, director or managers) by a vote of the members of the institution (some states authorize perpetual boards), and does not want to elect the entire board at the organization meeting. The intended plan provides that within six years, the entire board of directors would be elected by a vote of the members in increments of at least one-fifth of the number of members in each year beginning within two years of conversion. The plan also provides that the newly converted federal savings bank may be organized by its preconversion governing board and addresses the manner of amending the institution's charter during the first two years and other organization and disclosure matters.

Qualified Thrift Lender (QTL) or Domestic Building and Loan Association Tax Test (DBLA)

The converting depository institution should meet the QTL test upon its conversion to a federal savings institution. For institutions with interstate branch networks (i.e., branches outside the state in which the institution's home office is located), the converting institution must also satisfy QTL in each state individually where it operates an interstate branch or branches pursuant to Section 5(r) of HOLA, subject to certain exemptions in Section 5(r)(2). The assets of all branches in each state (not each out-of-state branch separately) are aggregated in determining compliance with QTL for each state. Alternatively, an institution may satisfy its QTL requirements by meeting the domestic building and loan association test of the Internal Revenue Code.

A converting depository institution may be unable to satisfy its QTL requirements initially. OTS will consider granting a converted institution a QTL waiver for up to a two-year period to permit the institution to make a reasonable transition without sacrificing safety and soundness considerations and prudent lending practices. 12 U.S.C. § 1467a(m)(2) allows temporary and limited exceptions to be granted by the OTS. OTS will decide to grant the extension based upon a finding that extraordinary circumstances exist. Any exception would be based upon an acceptable business plan evidencing timely compliance in a safe and sound manner. If the converting institution cannot meet QTL in a state outside the home office state, OTS will consider granting a waiver for good cause for up to a two year period to comply with Section 5(r) of the HOLA. A request for approval of the exception and/or waiver must be submitted with the application.

Asset Composition

Section 5(c) of HOLA discusses permissible loans and investments for Federal thrifts and limits certain types of lending to a percentage of assets or capital. It is not uncommon for converting depository institutions to exceed these limitations, especially in consumer and commercial loans. Based on an acceptable business plan evidencing that the asset composition will be brought into compliance with the limitations of Section 5(c) in a safe and sound manner, OTS will generally permit a converted institution to achieve compliance with such limitations within two years following the conversion [see Section 5(c)(5)]. A request for approval of the exception must be submitted with the application and can be approved by the Regional Office.

Credit Union Memberships

Credit unions may be members of corporate credit unions and have deposits and capital accounts in such entities. The deposits may be considered commercial loans under HOLA, but the member capital accounts are considered equity investments and are, therefore, impermissible. In some instances, the capital account may not be withdrawn for a certain period of time. Accordingly, OTS may allow the converted credit union to hold the investment until divestiture is possible. A request to retain any such impermissible investments must be submitted with the application.

Credit Union Sponsored Shared Service Facilities

In some instances, credit unions may participate in a shared service facility that is regulated by the National Credit Union Administration. The facility resembles a typical branch office, is generally designated as a “Credit Union Service Center”, and allows the members of the various sponsoring credit unions to conduct certain banking transactions on facility premises. Generally, credit union members may withdraw funds, make deposits, transfer funds between accounts at their credit union, verify account information, and renew time deposits and cash checks. Converting credit unions may wish to continue this type of arrangement for their members' convenience. OTS has allowed this type of arrangement, provided that proper controls and oversight of the activities are in place. The application should include sufficient evidence that such controls and oversight are in place.

Deposit Insurance

Generally, in an indirect conversion involving an existing Bank Insurance Fund (BIF) depository institution, the applicant must submit an application and receive approval from the Federal Deposit Insurance Corporation (FDIC) or Savings Association Insurance Fund (SAIF) for insurance of accounts. BIF-depository institutions converting directly to a Federal savings institution have been permitted to retain their BIF insurance of accounts. The applicant should address the impact of the transaction on its deposit insurance. Questions regarding deposit insurance should be discussed with FDIC.

Federal Home Loan Bank Membership

The Gramm-Leach-Bliley Act (Section 603) amended Section 5(f) of HOLA to give a Federal savings institution the option of becoming a member of the FHLB.

Eligibility Examinations

OTS anticipates that it will conduct an eligibility examination of all credit unions proposing to convert to a Federal savings institution, due to the significant differences in their operations and regulatory oversight structure compared to other converting depository institutions. For converting entities that are not credit unions and have been recently examined by a Federal or State banking or trust regulator, and received satisfactory ratings (CAMELS 1 or 2, Compliance 1 or 2, CRA Outstanding or Satisfactory, Trust 1 or 2) OTS generally will not require an eligibility examination, unless the application raises a material issue not addressed by the report of examination. Also, when the most recent safety and soundness examination is older than six months, OTS will consider the need for an eligibility examination due to the age of the existing examination report. Absent these concerns, OTS will generally rely on the most recent report of examination as part of its review of the application.

The Regional Office should determine the need for an eligibility examination as early in the application process as possible. The eligibility examination may include on- or off-site activities. Prior to commencing the on-site work, OTS will forward a Preliminary Examination Response Kit (PERK) requesting more detailed information that should be made available to the examiners upon their arrival. OTS normally does not charge a fee for its eligibility examination. However, OTS may impose an

hourly fee if the examination encounters significant problems that require additional review beyond the scope of a standard eligibility examination.

REVIEW GUIDELINES

Processing Procedures and Time Frames

As noted in the Delegated Authority section, certain applications are not subject to delegated authority and are processed concurrently with OTS-Washington staff. As a general matter, correspondence from OTS regarding applications that are non-delegated will be transmitted from OTS-Washington. Correspondence on delegated applications will generally come from the Regional Office.

Within five business days of receipt of the application and the application fee, the Regional Office must notify the applicant of the application's receipt. The appropriate application fee must accompany each application in order for it to be considered filed. For nondelegated applications, the application will not be considered filed until received by both OTS-Washington and the Regional Office.

Within five business days of receipt of the application, the Regional Office will begin its background investigations on individuals who were required to submit such information in connection with the application. Upon receipt of the application, the Regional Office must forward all FBI Fingerprint Cards to OTS-Washington for processing. The background investigations should include, at a minimum, a search of the applicants in the Westlaw and CIIS databases. When applicable, OTS must contact other regulatory agencies to seek additional comments on the applicants, or to request a copy of examination reports from another agency. For applications involving insurance companies, the Regional Office must contact the Insurance Risk Management Specialist in OTS-Washington and request a review of the insurer. 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.

If the application is non-delegated and involves specialty areas, such as trust activities or CRA issues, OTS-Washington must provide a copy of the application to the corresponding OTS-Washington specialist.

Within 30 calendar days of receipt of a properly submitted application, OTS shall take the following actions.

- Deem the application complete;
- Request, in writing, any additional information necessary to deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

Failure by OTS to act within 30 calendar days of receipt of the application for processing shall result in the filed application being deemed complete, commencing the period for review.

OTS must timely review all requests for a waiver of an application requirement that certain information be supplied. Unless OTS requests, in writing, additional information about the waiver request, or denies the waiver request, the waiver request shall be deemed granted.

If additional information is requested, a response must be submitted within 30 calendar days of the letter requesting such information. The applicant may, in writing, request a brief extension of the 30-calendar day period for responding to a request for additional information, prior to the expiration of the 30-calendar day time period. OTS, at its option, may grant the applicant a limited extension of time in writing. Failure to respond to a written request for additional information within 30 calendar days of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial or disapproval of the application.

After the timely filing of additional information in response to any initial or subsequent request by OTS for additional information, OTS has 15 calendar days to review the additional information for completeness or appropriateness and take one of the following actions:

- Request, in writing, any additional information necessary to deem the application complete;
- Deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

The 15-day review period commences when the OTS receives a response that purports to respond to all questions in the information request. OTS may extend the 15-day review period for an additional 15 calendar days, if OTS requires the additional time to review the response. OTS will notify the applicant that it has extended the period before the end of the initial 15-day period.

Failure by OTS to act within 15 calendar days of receipt of the additional information shall result in the filed application being deemed complete, commencing the period for review.

OTS may elect to conduct an eligibility examination during the review process. OTS will not deem an application complete until it concludes the examination. In addition, OTS may request additional information as a result of the eligibility examination, and the applicant must submit a response in accordance with the time frames set forth in this section.

Once the application has been deemed complete, there is a 60-calendar day review period during which time OTS will take into consideration all factors present in the application and render a decision thereon. If, upon expiration of the 60-day review period, assuming no extension has been granted, OTS has failed to act, the application is deemed approved automatically, and the applicant may thereafter consummate the transaction. If multiple applications are submitted in connection with one transaction, the applicable review period for all applications is the review period for the application with the longest review period, subject to statutory review periods.

During the review period, OTS may request additional information if the information is necessary to resolve or clarify the issues presented in the application. OTS may also notify the applicant that the

application is incomplete and require that the applicant submit additional information to complete the application. The review period can be extended an additional 30 calendar days if OTS determines that additional time will be required to analyze the proposed transaction. In such cases, OTS must notify an applicant prior to the expiration of the period for review. In situations in which an application presents a significant issue of law or policy, OTS may extend the applicable period for review of such application beyond the time period for review. In these cases, written notice must be provided to an applicant no later than the expiration of the time period.

Under 12 C.F.R. § 516.290, if OTS has not acted on a pending application within two calendar years after the filing date, OTS may deem the application withdrawn unless OTS determines that the applicant is actively pursuing a final determination on the application. Applications that are subject to this withdrawal provision are those that have failed to timely take action such as filing required additional information, or OTS has suspended processing of an application based on circumstances that are, in whole or in part, within the applicant's control and have failed to take reasonable steps to resolve these circumstances.

For purposes of calculating processing time frames, OTS does not include the day of the act or event, in determining the date the time period commences. In determining the conclusion of a time period, when the last day of the time period is a Saturday, Sunday, or a Federal holiday, the last day will become the next day that is not a Saturday, Sunday, or Federal holiday.

Regulatory Criteria

Applications to convert to a Federal thrift are generally subject to the same standards for approval as applications for permission to organize a new thrift as set forth in 12 C.F.R. §§ 543.2(g)(1) and 552.2-1(b). Section 5(e) of the HOLA sets forth the basic criteria that OTS must consider when acting on an application for permission to organize a Federal savings institution. Section 5(e) states that OTS may grant a Federal charter only if, in OTS' judgment:

- The organizers are persons of good character and responsibility;
- A need exists for the savings institution in the community to be served;
- There is a reasonable probability of the savings institution's usefulness and success; and
- The savings institution can be established without undue injury to other local thrift and home-financing institutions.

For the criteria above, the existence of the depository institution will generally serve to demonstrate that a need exists, and that the conversion will not result in undue injury to existing financial institutions.

12 C.F.R. § 552.2-1(b)(1)(v) (12 C.F.R. § 543.2(g)(1)(v) for mutual savings institutions) requires OTS to consider whether the savings institution will perform a role of providing credit for housing consistent with safe and sound operations of a Federal savings institution.

Pursuant to 12 C.F.R. § 563e.29, OTS must consider the savings institution's plans for meeting its objectives under the Community Reinvestment Act. OTS will review the proposed plan for satisfying the CRA and may deny or condition approval based upon this review.

If the application involves the formation of a de novo thrift and the merger or purchase and assumption of the converting institution into the newly-chartered de novo, the application will also be reviewed under the standards for mergers or purchase and assumptions set forth at Section 10(s) of HOLA, Sections 5(d)(3) and 18(c) of FDIC, and 12 C.F.R. §§ 552.13 and 563.22(d).

Converting institutions that have been in existence less than three years will be subject to all approval criteria and other requirements applicable to de novo Federal institutions, including the policy considerations outlined in 12 C.F.R. § 543.3.

Decision Guidelines

The statutory and regulatory requirements are designed to ensure the viability and safe and sound operation of the savings institution. In general, the analysis should conclude that capital is sufficient in relationship to the risk-profile of the institution, management has the necessary expertise and controls to implement the business plan, the institution will meet the needs of the community it will serve, and that the converted institution will be operated in compliance with the laws, rules and regulations applicable to a Federal savings institution. If, based upon this review, it is determined that the savings institution will not operate in compliance with laws, rules and regulations applicable to a savings institution, or that the institution lacks the management or financial resources to ensure the institution is prudently run in a safe and sound manner, a denial recommendation may be necessary. The following factors should be considered in analyzing the application to determine if the transaction satisfies the applicable statutory and regulatory criteria for approval:

- Did the applicant submit the following forms and information:
 - * OTS Form 1623 (Interagency Biographical and Financial Report); properly executed RB-20 Certification; and FBI Fingerprint Cards, for each director, senior executive officer, and controlling shareholder?
 - * Copies of proposed employment contracts and evidence of regulatory compliance?
 - * Description and copies of any proposed stock option plans?
 - * Discussion of specific policies addressing compliance with Sections 23A, 23B, 22(g) and (h) of the Federal Reserve Act, and with 12 C.F.R. §§ 563.41 and .42?
 - * Oaths of Directors?
 - * Proposed charter and bylaws?
 - * Copies of all proposed contracts with affiliates, all contracts not in the ordinary course of business or in excess of 15 percent of the proposed operating budget?
 - * Three-year business plan?

-
- * CRA plan?
 - * Notices and/or application forms for related filings, i.e. subsidiaries, trust powers, etc.?
 - * Listing of all subscribers to capital stock that are directors, senior executive officers, ten percent shareholders, and other insiders?
 - * Information to demonstrate that the application meets relevant approval standards?
-
- Did the certification or background check (FBI, LEXIS/NEXIS and/or Westlaw, and CIIS) of proposed management and ownership indicate that they have been the subject of any enforcement, criminal or questionable actions?
 - Was any adverse information found in the background reviews not disclosed by any individual in their RB-20 Certification or on OTS Form 1623?
 - Do the Interagency Biographical and Financial Reports (OTS Form 1623) disclose any questionable information (i.e., prior employment with any type of financial institution must be checked)?
 - In applications involving a proposed existing parent company(ies), did the background review or RB-20 Certification disclose any questionable information on the company(ies) or any affiliate(ies) of the company(ies)?
 - Was any adverse information found in the background reviews not disclosed by the company(ies) in its RB-20 Certification Form?
 - For transactions with affiliates, will the transactions and contracts comply with Sections 23A and 23B of the Federal Reserve Act, and with 12 C.F.R. §§ 563.41 and .42?
 - Will the savings institution's board of directors have sufficient independence from its parent holding company(ies) and affiliates to ensure that the savings institution will continue to operate without undue influence from these affiliates?
 - Do the board of directors and senior management have the qualifications and experience necessary to operate the proposed charter in a safe and sound manner?
 - Will the savings institution have sufficient full-time management to ensure safe and sound operations?
 - Does the proposed salary and bonus structure appear reasonable?
 - Do proposed employment agreements comply with the requirements of 12 C.F.R. § 563.39 and RB 27-a?
 - Will the board of directors meet the composition requirements of 12 C.F.R. § 563.33(a)?
 - Has the applicant identified the proposed board and management committees, their functions, and are these committees adequate?
 - Will sufficient fidelity coverage on officers and employees be maintained?
 - Will the applicant comply with the Management Interlocks Act?

-
- Does the business plan satisfy OTS requirements?
 - Are the underlying assumptions of the business plan reasonable?
 - Do the lending activities present unusually high elements of risk, such as a significant volume of activity or concentrations of activity in sub-prime lending, speculative lending, or credit card activity?
 - Do the proposed savings and lending services appear reasonable?
 - Will the proposed balance sheet and business strategy comply with the lending and investment limitations of Section 5(c) of HOLA and 12 C.F.R. Part 560?
 - Does the business plan demonstrate compliance with OTS capital requirements over the three-year projections?
 - Do the dividend projections in the business plan reconcile with the proposed dividend policy?
 - Does the savings institution have capital reserves to offset potential adverse changes in market conditions or for operational performance by the savings institution below business plan projections?
 - Is capital adequate based upon the proposed business philosophy or for proposed charters with specialized operations or higher risk profiles (e.g. Internet based banking)?
 - Do the business plan projections indicate that QTL compliance will be maintained?
 - Are the business plan assumptions reasonable and consistent with local community needs?
 - Does the savings institution have a reasonable plan to meet its obligations under the CRA?
 - Will the savings institution meet the identified convenience and needs in the target market, including the low- and moderate-income needs?
 - Will the savings institution provide credit for housing consistent with safe and sound banking principles?
 - Will Internet banking activities be conducted in compliance with OTS and Interagency policy?
 - Do the charter and bylaws comply with regulatory requirements?
 - Has the institution addressed the continuation of deposit insurance by FDIC?

Conditions

Generally, the following conditions will be imposed on any approval for institutions that are converting from a non-OTS-regulated depository institution to a Federal thrift charter.

- The applicant must receive all required regulatory and shareholder approvals for the proposed transaction and submit copies of all such approvals to the Regional Office prior to consummation of the proposed transaction;

-
- The applicant must consummate the proposed transaction within one hundred and twenty (120) calendar days from the date of approval, unless extended by the Regional Director for good cause;
 - On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the proposed holding company(ies) (Applicants) and the converting institution must certify in writing to the Regional Director that no material adverse events or material adverse changes have occurred with respect to the financial condition or operation of the Applicants and the savings institution as disclosed in the applications. If additional information having an adverse bearing on any feature of the applications are brought to the attention of the Applicants, the converting institution, or OTS since the date of the financial statements submitted with the applications, the transaction must not be consummated unless the information is presented to the Regional Office, and the Regional Office provides written non-objection to consummation of the transaction;
 - The Applicant must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed transaction: (a) of the effective date of the proposed transaction; and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the applications, and the approval; and
 - The Applicant must operate within the parameters of its business plan. The Applicants and the savings institution must submit any proposed major deviations or material changes from the plan (including changes resulting from decisions made by the Applicants), (OPTIONAL LANGUAGE: and in particular, those pertaining to cross-marketing of products of the savings institution and its affiliates, a change in the role of the independent agents, and any changes in the proposed delivery system of the savings institution's products,) for the prior, written non-objection of the Regional Office. The request for change must be submitted a minimum of 60 calendar days before the proposed change is implemented with a copy provided to the FDIC Regional Office.

Nonstandard Conditions

It is not unusual for the approval letter for a conversion application to contain nonstandard conditions of approval. Additional conditions may be warranted in circumstances where the proposed operations are integrated with services or activities involving affiliates, where securities affiliates exist, in structures involving non-shell holding companies, where anti-tying issues are present, or due to unique characteristics or the risk profile of the proposed charter. All nonstandard conditions of approval must be supported with justification in the recommendation memorandum related to approval of the application. Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application. Listed below are examples of most common nonstandard conditions:

- Any contracts or agreements pertaining to transactions with affiliates, not yet submitted to the OTS for review, must be provided to the Regional Office at least 30 calendar days prior to execution for a written non-objection prior to implementation;

- (For trust only applicants): At least 50 percent of the audit and investment committees established by the savings institution must be directors who are not officers or employees of the savings institution, the applicants or any affiliates. If compliance with this condition involves the selection of additional directors, each director must receive the prior written approval of the Regional Office; and
- The institution must comply with the investment and lending limitations contained in Section 5(c)(2)(D) of HOLA within two years.

RECORDKEEPING REQUIREMENTS

All correspondence related to the processing of the notice or application must be consolidated 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 non-delegated filings. The file copy must include a copy of the original filing including any 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 memorandum, and compliance material. The file copy must be organized and separated into public and confidential material, and clearly identified as such. The public and confidential sections must be arranged in chronological order, or in a similarly organized fashion.

MONITORING AND CONTROL

The Regional Office will monitor compliance with all conditions imposed in connection with an application's approval. The applicant must submit evidence of satisfaction of the conditions included in the approval order or letter to the Regional Office within the stated time frames.

The Regional Office should notify the appropriate staff responsible for the supervision and examination of the savings institution regarding the action taken on an application, and provide staff with copies of the approval order or letter. If an application is approved, the first examination of the savings institution following the approval should include a review of compliance with all conditions of approval and any changes in operations as a result of the transaction.

A review of the application 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 application in the Regional Office, including a review of the documentation maintained in the application file.

INFORMATION SOURCES

Statutes

12 U.S.C. § 1464
12 U.S.C. § 1464

HOLA Section 5(b); Deposits and Related Powers
HOLA Section 5(c); Loans and Investments

Section: Conversion of Bank or Credit Union to a Federal Charter

Section 430

12 U.S.C. § 1464	HOLA Section 5(e); Character and Responsibility
12 U.S.C. § 1464	HOLA, Section 5(i) Conversion to a Federal Charter
12 U.S.C. § 1464	HOLA, Section 5(o) Conversion of State Savings Banks
12 U.S.C. § 1464	HOLA Section 5(q); Tying Arrangements
12 U.S.C. § 1464	HOLA, Section 5(r) Out-of-State Branches
12 U.S.C. § 1467a	HOLA Section 10(m); Qualified Thrift Lender Test
12 U.S.C. § 1467a	HOLA Section 10(n), Tying Arrangements
12 U.S.C. § 1468	HOLA Section 11; Transactions with Affiliates
12 U.S.C. §§ 2901, <u>et seq.</u>	Community Reinvestment Act
12 U.S.C. §§ 3201, <u>et seq.</u>	Depository Institution Management Interlocks Act

Regulations

12 C.F.R. Part 516	Applications Processing Guidelines
12 C.F.R. § 541.18	Interim Federal Institution
12 C.F.R. § 543.1	Corporate Titles of Federally Chartered Institutions
12 C.F.R. § 543.2	Application for Permission to Organize
12 C.F.R. § 543.3	"De Novo" Applications for a Federal Association Charter
12 C.F.R. § 543.5	Issuance of a Charter
12 C.F.R. § 543.6	Completion of Organization
12 C.F.R. § 543.8 through .14	Conversion from State Mutual to Federal Mutual
12 C.F.R. § 544.1 through .5	Charter and Bylaws for Federal Mutual
12 C.F.R. § 545.92	Branch Offices
12 C.F.R. § 552.2-1	Procedures for Organization of Federal Stock Association
12 C.F.R. § 552.2-2	Procedures for Organization of Interim Federal Stock Association
12 C.F.R. § 552.2-6	Conversion from State Stock to Federal Stock
12 C.F.R. § 552.3 through .6-3	Charter and Bylaws for Federal Stock Associations
12 C.F.R. § 552.13	Combinations involving Federal Stock Institutions
12 C.F.R. Part 560	Lending and Investment Limitations
12 C.F.R. § 561.4	Affiliate Definition
12 C.F.R. § 561.5	Affiliated Person (Definition)
12 C.F.R. § 561.14	Controlling Person (Definition)
12 C.F.R. § 561.35	Officer (Definition)
12 C.F.R. § 563.33	Directors, Officers and Employees
12 C.F.R. § 563.39	Employment Contracts
12 C.F.R. § 563.41	Loans and other transactions with affiliates and subsidiaries
12 C.F.R. § 563.42	Additional standards applicable to transactions with affiliates and subsidiaries
12 C.F.R. § 563.43	Restrictions on Loans and Other Investments Involving Affiliated Persons
12 C.F.R. Part 563e	Community Reinvestment Act
12 C.F.R. Part 563f	Management Interlocks Act
12 C.F.R. Part 565	Prompt Corrective Action
12 C.F.R. Part 567	Capital

Other

Regulatory Bulletin 20	Background Investigations
Regulatory Bulletin 27-a	Executive Compensation and Employment Contracts
Regulatory Bulletin 32-5	Qualified Thrift Lender Test
23A and 23B of the Federal Reserve Act	Transactions with Affiliates
OTS Form 1518	Model Bylaws for Stock Associations
Fees and Assessments Thrift Bulletin	

Application Forms

OTS Form 1582	Application for Conversion From a State-Chartered Stock or Mutual Association into a Federal Stock or Mutual Savings Association or Savings Bank
OTS Form 1623	Interagency Biographical and Financial Report

This handbook section provides information regarding the filing of new charter applications for a Federal savings institution. 12 C.F.R. Parts 543 and 552 set forth the regulations, policies and procedures that govern the submission, review and decision for Permission to Organize (PTO) applications filed by the organizers of a proposed Federal de novo institution. A “de novo applicant” means any person, persons, or companies who apply to establish a de novo institution. A “de novo institution” means any Federal savings institution chartered by OTS [as defined in 12 C.F.R. 543.3(a)] the business of which has not been conducted previously under any charter or conducted in the previous three years in substantially the same form as is proposed to be conducted by the de novo institution. These guidelines apply whenever a de novo applicant files an application to charter a de novo institution.

FILING REQUIREMENTS

Delegated Authority

The application is not eligible for delegated processing. See Delegation Section 040 of the handbook for information on the delegation process.

Expedited and Standard Procedures

This application is not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. Accordingly, the application will be processed utilizing the procedures set forth in 12 C.F.R. §§ 516.210 – 516.290.

Meetings

The applicant must contact the appropriate Regional Office to schedule meetings related to its application for a de novo thrift charter. The applicant is required to meet with the Regional Office for a prefiling meeting in advance of filing the application. Additional meetings may be required by the Regional Office, which may include a preopening meeting following approval of the application.

Prefiling Meeting Requirement

The applicant must meet with the Regional Office for at least one prefiling meeting prior to filing an application. It is the applicant’s responsibility to contact the Regional Office in a reasonable time frame in advance of filing the application to schedule this meeting. The purpose of the meeting is to permit OTS and the applicant to identify any legal or policy issues before submission of the application, and enable the applicant to address these issues early in the process. Additional prefiling meetings may be warranted on a case-by-case basis. The Regional Office will work with the applicant to determine a schedule and forum for a meeting. The forum for the meeting will usually be in person at the Regional Office, although the Regional Office may consider meetings by telephone or video conferencing at its discretion on a case-by-case basis. OTS may decide not to accept a submitted application as officially filed until the prefiling meeting requirements in 12 C.F.R. Part 516 are met.

When a meeting is required, the applicant should contact the Regional Office to determine who should attend the meeting. These individuals will be expected to discuss the salient aspects of the proposed transaction. The applicant must submit a draft business plan to the Regional Office prior to the meeting in a time frame in advance of the meeting acceptable to the Regional Office. At a minimum, the plan should:

- Describe clearly and completely the projected operations and activities;
- Provide financial projections for a three-year period;
- Discuss the associated risks of the proposed activities and operations contemplated in the plan;
- Identify all or a majority of the proposed director and key senior executive officers with documentation to support that these individuals have the required qualifications and experience to prudently oversee operations; and
- Demonstrate how the charter will serve the credit and lending needs in its target market.

Preopening Meeting

In most cases, the applicant will meet with the Regional Office for a “preopening” meeting following approval of the de novo application, but prior to the savings institution opening for business. The Regional Office will contact the applicant to discuss the forum for the meeting and who should attend. In most cases, at least the organizers, board of directors, and senior executive management should attend. Regional Office staff will discuss with the applicant: satisfaction of conditions of approval; supervision and examination process; responsibility and fiduciary duty of the board of directors and management; regulatory issues germane to the successful opening of the savings institution; and, Regional OTS resources and contacts available to the institution.

Information and Form Requirements

The applicant must file the application with the appropriate Regional Office and the Applications Filing Room (AFR) in OTS-Washington in accordance with 12 C.F.R. Part 516. The applicant is required to file the original and two copies of this application and the applicable application filing fee(s) with the appropriate Regional Office, and file three copies of the application with the AFR. When a transaction requires submission of additional copies, as in the case of a merger transaction subject to the Bank Merger Act, the additional copies should be sent to the appropriate Regional Office. The original filing, all copies, and all exhibits and other pertinent documents must be clearly marked and captioned as to the type of filing. One copy must contain original signatures on all executed documents. See Application Filing Requirements in Section 010 of this handbook.

The PTO application is filed under the cover of one of two variations of OTS Form 138:

- Form 138-E Application for Permission to Organize a Federal Mutual Savings Association or Savings Bank; or

-
- Form 138-F Application for Permission to Organize a Federal Stock Savings Association or Savings Bank.

The applicant is required to submit all documents and information set forth in OTS Form 138. The application form addresses seven categories of information requirements:

- Overview
- Management
- Capital
- Characteristics of the Community
- Community Reinvestment Act
- Premises and Fixed Assets
- Other Information

Stock institutions must also submit:

- Sample Stock Certificates, including restrictive legends;
- For de novo institutions with holding companies, copies of the holding company charter, bylaws, a description of business operations including background, and the most recent and past five years' certified financial statements;
- Proposed voting trust agreements, if applicable; and
- Proposed offering materials if applicable.

For transactions where the de novo charter is combined with an existing operating financial institution, the following information must be submitted for the existing institution:

- The most recent State and/or Federal banking examinations;
- Audit reports and annual reports for the past three years; and
- The most recent published financial statements for the past three years.

Additional forms or filings to supplement OTS Form 138 may be necessary, e.g., forms seeking approval for subsidiaries, holding companies, trust powers, biographical and financial reports complete with supporting documentation, and business plan. These forms and/or instructions are available on the OTS Website.

Confidentiality

The applicant must submit in writing, concurrently with the submission of the application, any requests to keep specific portions of the application 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. OTS will not treat as confidential the portion of an application describing the plan to meet the Community Reinvestment Act objectives.

Information for which confidential treatment is requested should be: (i) specifically identified in the public portion of the application 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 application. 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.

Special Considerations

Publication Requirements

The applicant must publish notice of its intent to organize a Federal savings institution no earlier than seven days before and no later than the date of filing of the application, in accordance with the requirements of 12 C.F.R. Part 516 Subpart A. Notice must be published in a newspaper printed in the English language and having a general circulation in the community in which the home office of the new savings institution is to be located. If the Regional Office determines that the primary language of a significant number of adult residents of the community is a language other than English, the applicant may also be required to publish notice simultaneously in the appropriate language(s).

OTS may require an applicant to publish a new public notice of the application in circumstances when an applicant submits a revision to the application, or submits new or additional information, or when a major issue of law or change in circumstance arises after filing the application. OTS has the discretion in these circumstances to require republication if it determines that the public has not had adequate notice and opportunity to comment on the application due to the substantial change. OTS will notify the applicant if a new public notice of a revised application must be published.

Additional public notice requirements may apply for transactions involving mergers or branch purchase applications filed pursuant to 12 C.F.R. § 563.22, or change of control applications filed pursuant to 12 C.F.R. § 574.3. Combined public notice may be published consistent with existing OTS policy. See Publication Forms Section 020 of the Handbook for examples of publication language.

- **Comment Procedures**

Any person may submit a written comment to the Regional Office supporting or opposing a de novo application within 25 days after the filing date of the application. OTS will not consider any late filed comments unless: the commenter demonstrates good cause for why they could not submit a timely comment, or, OTS concludes that the comment addresses a significant regulatory concern and will assist in the disposition of the de novo application. OTS can extend the 25-day comment period with demonstrated good cause for why a commenter was unable to submit a timely comment. The duration of an extension request is

subject to the discretion of OTS on a case-by-case basis, after consideration of the unique circumstances of each extension request.

The comment should recite relevant facts, including any demographic economic or financial data supporting the commenter's position. If the commenter opposes the application, the comment should also: 1) address at least one reason for denial based upon regulatory criteria for denial; 2) support the reason for denial with relevant facts and supporting data; and, 3) address how the approval of the application is harmful to the community or the commenter. While OTS will accept and consider all comments, including those that do not meet all of the content criteria, commenters are encouraged to include all relevant information and arguments.

The commenter may also request an informal meeting pursuant to 12 C.F.R. §§ 516.120 and 516.170 with their comment, along with a description of the issues and facts to be discussed and justification for why written submissions are insufficient to adequately address those facts or issues.

If the commenter has filed a written request for a meeting and the request contains the required information set forth in 12 C.F.R. 516.120(b), OTS will arrange a meeting. If an informal meeting is requested, the commenter must simultaneously send a copy of the written request to the applicant. OTS will generally provide an applicant an appropriate opportunity and period of time to respond to submitted comments.

OTS will facilitate the informal meeting between the applicant, the commenter(s) and any other interested person(s). OTS has discretion to determine the format of the meeting, including telephone conference or face-to-face meetings. OTS will inform the applicant and commenters requesting an informal meeting of its decision on a request for a meeting, or of its decision to hold an informal meeting on its own initiative. OTS may also invite any other interested persons to attend. OTS will inform the participants of the date, time, location and format for the meeting in reasonable time in advance. OTS anticipates that informal meetings will be sufficient to facilitate the resolution of issues in most cases.

If an informal meeting fails to facilitate the resolution of issues to the satisfaction of any participant in an informal meeting, OTS may proceed to conduct a formal meeting before a presiding officer upon the filing of a request. Any participant requesting a formal meeting pursuant to 12 C.F.R. §§ 516.170 and .180, should submit a request to OTS within three days after the informal meeting, and provide copies of its request to the other participants of the informal meeting. The request must describe the nature of the issues or facts to be presented and must demonstrate that material issues or facts have not been adequately addressed by the informal meeting, and that a formal meeting is necessary to develop a record sufficient to support a determination on those facts or issues. OTS will not arrange an informal meeting where a request is clearly frivolous or clearly lacking a factual basis. OTS may elect to hold a formal meeting on its own initiative if deemed necessary to assist in the disposition of the application or issues raised by the application.

OTS will issue a Notice of Formal Meeting if it decides to hold a formal meeting, and send the notice to the applicant, to any person requesting a formal meeting, and to any interested

person, in its discretion, it desires to invite. Any person receiving the Notice of Formal Meeting must notify OTS within ten days of receipt of the notice of their intent to participate in the meeting. All participants in the formal meeting must provide the names of their presenters and copies of proposed exhibits to OTS, to the applicant, and to any other person designated by OTS, no later than five days before the date of the formal meeting. All presenters of documentary material must furnish copies of the material to OTS and to each other participant. OTS will arrange for a transcript of the meeting, with each participant bearing the cost of any copies of the transcript it requests for its use.

OTS anticipates that most formal meetings will follow an informal meeting. Accordingly, OTS will not grant a request for a formal meeting unless an informal meeting has occurred. However, OTS has the authority to conduct a formal meeting without holding an informal meeting if the meeting is beneficial to the review process and will facilitate a resolution of the issues raised by application.

If OTS has arranged an informal or formal meeting, the processing time frames for the application are suspended until OTS determines that a sufficient record has been developed to address the issues raised in the comments.

Interim Institutions

An interim Federal savings institution, as defined in 12 C.F.R. § 541.18, is an institution chartered under Section 5 of the Home Owners' Loan Act of 1933, as amended (HOLA), to facilitate the acquisition of 100 percent of the voting shares of an existing Federal stock institution or other insured institution by a newly formed company or an existing savings and loan stock holding company, or to facilitate any other transaction OTS may approve. A transaction involving an interim institution requires the submission of OTS Form 1495 with the PTO application.

The approval of an interim application is conditioned upon OTS approval of an application to merge the interim institution into an existing insured savings institution or upon OTS approval of a related transaction. In evaluating the application, OTS considers the following factors:

- The purpose for which the savings institution will be organized;
- The form of any proposed transaction involving the organizing savings institution;
- The effect of the transaction on existing institutions involved in the transactions; and,
- The factors specified in 12 C.F.R. § 543.2(g)(1) to the extent relevant.

Background Checks

OTS policy requires background investigations of all organizers, proposed senior executive officers, directors, and any individuals or groups acting in concert who own or control, directly or indirectly, ten percent or more of the de novo institution's stock. These individuals are considered management officials of the savings institution for the purpose of OTS's evaluation of the character and qualifications of the savings institution's management. At a minimum, individuals must submit an

Interagency Biographical and Financial form, FBI Fingerprint Card, and a Regulatory Bulletin (RB) 20 Certification Form. RB-20 authorizes OTS to request supplemental information from applicants if the information is useful in completing a thorough background investigation. Applicants can request a waiver from filing portions of this information by providing justification stating why this information is unduly burdensome or unnecessary. Waiver requests will only be granted in limited circumstances and consistent with current OTS policy. The Regional Office must conduct a background investigation in compliance with RB-20. Individuals must be fingerprinted by an independent third party unrelated to the individual or companies affiliated with the individual on fingerprint cards bearing the OTS identification number. Results of all background checks should be addressed in the Regional Office's digest.

Eligibility Examinations

PTO applications may involve transactions where the proposed de novo institution is combined with an existing operating company, or where assets are either acquired by, or contributed to, the proposed de novo institution. For example, if a transaction contemplates the contribution of a mortgage banking company, an examination would normally be conducted to review the company's policies and procedures, internal controls, and management oversight. If a transaction involves the contribution of credit card receivables, loans, or other assets to the de novo institution, an examination would normally be conducted to assess the quality and valuation of such assets. In other circumstances, OTS may have concerns regarding the qualifications of an acquirer to control a financial institution, related to existing operations affiliated with the de novo applicant, if issues involving the treatment of consumers, regulatory compliance, or other matters were identified during the background review of an acquirer. These types of circumstances may require OTS to perform an eligibility examination or to perform a review of parent or affiliated organizations. The examination procedures should be limited to those needed to assess the particular risks posed by the proposed transaction, or necessary to assess significant or novel issues relevant to the application decision.

The Regional Office should determine the need for an eligibility examination as early in the application process as possible. The eligibility examination may include on- or off-site activities. Prior to commencing the on-site work, OTS will forward a Preliminary Examination Response Kit (PERK) requesting more detailed information that should be made available to the examiners upon their arrival. OTS does not normally charge a fee for its eligibility examination. However, OTS may impose an hourly fee if the examination encounters significant problems that require additional review beyond the scope of a standard eligibility examination.

Organization of a De Novo by a Holding Company

The applicant may organize a de novo institution under a holding company structure that will require the filing of the appropriate holding company acquisition application (typically, an H-(e)1) in addition to the PTO application.

Bank holding companies that create de novo savings institutions are not required to submit a holding company application to OTS due to the passage of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPR). EGRPR amended Section 10(e)(1)(B) of the HOLA to exempt bank holding companies and companies controlled by bank holding companies from having to seek

OTS's approval to acquire a savings institution. The Federal Reserve has the regulatory authority over a bank holding company's acquisition of a de novo savings institution.

Federal Home Loan Bank Membership

The Gramm-Leach-Bliley Act (Section 603) amended Section 5(f) of HOLA to give a Federal savings institution the option of becoming a member of the FHLB.

National Historic Preservation Act

If the applicant proposes to establish its home or branch office in any historical district, site, building, structure, object or archaeological site, included in, or eligible for inclusion in, the National Register of Historic Places pursuant to the National Historic Preservation Act (NHPA), 16 U.S.C. 470, the application is subject to the requirements set forth in Section 106 of the NHPA.

Section 106 of the NHPA requires Federal agencies to consider the effects of their actions on historic properties and provide the Advisory Council on Historic Preservation (Advisory Council) an opportunity to comment with regard to such actions. To successfully complete a Section 106 review, OTS must:

- Determine if Section 106 of NHPA applies to a given project and, if so, initiate the review;
- Gather information to decide which properties in the project area are listed on or eligible for the National Register of Historic Places;
- Determine how historic properties might be affected;
- Explore alternatives to avoid or reduce harm to historic properties; and
- Reach agreement with the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) (where tribal lands or historic properties of significance to such tribes are involved) on measures to deal with any adverse effects or obtain advisory comments from the Advisory Council, which are sent to the head of the agency.

The SHPO coordinates state participation in the implementation of the NHPA, is a key individual in the Section 106 process, and should be involved in each step.

In order to facilitate the Section 106 review, the savings institution must indicate in the application if the proposed main office and/or any branch site affects any district, site, building, or structure listed in, or eligible for listing in, the National Register of Historic Places, specify how such determination was made (e.g., National Register, SHPO/THPO or other), and provide documentation of consultation with SHPO/THPO.

The involvement of Section 106 of NHPA in an application is considered an issue of law or policy. As a result, the analysis of the application must address the requirements set forth in Section 106 of the NHPA.

REVIEW GUIDELINES

Processing Procedures and Time Frames

As indicated, this application is not subject to delegated authority and will be processed concurrently with OTS-Washington staff. As a general matter, correspondence from OTS regarding applications will be transmitted from OTS-Washington.

Within five business days of receipt of the application and the application fee, the Regional Office must notify the applicant of the application's receipt. The appropriate application fee must accompany each application in order for it to be considered filed. The application will not be considered filed until received by both OTS-Washington and the Regional Office.

Within five business days of receipt of the application, the Regional Office will begin its background investigations on individuals who were required to submit such information in connection with the application. Upon receipt of the application, the Regional Office must forward all FBI Fingerprint Cards to OTS-Washington for processing. The background investigations should include, at a minimum, a search of the applicants in the Westlaw and CIIS databases. When appropriate, OTS must contact other regulatory agencies to seek additional comments on the applicants, or to request examination reports from another agency. For applications involving insurance companies, the Regional Office should contact the Insurance Risk Management Specialist in OTS-Washington to conduct a review of the insurer. 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.

If the application involves specialty areas, such as trust activities or CRA issues, OTS-Washington must provide a copy of the application to the corresponding OTS-Washington specialist.

Within 30 calendar days of receipt of a properly submitted application, OTS shall take one of the following actions.

- Deem the application complete;
- Request, in writing, any additional information necessary to deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

Failure by OTS to act within 30 calendar days of receipt of the application for processing shall result in the filed application being deemed complete, commencing the period for review.

OTS must timely review all requests for a waiver of an application requirement that certain information be supplied. Unless OTS requests, in writing, additional information about the waiver request, or denies the waiver request, the waiver request shall be deemed granted.

If additional information is requested, a response must be submitted within 30 calendar days of the letter requesting such information. The applicant may, in writing, request a brief extension of the 30-calendar day period for responding to a request for additional information, prior to the expiration

of the 30-calendar day time period. OTS, at its option, may grant the applicant a limited extension of time in writing. Failure to respond to a written request for additional information within 30 calendar days of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial or disapproval of the application.

After the timely filing of additional information in response to any initial or subsequent request by OTS for additional information, OTS has 15 calendar days to review the additional information for completeness or appropriateness and take one of the following actions:

- Request, in writing, any additional information necessary to deem the application complete;
- Deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

The 15-day review period commences when the OTS receives a response that purports to respond to all questions in the information request. OTS may extend the 15-day review period for an additional 15 calendar days, if OTS requires the additional time to review the response. OTS will notify the applicant that it has extended the period before the end of the initial 15-day period.

Failure by OTS to act within 15 calendar days of receipt of the additional information shall result in the filed application being deemed complete, commencing the period for review.

For transactions involving combinations with existing operating institutions or a contribution of assets (companies, loans, receivables, etc.) to the de novo charter, OTS may elect to conduct an eligibility examination during the review process. OTS will not deem an application complete until it concludes the examination. In addition, OTS may request additional information as a result of the eligibility examination, and the applicant must submit a response in accordance with the time frames set forth in this section.

Once the application has been deemed complete, there is a 60-calendar day review period during which time OTS will take into consideration all factors present in the application and render a decision thereon. If, upon expiration of the 60-day review period, assuming no extension has been granted, OTS has failed to act, the application is deemed approved automatically, and the applicant may thereafter consummate the transaction. If multiple applications are submitted in connection with one transaction, the applicable review period for all applications is the review period for the application with the longest review period, subject to statutory review periods.

During the review period, OTS may request additional information if the information is necessary to resolve or clarify the issues presented in the application. OTS may also notify the applicant that the application is incomplete and require that the applicant submit additional information to complete the application. The review period can be extended an additional 30 calendar days if OTS determines that additional time will be required to analyze the proposed transaction. In such cases, OTS must notify an applicant prior to the expiration of the period for review. In situations in which an application presents a significant issue of law or policy, OTS may extend the applicable period for

review of such application beyond the time period for review. In these cases, written notice must be provided to an applicant no later than the expiration of the time period.

Under 12 C.F.R. § 516.290, if OTS has not acted on a pending application within two calendar years after the filing date, OTS may deem the application withdrawn unless it determines that the applicant is actively pursuing a final determination on the application. Applications that are subject to this withdrawal provision are those that have failed to timely take action such as filing required additional information, or OTS has suspended processing of an application based on circumstances that are, in whole or in part, within the applicant's control and have failed to take reasonable steps to resolve these circumstances.

For purposes of calculating processing time frames, OTS does not include the day of the act or event, in determining the date the time period commences. In determining the conclusion of a time period, when the last day of the time period is a Saturday, Sunday, or a Federal holiday, the last day will become the next day that is not a Saturday, Sunday, or Federal holiday.

Regulatory Criteria

Section 5(e) of the HOLA sets forth the basic criteria that OTS must consider when acting on an application for permission to organize a Federal savings institution. Section 5(e) states that OTS may grant a Federal charter only if, in OTS's judgment:

- The organizers are persons of good character and responsibility;
- A need exists for the savings institution in the community to be served;
- There is a reasonable probability of the savings institution's usefulness and success; and
- The savings institution can be established without undue injury to other local thrift and home-financing institutions.

12 C.F.R. § 552.2-1(b)(1)(v) (12 C.F.R. § 543.2(g)(1)(v) for mutual savings institutions) requires OTS to consider whether the savings institution will perform a role of providing credit for housing consistent with safe and sound operations of a Federal savings institution.

12 C.F.R. § 543.3 sets forth certain policy considerations regarding de novo applications for permission to organize including:

- Minimum Initial Capitalization

A de novo institution must have at least two million dollars in initial capital stock or initial pledged savings or cash. The minimal initial capitalization is the amount of proceeds net of all incurred and anticipated expenses involved in the organization of the savings institution, as well as securities expenses for stock institutions. On a case-by-case basis, OTS may approve a de novo application that has less than two million dollars in initial capital or may require the applicant to have more than two million dollars in initial capital. Charter applications proposing relatively novel or higher-risk operations, such as substantial Internet-based operations, will require additional capital consistent with current OTS policy.

- Business Plan

The applicant must submit a business plan materially consistent with OTS requirements, describing the major areas of operations for the first three years of operation of the de novo institution. See Business Plan Guidance Section 625 of the Handbook for information on business plan requirements. The business plan should address the following areas of operation:

- * Lending, leasing and investment activity, including plans to meet the Qualified Thrift Lender requirements;
- * Deposit, savings and borrowing activity;
- * Interest-rate risk management;
- * Internal controls and procedures;
- * A discussion of the requirements set forth in the Community Reinvestment Act and plans for meeting the credit needs of the community, including low- and moderate-income neighborhoods; and
- * Comprehensive financial projections for the first three years of operation.

The business plan must provide for the continuation or succession of competent management subject to the approval of the Regional Office and must further provide that any material change in, or deviation from, the business plan must receive the prior approval of the Regional Office. The business plan must also demonstrate the de novo institution's ability to maintain required minimum regulatory capital pursuant to 12 C.F.R. Parts 565 and 567 for the duration of the plan.

- Composition of the Board of Directors

A majority of the de novo institution's board of directors must be representative of the state in which the savings institution is to be located. The board must be diversified and composed of individuals with varied business and professional experience. In addition, no more than one-third of the board of directors may be in closely related businesses, except in the case of a de novo institution that is wholly owned by a holding company with substantial economic substance. The background of each director must reflect a history of responsibility, personal integrity, and competence sufficient to direct the savings institution in a safe and sound manner.

Pursuant to 12 C.F.R. § 563e.29, OTS must consider the savings institution's plans for meeting its objectives under the Community Reinvestment Act. OTS will review the proposed plan for satisfying the CRA and may deny or condition approval based upon this review.

Decision Guidelines

The statutory and regulatory requirements are designed to ensure the viability and safe and sound operation of the de novo charter. In general, the analysis should conclude that management and ownership satisfies OTS integrity standards, that management has the expertise to implement the business plan, that the savings institution is viable and will maintain sufficient capital in relationship to its risk profile, that the community will be served and will support the proposed charter, and that the proposed transaction is in compliance with applicable rules and regulations. The following factors should be considered in analyzing the application to determine if the transaction satisfies the applicable statutory and regulatory criteria for approval:

- Did the applicant submit the following forms and information:
 - * Appropriate and properly executed application OTS Form 138 for Permission to Organize to be filed with either: 1) OTS Form 138-E for Permission to Organize a Federal Mutual Savings Association or Savings Bank; or, 2) OTS Form 138-F for Permission to Organize a Federal Stock Savings Association or Savings Bank?
 - * OTS Form 1623 (Interagency Biographical and Financial Report); properly executed RB-20 Certification; and FBI Fingerprint Cards, for each organizer, director, senior executive officer, and controlling shareholder?
 - * Copies of proposed employment contracts and evidence of regulatory compliance?
 - * Description and copies of any proposed stock option plans?
 - * Discussion of specific policies and actions the institution will institute to ensure compliance with Sections 23A, 23B, 22(g) and (h) of the Federal Reserve Act, and with 12 C.F.R. §§ 563.41 and .42?
 - * Oaths of Directors?
 - * Proposed Charter and Bylaws?
 - * Copies of all proposed contracts with affiliates, all contracts not in the ordinary course of business or in excess of 15 percent of the proposed operating budget?
 - * Map of the primary market area? The map should be outlined with a heavy line to indicate the proposed market area(s); the proposed office location and branch offices must be clearly identified; and home office locations and branch facilities of competing savings institutions and commercial banks should be clearly identified. The map must contain a distance scale.
 - * Description of the proposed market area and economic environment that discusses population trends, income, industry and housing patterns?
 - * Copies of any economic survey or market feasibility study used to assess the existing and projected demographic profile of the target market area?
 - * Analysis of anticipated market changes to the proposed market area and factors influencing the expected changes?
 - * Three-year business plan?

-
- * CRA plan?
 - * Notices and/or application forms for related filings, e.g. subsidiaries, trust powers, etc.?
 - * Listing of all subscribers to capital stock that are organizers, directors, senior executive officers, ten percent shareholders, and other insiders?
 - * Information to demonstrate that the application meets relevant approval standards?
- Do the organizers appear to be responsible, financially stable, competent, and of good character and integrity?
 - Did the RB-20 certification or background check (FBI, LEXIS/NEXIS and/or Westlaw, and CIIS, or other) of the organizers, proposed management, and controlling shareholders, indicate that they have been the subject of any enforcement, criminal or questionable actions?
 - Was any adverse information found in the background reviews not disclosed by any individual in their RB-20 Certification or on OTS Form 1623?
 - Do the Interagency Biographical and Financial Reports (OTS Form 1623) disclose any questionable information? (Any prior employment with a financial institution must be checked).
 - In applications involving a proposed existing parent company(ies), did the background review or RB-20 Certification disclose any questionable information on the company(ies) or any affiliate(ies) of the company(ies)?
 - Was any adverse information found in the background reviews not disclosed by the company(ies) in its RB-20 Certification Form?
 - For transactions with affiliates, will the transactions and contracts comply with Sections 23A and 23B of the Federal Reserve Act, and with 12 C.F.R. §§ 563.41 and .42?
 - Will the de novo institution's board of directors have sufficient independence from its parent holding company (ies) and affiliates to ensure that the savings institution will continue to operate without undue influence from these affiliates?
 - Do the board of directors and senior management have the qualifications and experience necessary to operate the proposed charter in a safe and sound manner?
 - Will the savings institution have sufficient full-time management to ensure safe and sound operations?
 - Does the proposed salary and bonus structure appear reasonable?
 - Do proposed employment agreements comply with the requirements of 12 C.F.R. § 563.39 and RB 27-a?
 - Will the board of directors meet the composition requirements of 12 C.F.R. §§ 543.3(d) and 563.33(a)?
 - Has the applicant identified the proposed board and management committees, their functions, and are these committees adequate?
 - Will sufficient fidelity coverage on officers and employees be maintained?

-
- Will the applicant comply with the Management Interlocks Act?
 - Does the business plan satisfy OTS requirements?
 - Are the underlying assumptions of the business plan reasonable?
 - Do the lending activities present unusually high elements of risk, such as a significant volume of activity or concentrations of activity in subprime lending, speculative lending, or credit card activity?
 - Do the proposed savings and lending services appear reasonable?
 - Will the proposed balance sheet and business strategy comply with the lending and investment limitations of Section 5(c) of HOLA and 12 C.F.R. Part 560?
 - In those instances where the office quarters will be purchased or leased from an affiliated person, as defined in 12 C.F.R. § 561.5, did the applicant follow the procedures as set forth in 12 C.F.R. § 563.41?
 - Does the investment in fixed assets by the savings institution meet current OTS policy for limitations of initial capital invested in fixed assets?
 - Have organizational expenses been estimated and disclosed and their funding been discussed?
 - Will organizational costs be expensed in accordance with GAAP and has the expense been recognized in the business plan projections?
 - Does the business plan demonstrate compliance with OTS capital requirements over the three-year projections?
 - Do the dividend projections in the business plan reconcile with the proposed dividend policy?
 - Does the savings institution have capital reserves to offset potential adverse changes in market conditions or for operational performance by the savings institution below business plan projections?
 - Is capital adequate based upon the proposed business philosophy or for proposed charters with specialized operations or higher risk profiles (e.g. Internet based banking)?
 - Do the business plan projections indicate that QTL compliance will be maintained?
 - Are the business plan assumptions reasonable and consistent with local community needs?
 - Does the application or business plan raise concerns that may preclude the de novo charter from a favorable decision on its insurance of accounts application?
 - Does the description of the local community adequately demonstrate the community's credit needs?
 - Does the description of the proposed market area include historical and projected demographic data and trends (e.g. population, unemployment, income, housing, deposit account activity, etc.)?
 - Does the proposed market area discussion evaluate each assessment area's financial needs, including consumer, business, non-profit, and government sectors?

-
- Can the de novo institution be established without undue injury to competing savings institutions and other home financing institutions?
 - Does the savings institution have a reasonable plan to meet its obligations under the CRA?
 - Will the proposed charter meet the identified convenience and needs in the target market, including the low- and moderate-income needs?
 - Will the de novo institution provide credit for housing consistent with safe and sound banking principles?
 - Will the employees of the de novo institution participate in a stock option plan, and does the plan meet current OTS policy limitations?
 - Will all stock subscriptions be sold at a price that is reasonable and equitable to all parties? Officers, directors, and organizers should not receive the payment of commissions or other compensation for the subscription to or sale of permanent stock.
 - Will all stock of a particular class be sold at the same price in the initial offering?
 - Will Internet banking activities be conducted in compliance with OTS and Interagency policy?
 - Will the de novo institution have a transactional web site subject to OTS review pursuant to 12 C.F.R. § 555.310?
 - Will the proposed charter be a Subchapter S Corporation?
 - Do the charter and bylaws comply with regulatory requirements?

Conditions

Standard Conditions

Listed below are the standard conditions of approval for this application type. If OTS imposes any additional or materially different conditions, they must be justified in the supporting documentation.

- The applicant must receive all required regulatory and shareholder approvals for the proposed transaction and submit copies of all such approvals to the Regional Director prior to consummation of the proposed transaction;
- The applicant must consummate the proposed transaction within one hundred and twenty (120) calendar days from the date of the Approval Order;
- On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the proposed holding company(ies) (Applicants) and the de novo institution must certify in writing to the Regional Director that no material adverse events or material adverse changes have occurred with respect to the financial condition or operation of the Applicants and the de novo institution as disclosed in the applications. If additional information having an adverse bearing on any feature of the applications are brought to the attention of the Applicants, the de novo institution, or OTS since the date of the financial statements submitted with the applications, the transaction must not be consummated unless

the information is presented to the Regional Director, and the Regional Director provides written non-objection to consummation of the transaction;

- The applicant must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed transaction: (a) of the effective date of the proposed transaction; and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the applications, and the Approval Order; and
- The applicant must operate within the parameters of its business plan. The Applicants and the de novo institution must submit any proposed major deviations or material changes from the plan (including changes resulting from decisions made by the Applicants), (OPTIONAL LANGUAGE: and in particular, those pertaining to cross-marketing of products of the Savings Institution and its affiliates, a change in the role of the independent agents, and any changes in the proposed delivery system of the de novo institution's products,) for the prior, written non-objection of the Regional Director. The request for change must be submitted a minimum of 60 calendar days before the proposed change is implemented with a copy provided to the FDIC Regional Office.

Nonstandard Conditions

It is not unusual for the approval order for a PTO application to contain nonstandard conditions of approval. Additional conditions may be warranted in circumstances where the proposed operations are integrated with services or activities involving affiliates, where securities affiliates exist, in structures involving non-shell holding companies, where anti-tying issues are present, or due to unique characteristics or the risk profile of the proposed charter. All nonstandard conditions of approval must be supported with justification in the recommendation memorandum related to approval of the application. Any nonstandard conditions incorporated into the approval order must be summarized in the National Applications Tracking System record for the application. Listed below are examples of frequently seen nonstandard conditions:

- The de novo institution must submit annual independent audit reports to the Regional Director for its first three fiscal years. These reports must be in compliance with the audit rules set forth at 12 C.F.R. § 562.4;
- Any contracts or agreements pertaining to transactions with affiliates, not yet submitted to the OTS for review, must be provided to the Regional Director at least 30 calendar days prior to execution for a written non-objection prior to implementation;
- (Applied on a case-by-case basis, customarily used for holding company structures in which there is expected to be significant reliance on affiliates for certain services.): At least 40 percent of the de novo institution's board of directors must be individuals who are not officers or employees of the applicants or affiliates thereof or have otherwise been determined by the Regional Director to lack sufficient independence, and at least one member of the de novo institution's board of directors must be an individual who is not an officer, director or employee of the applicants or any affiliate and who is not an officer or employee of the de novo institution or have otherwise been determined by the Regional Director to lack sufficient independence;

-
- (For trust only applicants): At least 50 percent of the audit and investment committees established by the de novo institution must be directors who are not officers or employees of the de novo institution, the applicants or any affiliates. If compliance with this condition involves the selection of additional directors, each director must receive the prior written approval of the Regional Director;
 - Within the first year of its operation, or a longer period if determined, the proposed appointment of any permanent executive officers or directors of the de novo institution is subject to the prior review and non-objection of the Regional Director;
 - The applicants, its affiliates and the de novo institution must comply with the anti-tying restrictions of 12 U.S.C. §§ 1464(q) and 1467a(n) and must develop written procedures to effect such compliance. The procedures must be submitted for the review and non-objection of the Regional Director prior to the opening of the de novo institution for business (alternative language if not cross marketing at the onset of business: at least 30 calendar days prior to the commencement of the cross-marketing activity);
 - A majority of the de novo institution's board of directors must not be individuals who are officers, directors or employees of any affiliate of the de novo institution that engages in securities brokerage, securities dealing, investment company, or investment advisor activities (Securities Affiliate(s)); and
 - The de novo institution is prohibited from sharing common officers with any Securities Affiliate unless prior written approval is obtained from the Regional Director, which shall be based on criteria such as regulatory compliance, experience, character, integrity and the ability to perform both duties.

RECORDKEEPING REQUIREMENTS

All correspondence related to the processing of the notice or application should be consolidated 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 any 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 memorandum, and compliance material. The file copy must be organized and separated into public and confidential material, and clearly identified as such. The public and confidential sections should be arranged in chronological order, or in a similarly organized fashion.

MONITORING AND CONTROL

The Regional Office will monitor compliance with all conditions imposed in connection with an application's approval. The applicant must submit evidence of satisfaction of the conditions included in the approval order to the Regional Office within the stated time frames.

The Regional Office should notify the appropriate staff responsible for the supervision and examination of the savings institution regarding the action taken on an application, and provide staff with copies of the approval order. If an application is approved, the first examination of the savings

institution following the approval should include a review of compliance with all conditions of approval and any changes in operations as a result of the transaction.

A review of the application 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 application in the Regional Office, including a review of the documentation maintained in the application file.

INFORMATION SOURCES

Statutes

12 U.S.C. § 1464	HOLA Section 5(b); Deposits and Related Powers
12 U.S.C. § 1464	HOLA Section 5(c); Loans and Investments
12 U.S.C. § 1464	HOLA Section 5(e); Character and Responsibility
12 U.S.C. § 1464	HOLA Section 5(q); Tying Arrangements
12 U.S.C. § 1467a	HOLA Section 10(m); Qualified Thrift Lender Test
12 U.S.C. § 1467a	HOLA Section 10(n), Tying Arrangements
12 U.S.C. § 1468	HOLA Section 11; Transactions with Affiliates
12 U.S.C. §§ 2901, <u>et seq.</u>	Community Reinvestment Act
12 U.S.C. §§ 3201, <u>et seq.</u>	Depository Institution Management Interlocks Act

Regulations

12 C.F.R. Part 516	Applications Processing Guidelines
12 C.F.R. § 541.18	Interim Federal Institution
12 C.F.R. § 543.2	Application for Permission to Organize
12 C.F.R. § 543.3	"De Novo" Applications for a Federal Association Charter
12 C.F.R. § 543.5	Issuance of a Charter
12 C.F.R. § 543.6	Completion of Organization
12 C.F.R. § 545.92	Branch Offices
12 C.F.R. § 552.2-1	Procedures for Organization of Federal Stock Association
12 C.F.R. § 552.2-2	Procedures for Organization of Interim Federal Stock Association
12 C.F.R. § 552.3	Charters for Federal Stock Associations
12 C.F.R. § 552.5 – 552.6-3	Bylaws for Federal Stock Associations
12 C.F.R. Part 560	Lending and Investment Limitations
12 C.F.R. § 561.4	Affiliate Definition
12 C.F.R. § 561.5	Affiliated Person (Definition)
12 C.F.R. § 561.14	Controlling Person (Definition)
12 C.F.R. § 561.35	Officer (Definition)
12 C.F.R. § 563.33	Directors, Officers and Employees
12 C.F.R. § 563.39	Employment Contracts
12 C.F.R. § 563.41	Loans and other transactions with affiliates and subsidiaries
12 C.F.R. § 563.42	Additional standards applicable to transactions with affiliates and subsidiaries

12 C.F.R. § 563.43	Restrictions on Loans and Other Investments Involving Affiliated Persons
12 C.F.R. Part 563e	Community Reinvestment Act
12 C.F.R. Part 563f	Management Interlocks Act
12 C.F.R. Part 563g	Securities Offerings
12 C.F.R. Part 565	Prompt Corrective Action
12 C.F.R. Part 567	Capital

Other

Regulatory Bulletin 20	Background Investigations
Regulatory Bulletin 27-a	Executive Compensation and Employment Contracts
Regulatory Bulletin 32-5	Qualified Thrift Lender Test
Fees and Assessments Thrift Bulletin 23A and 23B of the Federal Reserve Act	Transactions with Affiliates
Directors' Responsibilities Guide	

Application Forms

OTS Form 138	Permission to Organize
OTS Form 138-E	Permission to Organize a Federal Mutual Savings Institution
OTS Form 138-F	Permission to Organize a Federal Stock Savings Institution
OTS Form 1495	Interim Institutions
OTS Form 1623	Interagency Biographical and Financial Report

**Section: Conversion of Savings Institutions
From the Mutual Form of Organization
To the Stock Form of Organization**

Section 450

To be provided.

12 C.F.R. § 546.4 provides the requirements and approval standards for the voluntary dissolution of a federal savings institution. Although this section only applies to federally chartered institutions, it is noted that state chartered institutions proposing to dissolve may be required to submit certain applications/notices under 12 C.F.R. § 563.22(b). The types of filings required for submission will be dependent on the structure of the transaction.

Related Applications

When an institution is voluntarily dissolving, the transaction may require additional applications depending upon the structure of the dissolution. For example, a voluntary dissolution application that includes the sale of a branch or transfer of deposits by a savings institution to another institution may require a filing under the Bank Merger Act (BMA). If the purchasing institution is a savings institution regulated by OTS, the institution must file under the BMA and 12 C.F.R. § 563.22(a). If a bulk transfer is contemplated as part of the transaction, a transfer of assets application under 12 C.F.R. § 563.22(c) must be filed by the dissolving institution.

If the institution is controlled by a holding company, and such company is subject to a capital maintenance obligation, a divestiture of control application is required under 12 C.F.R. § 567.13. The regulation requires a holding company that is subject to a capital maintenance obligation to provide written notice of its divestiture to OTS. Under this circumstance, OTS may conduct a full- or limited-scope examination of the institution as deemed appropriate by the Regional Director.

In addition, a holding company deregistration application is required under 12 C.F.R. § 584.1(d) when a holding company controls a savings institution that plans to dissolve. OTS may release a registered savings and loan holding company from registration if it is determined that the holding company no longer has control of the savings institution.

FILING REQUIREMENTS

Delegated Authority

The Regional Director, or their designee, is authorized to approve certain voluntary dissolution applications provided they do not raise a significant issue of law or policy. The dissolution of a mutual savings institution is a matter that generally will raise a significant issue of law or policy. In addition, the dissolution of certain stock savings institutions, which involve a proxy solicitation and/or a non pro rata liquidating distribution to shareholders, may raise a significant issue of law or policy. The Regional Office should consult with Examination Policy in the event it receives these types of applications. See Delegation Section 040 of the handbook for a discussion of the delegation process.

Expedited and Standard Processing Procedures

Voluntary dissolution applications are not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. Accordingly, this application will be processed utilizing the procedures set forth in 12 C.F.R. §§ 516.210-516.290.

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

There are no specific application forms required for this transaction. The original and two copies of the following information, with the processing fee, must be submitted to the Regional office. In addition, the applicant may be required to file three copies with the Applications Filing Room in Washington, D.C. for concurrent processing if the proposed dissolution raises an issue of law or policy. The following information must be provided in the application:

- Statement of reasons for proposing the dissolution;
- A Plan of Voluntary Dissolution (the Plan), which includes a complete description of all the steps of the dissolution;
- A discussion of other alternatives to the voluntary dissolution the institution's board of directors have considered. The discussion should address the actions taken to determine if the dissolution is in the best interests of all parties, i.e. contact with potential merger partners and/or acquirors of any or all of its assets and liabilities;
- Copies of notice letters to depositors;
- Pro forma financial statements giving effect to the proposal, with a discussion of any significant assumptions used in their preparation. Such information should include a balance sheet, income statement, cash flow statement, statement of operations, and statements of changes in shareholders' equity;
- A description of the savings institution's deposits and the number of depositors;
- A description of the relevant eligibility record date, voting record date, how such record dates were determined, and the requirements for receiving any liquidating distribution;
- Certified resolutions from the board of directors;
- Executed affidavits of non-inducement from senior management, legal counsel and directorate;
- Itemized statement of the assets and liabilities of the institution sworn to by a majority of the board of directors and identification of any contingent liabilities;
- A pro forma liquidation table, showing all expenses and any proposed liquidating distributions;
- Full description of any liquidating trust, if one is to be established;
- Preliminary proxy solicitation material for the members or shareholders meeting to vote on the plan of dissolution;

-
- A copy of an independent appraisal for the savings institution and a copy of the fairness opinion obtained regarding the proposed transaction; and *
 - Financial statements for the past two fiscal years that have been audited and certified by an independent public accountant, along with any subsequent quarterly information.*

* These provisions may be waived on a case-by-case basis depending on the facts and circumstances of the transaction, i.e., the structure of the transaction, the financial condition of the institution, or dissolution of a closely held stock institution.

Savings and loan holding companies that wish to deregister as a result of a voluntary dissolution, must submit a letter describing their reasons to deregister pursuant to 12 C.F.R. § 584.1, and if applicable, a Form DV Certification – OTS Form 1499 as required by 12 C.F.R. § 567.13.

When a voluntary dissolution is effected with a sale of assets and/or liabilities, the applicable filing under 12 C.F.R. § 563.22(c) must be submitted.

Confidentiality

The applicant must submit in writing, concurrently with the submission of the application, any requests to keep specific portions of the application 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 application 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 application. 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

As noted in the Delegated Authority Section, certain applications are not subject to delegated authority and are processed concurrently with OTS-Washington staff. As a general matter, correspondence from OTS regarding applications that are not subject to delegated authority will be transmitted from OTS-Washington, all other correspondence will be transmitted from the Regional office.

Within five business days of receipt of the application and the application fee, the Regional Office must notify the applicant of the application's receipt. The appropriate application fee must accompany each application in order for it to be considered filed. The application will not be considered filed until received by both OTS-Washington and the Regional Office.

If the application involves specialty areas, such as trust activities, OTS-Washington must provide a copy of the application to the corresponding OTS-Washington specialist.

Within 30 calendar days of receipt of a properly submitted application, OTS shall take the following actions.

- Deem the application complete;
- Request, in writing, any additional information necessary to deem the application complete;
or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

Failure by OTS to act within 30 calendar days of receipt of the application for processing shall result in the filed application being deemed complete, commencing the period for review.

OTS must timely review all requests for a waiver of an application requirement that certain information be supplied. Unless OTS requests, in writing, additional information about the waiver request, or denies the waiver request, the waiver request shall be deemed granted.

If additional information is requested, a response must be submitted within 30 calendar days of the letter requesting such information. The applicant may, in writing, request a brief extension of the 30-calendar day period for responding to a request for additional information, prior to the expiration of the 30-calendar day time period. OTS, at its option, may grant the applicant a limited extension of time in writing. Failure to respond to a written request for additional information within 30 calendar days of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial or disapproval of the application.

After the timely filing of additional information in response to any initial or subsequent request by OTS for additional information, OTS has 15 calendar days to review the additional information for completeness or appropriateness and take one of the following actions:

- Request, in writing, any additional information necessary to deem the application complete;
- Deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

The 15-day review period commences when the OTS receives a response that purports to respond to all questions in the information request. OTS may extend the 15-day review period for an additional 15 calendar days, if OTS requires the additional time to review the response. OTS will notify the applicant that it has extended the period before the end of the initial 15-day period.

Failure by OTS to act within 15 calendar days of receipt of the additional information shall result in the filed application being deemed complete, commencing the period for review.

Once the application has been deemed complete, there is a 60-calendar day review period during which time OTS will take into consideration all factors present in the application and render a decision thereon. If, upon expiration of the 60-day review period, assuming no extension has been granted, OTS has failed to act, the application is deemed approved automatically, and the applicant may thereafter consummate the transaction. If multiple applications are submitted in connection with one transaction, the applicable review period for all applications is the review period for the application with the longest review period, subject to statutory review periods.

During the review period, OTS may request additional information if the information is necessary to resolve or clarify the issues presented in the application. OTS may also notify the applicant that the application is incomplete and require that the applicant submit additional information to complete the application. The review period can be extended an additional 30 calendar days if OTS determines that additional time will be required to analyze the proposed transaction. In such cases, OTS must notify an applicant prior to the expiration of the period for review. In situations in which an application presents a significant issue of law or policy, OTS may extend the applicable period for review of such application beyond the time period for review. In these cases, written notice must be provided to an applicant no later than the expiration of the time period.

Under 12 C.F.R. § 516.290, if OTS has not acted on a pending application within two calendar years after the filing date, OTS may deem the application withdrawn unless it is determined that the applicant is actively pursuing a final determination on the application. Applications that are subject to this withdrawal provision are those that have failed to timely take action such as filing required additional information, or OTS has suspended processing of an application based on circumstances that are, in whole or in part, within the applicant's control and have failed to take reasonable steps to resolve these circumstances.

For purposes of calculating processing time frames, OTS does not include the day of the act or event, in determining the date the time period commences. In determining the conclusion of a time period, when the last day of the time period is a Saturday, Sunday, or a Federal holiday, the last day will become the next day that is not a Saturday, Sunday, or Federal holiday.

Regulatory Criteria

The voluntary dissolution of a federal savings institution requires approval of the applicant's Plan of Voluntary Dissolution (the Plan). The Plan may be approved if the dissolution is advisable, and the Plan is in the best interests of all concerned parties.

If the Plan is approved, the following must occur prior to termination of the savings institution's corporate existence:

- The Plan must be submitted to the savings institution's members/shareholders at a duly called meeting where the majority of the savings institutions members/shareholders vote for the Plan's approval;
- The savings institution must submit a certificate evidencing to the appropriate Regional Office that the institution's dissolution took place in accordance with the Plan; and

-
- The savings institution must submit its original charter and bylaws, requesting that its charter be canceled.

Decision Guidelines

When reviewing a savings institution's plan of dissolution, OTS should evaluate the Plan to determine if it is in the best interests of all concerned. The review should conclude that all liabilities will be extinguished, and that any assets remaining after satisfaction of such liabilities will be distributed to members or shareholders in a fair and equitable manner. To reach this conclusion, the analysis should consider the following:

- Has the institution fully explored other alternatives to the voluntary dissolution, such as a merger or acquisition?
- Are there sufficient funds available to complete the deposit transfer or payout?
- Does the market value of the institution vary significantly from the book value?
- Has the institution identified all potential contingent liabilities?
- Does the Plan identify the interests of all parties in the institution, and sufficiently provide for such interests?
- If a liquidating trust will be established, does the trust provide for orderly payments to accountholders or shareholders?
- Will any liquidating distribution be paid on a pro rata basis to the accountholders or shareholders?
- Does the plan require an orderly dissolution process? Note: The process should include the establishment of an eligibility record date and the requirement that depositors maintain their account at the same level from the eligibility record date to and including the consummation date of the transaction.

Conditions

The following standard conditions should be included in the approval letter or order. If the Region imposes any additional conditions, they must be justified in the supporting documentation.

- The institution shall promptly submit the Plan of Dissolution to its members or shareholders for approval. After the meeting of members or shareholders of the institution to vote on the adoption of the Plan, the institution must submit copies of the certification of the results of such vote, including the number of members/shareholders voting, the total number of votes cast and the number and percentage of votes for, against or abstaining on the proposed adoption of the Plan;
- If any proxy material to obtain the consent of the members or shareholders is required, then copies of the proxy solicitation material must be filed with and cleared by OTS's Business Transactions Division prior to its use;

-
- The institution must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed transaction: (a) of the effective date of the proposed transaction; and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the applications and this Order/letter;
 - Within 5 days after the effective date, the institution must provide a legal opinion stating that all the institution's obligations, and obligations to all parties have been identified and satisfied, pursuant to the Plan; and
 - Within 5 days after the effective date of the dissolution, the institution must submit its original charter and bylaw to OTS for cancellation.

If a liquidating trust will be established as part of the dissolution, the following condition should be included:

- The institution must provide a certification from the trustee of the liquidating trust that identifies the amount of residual assets that have been transferred to such trust.

If another application is submitted as part of the dissolution application, the following condition should be included:

- On the business day prior to the date of consummation of the proposed transaction, the chief financial officer of the institution must certify in writing to the Regional Director that no material adverse events or material adverse changes have occurred with respect to the financial condition or operation of the institution as disclosed in the applications. If additional information having an adverse bearing on any feature of the applications are brought to the attention of the institution or OTS since the date of the financial statements submitted with the applications, the transaction must not be consummated unless the information is presented to the Regional Director, and the Regional Director provides written non-objection to consummation of the transaction.

NOTE: Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application.

RECORDKEEPING REQUIREMENTS

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

MONITORING AND CONTROL

The approval order or letter will include any conditions of approval. The Regional Office will monitor compliance with all conditions imposed in connection with the dissolution to ensure the applicant has submitted evidence of satisfaction of the conditions included in the approval within the stated time frames.

The appropriate staff responsible for the supervision and examination of the institution should be notified of the action taken on the application, and provided with copies of the approval order or letter. A review of the application 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 application in the Regional Office, including a review of the documentation maintained in the application file.

INFORMATION SOURCES**Statutes**

12 U.S.C. § 1464(d)(3)(A) Home Owners' Loan Act of 1933

Regulations

12 C.F.R. § 546.4	Voluntary Dissolution
12 C.F.R. § 563.22	Merger, consolidation, purchase or sale of assets, or assumption of liabilities
12 C.F.R. § 567.13	Obligations of acquirors of savings associations to maintain capital
12 C.F.R. § 584.1(d)	Holding Company Deregistration