I. INTRODUCTION

On October 13, 2006, the Financial Services Regulatory Relief Act of 2006 amended Section 5(i)(5)(A) of the Home Owners' Loan Act (HOLA)[1] to state that any Federal savings association (FSA)[2] chartered and in operation before November 12, 1999, with branches in operation in one or more states before such date, may convert into one or more state or national banks,[3] with the approval of the appropriate state bank supervisor and the appropriate Primary Federal Regulator (PFR) for each state bank, and the approval of the Office of the Comptroller of the Currency (OCC) for each national bank.

The approval authority in Section 5(i)(5)(A) is conditioned upon the resulting institution(s) meeting all financial, management, and capital requirements applicable to the resulting state bank (collectively "statutory factors"). Furthermore, pursuant to Section 5(i)(5)(B)(ii) of the HOLA, if more than one national or state bank will result from an FSA conversion, each resulting institution must have received approval for deposit insurance from the FDIC under Section 5(a) of the Federal Deposit Insurance (FDI) Act prior to approval of the conversion.

Pursuant to Section 5(i)(6) of the HOLA, an FSA may not convert to a state bank or state savings association during any period in which the FSA is subject to a cease and desist order or other formal enforcement order issued by, or a memorandum of understanding entered into with, the OCC with respect to a significant supervisory matter.

There are differences between the transferred Office of Thrift Supervision filing regulations relevant to FSAs, which are contained in Part 390 of the FDIC Rules and Regulations and the filing rules contained in Part 303 of the FDIC Rules and Regulations. As such, Case Managers should ensure that the appropriate procedures and timelines are followed on any filing related to an FSA.

II. CONVERSIONS SUBJECT TO FDIC APPROVAL

Any conversion to a state nonmember bank by any FSA, and by definition any federal savings bank, that meets the criteria above is subject to the approval of the FDIC and the appropriate state bank supervisor.

III. FORM OF APPLICATION

Pursuant to Section 5 of the HOLA, FSAs may convert to a state nonmember bank with the approval of the appropriate state bank supervisor and the FDIC through either a direct conversion or a conversion by merger.[4] Each FSA seeking to convert to a state nonmember bank should submit a letter application to the appropriate Regional Office (RO) prior to the anticipated conversion date. As the conversion will allow the institution to engage in a wider range of activities than are otherwise permissible for an FSA, the FDIC will require submission of a business plan and financial projections for the first three years of operations. Though the FDIC may request additional information at any time during processing, Case Managers should ensure, at a minimum, that the application includes the following information:

[1] 12 U.S.C. 1464(i)(5)(A).
[2] Per Section 3 of the FDI Act, the term ''Federal savings association'' means any FSA or federal savings bank that is chartered under 12 U.S.C. Section 1464.
[3] Each of which may encompass 1 or more of the branches of the Federal savings association in operation before such date of enactment in 1 or more states.
[4] No merger application under Section 18(c) of the FDI Act is required for a conversion under Section 5(i)(5) of HOLA.

- A description of the proposed conversion, including the plan of conversion, and all materials that have been filed with any state or Federal regulator;[5]
- An analysis demonstrating that the conversion is in compliance with laws of the applicable jurisdictions regarding the permissibility, requirements, and procedures for conversions, including any applicable stockholder or account holder approval requirements;
- A three year business plan, including financial projections; and
- A description of how the resulting bank(s) will meet each of the statutory factors.

IV. ACCEPTING AND PROCESSING THE APPLICATION

Case Managers should review and process conversion applications following the steps below. Refer to Section 1.1 of these Procedures, *Applications Overview*, for general information regarding receipt and acceptance of applications.[6]

1. Establish the application tracking record in the internal system of record within three days of receipt under Other Applications - HOLA 5(i)(5) FSA charter conversion to state nonmember bank. In all cases, dates and comments in the record should be updated regularly to reflect any changes regarding details of the request, including the current status of the application.

2. Review the application for completeness and request additional information, if necessary. If filings to other agencies are involved, the Case Manager should coordinate with the applicant and the applicable state regulatory authority and PFR to ensure that responses to all information submissions are promptly provided to the FDIC.

3. Thoroughly review the application with emphasis on any proposed material changes to the current business strategy and risk profile, and analyze the institution's condition and supervisory status, including, at a minimum, recent supervisory records and current financial information. Communicate any follow-up questions, issues, and/or information needs to the applicant and the other applicable regulatory agencies.

4. Complete the appropriate Summary of Investigation (SOI) form.[7] Designate the type of application as HOLA 5(i)(5) charter conversion. Retrieve the Application Summary Statement from the system of record and attach to the SOI. The narrative portion of the SOI should include the following:

    - A summary of the application, including the reason for the conversion;
    - A brief description of the FSA's structure, financial condition (e.g., asset quality, earnings, liquidity, and sensitivity to market risk), and history, including confirming that the applicant was chartered and in operation before November 12, 1999;
    - A description of the strategic focus, including discussion of holding company activities, any significant subsidiaries, non-traditional banking products or non-branch offices, and details regarding any proposed changes to the current business plan or strategic direction;
    - A discussion of compliance with the financial condition, management, and capital requirements applicable to the resulting bank, as referenced in Section 5(i)(5)(B)(i) of the HOLA, and if

[5] An FSA converting to a state chartered bank is required to submit a notice of intent to convert to the OCC. Notifications must demonstrate compliance with laws of the applicable jurisdictions regarding the permissibility, requirements, and procedures for conversions, including any applicable stockholder or account holder approval requirements. See 12 CFR 5.25.

[6] Case Managers are to follow the general instructions for all applications regarding receipt and acceptance, recordkeeping responsibilities, Legal and Division of Depositor and Consumer Protection (DCP) notifications, Washington Office action or input, delegations, and other applicable instructions, in *Applications Overview*, Section 1.1 of these Procedures.

[7] Case Managers should follow the general instructions and SOI requirements for all types of applications found in *Summary of Investigation*, Section 1.2 of these Procedures, as well as the specific instructions in this Section.

more than one Federally chartered or state-chartered bank results from a conversion, note the status of any deposit insurance application(s) filed for multiple resulting banks, if applicable (See Section 5(i)(5)(B)(ii) of the HOLA);

- A description of the supervisory status, including any presence of a recent, outstanding or contemplated enforcement action (See Section 5(i)(6) of the HOLA);
- A summary of the views and recommendations provided by the state authority and the PFR;
- Any recommended non-standard conditions to be imposed; and
- A statement regarding whether the statutory factors have been fully considered and favorably resolved, including the RO's recommended action.

5. If approval is being recommended, the Case Manager should prepare a draft approval letter. The letter should request that the applicant notify the appropriate RO of the consummation date and should include all applicable standard conditions and any recommended non-standard conditions.

   At a minimum, non-standard conditions should require that the bank's parent company has obtained all necessary and final approvals from the appropriate Federal Reserve Bank to convert to a bank holding company. The Case Manager should also consider the following condition when material changes in business strategies are proposed:

   For the three years following consummation, the bank shall operate within the parameters of the business plan as submitted to the FDIC, and shall notify the Regional Director of any proposed major deviation or material change from the submitted plan no less than 60 days prior to consummation of the deviation or change.

6. The Case Manager should obtain the applicant's written agreement to any non-standard conditions. See *Standard and Non-standard Conditions,* Section 1.11 of these Procedures, for additional instructions regarding the imposition of conditions.

7. If the application presents deficiencies that may result in a denial action, the Case Manager should consult with RO management, and the Washington Office, if appropriate. The applicant should be advised regarding the specifics of the deficiencies and provided with an opportunity to submit additional information. If recommending denial, prepare a draft disapproval letter. Refer to *Denials and Disapprovals,* Section 1.3 of these Procedures, for further guidance.

8. Update the application tracking record with the action and date, hours devoted to the application, and other required information.

V. ANALYSIS OF STATUTORY FACTORS AND OTHER CONSIDERATIONS

When evaluating the statutory factors, the Case Manager should consider the institution's current and prospective management, financial history and performance, capital resources, and condition. The FDIC normally will not approve a proposed conversion if the institution would fail to meet existing capital standards; would have weak or unsatisfactory management; or would have a weak financial condition, including earnings, both in terms of quantity and quality. In assessing capital adequacy and financial condition, attention should also be paid to the adequacy of the allowance for loan and lease losses or allowance for credit losses, as applicable.

In evaluating management, the FDIC will rely, to a great extent, on the supervisory history of the applicant institution, unless the proposed conversion is occurring as a result of, or in conjunction with, a significant change in executive officers or directors or a significant shift in strategic focus. The evaluation of management should also include an assessment of performance in relation to Compliance, the Community

Reinvestment Act, and specialty examination areas, including Bank Secrecy Act, Information Technology, and Trust. The SOI should discuss any outstanding or proposed supervisory recommendations,[8] board resolutions, or other informal enforcement actions. Discussion of the management factor should also include an analysis of the business plan and financial projections. Refer to *Applications Overview*, Section 1.1 of these Procedures, for additional guidance regarding business plans.

If the proposed conversion is part of a significant shift in strategic focus, increased emphasis should be placed on the analysis of the reasonableness of the proposed strategic plan, financial projections, and supporting assumptions in consideration of the statutory factors. Analysis of the management factor should also consider whether the management team has the experience and capacity to effectively execute the proposed plans.

Conversions with Election for Savings Association Treatment

In the event that a conversion application is submitted in conjunction with a request to be treated as a savings association under Section 10(*l*) of the HOLA, the Case Manager may integrate the required analysis and recommendation into one SOI; however, these are two separate application types and each must be comprehensively analyzed, and tracked separately in the appropriate internal database. Refer to *Savings Association Designations*, Section 11.1 of these Procedures for additional information regarding applications to be treated as a savings association.

VI. TIME FRAME FOR PROCESSING

Statutory: None.

RO Processing Guideline: 30 days from receipt of a substantially complete application.

VII. PUBLICATION REQUIREMENT

None.

VIII. DELEGATED AUTHORITY

The Case Manager should refer to the delegations of authority matrices for specific information; additional information is also provided in the *Applications Overview*, Section 1.1 of these Procedures.

IX. REFERENCES

Financial Services Regulatory Relief Act of 2006

Section 5(i)(5)-5(i)(6) of the Home Owners' Loan Act (12 U.S.C. 1464(i)(5)-(6))

Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)

Organization of State banks as national banking associations (12 U.S.C. 35)

Conversion from a national bank or Federal savings association to a state bank or state savings association (12 CFR 5.25)

[8] In this context, supervisory recommendations are findings issued by other regulators, such as Matters Requiring Attention issued by the OCC.

FFIEC Statement on Regulatory Conversions, dated July 1, 2009

Interagency Statement on Section 612 of the Dodd-Frank Act Restrictions on Conversions of Troubled Banks, *FIL 50-2012*