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

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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

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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.

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### *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.

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**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.

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- 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

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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.

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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;

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- 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.



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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
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