UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CONFERENCE OF STATE BANK SUPERVISORS, Plaintiff, v. OFFICE OF THE COMPTROLLER OF THE CURRENCY, and JOSEPH M. OTTING, COMPTROLLER OF THE CURRENCY, Defendants.	C.A. No. 1:18-CV-02449 (DLF)

PLAINTIFF'S REPLY IN FURTHER SUPPORT OF ITS ALTERNATIVE MOTION FOR LEAVE TO CONDUCT JURISDICTIONAL DISCOVERY

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Because CSBS has sufficiently alleged a ripe claim for procedural injury, existing harm, and sufficiently impending future harm, OCC's motion to dismiss for lack of subject matter jurisdiction should be dismissed. CSBS brings this motion in the alternative, and it would be error for the Court to deny subject matter jurisdiction based on the pleadings alone, without permitting discovery.

OCC itself has put at issue the status of its Nonbank Charter Program, yet OCC seeks to deny CSBS the right to obtain discovery of additional evidence that would resolve the discrepancy between OCC's public statements touting the imminence of a charter, and its unsupported assertions in its pleadings that a charter is uncertain. OCC also contends that only the final grant of a nonbank charter is relevant to establish subject matter jurisdiction, but this disregards both settled law (which allows CSBS to establish jurisdiction based on future injury) and the true nature of the Court's prior ruling (which held that the granting of a charter would irrefutably establish actual harm, but acknowledged that future harm could be a basis for jurisdiction as well).

According to OCC's reasoning, even if OCC possesses internal agency documents showing plans to approve a fintech charter a *mere week* from now (possible because of OCC's extensive vetting of draft applications and track record for prompt approvals), the Court still must dismiss the case for lack of subject matter jurisdiction, and deny jurisdictional discovery. OCC argues that under this Court's earlier decision, *the sole* consideration is whether or not OCC actually has granted a charter, which discovery is unnecessary to illuminate. This not only mischaracterizes the Court's decision, but also belies the profoundly different circumstances in which the Court previously decided the case nearly one year ago.

I. CSBS Has Already Sufficiently Asserted Facts Establishing Subject Matter Jurisdiction and Brings This Request For Discovery as an Alternative Motion.

CSBS agrees with OCC that jurisdictional discovery is not necessary for the Court to rule on the OCC's challenge to subject matter jurisdiction, albeit for a different reason. CSBS's claim for procedural injury is unquestionably ripe, and it has sufficiently alleged actual injury and impending harm to its state members. For these reasons, the Court can deny OCC's pending motion to dismiss now. *See* Plaintiff's Opposition to Defendant's Motion to Dismiss For Lack of Jurisdiction and For Failure to State a Claim (Doc. 15) at 11-20. Indeed, if the Court rules upon OCC's motion based on the pleadings alone, it must require a "less specific showing" of standing. *Wilderness Society v. Griles*, 824 F.2d 4, 20 (D.C. Cir. 1987).

CSBS thus brings the instant motion for leave to take discovery in the alternative. If the Court is not yet prepared to deny OCC's motion and requires additional factual detail to verify CSBS's actual and imminent harm, it should permit jurisdictional discovery. The D.C. Circuit has held that it would be an abuse of discretion not to do so. *Id*. (holding that "[t]o subject plaintiffs to a more stringent review, as the District Court here did, while at the same time denying their discovery requests for the very materials that might enable them to satisfy that more stringent review, amounts to an abuse of discretion.")

II. OCC Relies upon the False and Flawed Premise that Only the Granting of a Nonbank Charter Can Establish Subject Matter Jurisdiction.

A. The granting of a Nonbank Charter is Not the Only Relevant Jurisdictional Consideration.

OCC argues that discovery is unnecessary because, under this Court's prior decision, jurisdictional standing and ripeness arise solely from OCC's actual grant of a charter, which will be a matter of public record. *See* Defendant's Opposition to Plaintiff's Alternative Motion for

Leave to Conduct Jurisdictional Discovery (Doc. 18) ("Opp.") at 1. But this mischaracterizes the decision. Although the Court held that CSBS's member states unquestionably will have suffered harm upon the granting of a charter, the Court did *not* hold that this was the *only* scenario in which this dispute would become justiciable. Rather, the Court also considered standing based on prospective risk of harm, as is required by settled precedent.

Specifically, the Court considered injury under the "certainly impending" test, as well as the "substantial risk of harm" test. *Conference of State Bank Supervisors v. Office of the Comptroller of the Currency*, 313 F. Supp. 3d 285, 295-98 (D.D.C. 2018) ("*CSBS I*"). Among other things, the Court noted that the existence of pending applications, for example, could strengthen the argument for standing. *Id*. at 297. But based upon the "present situation" at that time (nearly one year ago), the Court concluded that these tests were not yet satisfied. *Id*. Significantly, at that time OCC had asserted that it was "incontrovertible that the OCC ha[d] not decided whether it would move forward with the Nonbank Charter Program at all." *See* Reply in Support of Defendant's Motion to Dismiss at p. 14, filed in *CSBS I* (Doc. 15). This led the Court to conclude that the very existence of the Nonbank Charter Program was too speculative to support justiciability:

> In light of the recent leadership changes at the OCC, it is particularly speculative to guess whether the OCC will continue down paths considered by a previous Comptroller. The OCC may pursue similar ends through different regulatory means, *or the OCC may choose not to move forward with a national charter program for Fintechs*. Indeed, then-Acting Comptroller Noreika stated in July 2017 that "the OCC has not determined whether it will actually accept or act upon applications from nondepository fintech companies" and the OCC "will continue to hold discussions with interested companies while we evaluate our options."

Id. at 301 (quoting Keith A. Noreika, Public Remarks before the Exchequer Club (July 19, 2017), (Doc. 9-3 at 10) (emphasis added). Currently, not only is the Nonbank Charter Program moving forward, but the Comptroller himself has stated that a charter will be granted by mid-2019. It is

also possible, if not likely, that draft applications have already been submitted--an occurrence OCC notably does not deny. The "present situation" at the time of the Court's April 2018 ruling therefore was entirely different from the current posture.[1]

Simply put, the overall tenor of *CSBS I* was that a decision to grant a charter unquestionably would constitute injury, while also recognizing the relevance of impending injury. *Id*. at 295-98. The Court recognized that the further along the path toward charter, the stronger the argument for impending harm. *Id*. at 297. Thus, *CSBS I* made clear that other facts, not just the decision to grant a charter, matter for jurisdictional standing and ripeness.

B. CSBS's new facts strongly support jurisdiction.

This is important here because CSBS has asserted a host of new facts that it respectfully submits amply establish subject matter jurisdiction--or, at the very least, are highly relevant under the Court's prior decision. As CSBS explained in its Opposition to the Motion to Dismiss, these new facts meet each of the three tests for injury: "actual injury," "certainly impending," and the "substantial risk" tests. See Doc. 15 at pp. 12-17; *see All Am. Tel. Co. v. FCC*, 867 F. 3d 81, 93 (D.C. Cir. 2017); *see also, Air All Houston v EPA*, 906 F.3d 1049, 1058 (D.C. Cir. 2018).

First, CSBS has identified new, actual harm that has already resulted from the OCC's Nonbank Charter Program. For example, as explained more fully in CSBS's Opposition to the Motion to Dismiss, OCC has asserted that the preemptive effect of the national bank charter can apply as soon as the entity is formed and *retroactively* to conduct that occurs even before a national bank charter is granted. *See* Doc. 15 at 8-9, 13. And formation of these entities occurs when its organizers file articles of association and a certificate of organization with the OCC--a step that

[1] For the "substantial risk" test, the Court also considered whether CSBS had alleged any risk-mitigation costs. See *CSBS I*, 313 F. Supp. 3d at 297-98. As explained in CSBS's Opposition to the Motion to Dismiss, the D.C. Circuit does not require that showing. See Doc. 15, p. 15.

can predate preliminary approval and even occur at the same time the application is filed. *Id*. at 8. Thus, CSBS members likely have *already* lost regulatory authority over applicants that have formed the corporate entity that will commence business as a nonbank chartered by the OCC. *Id*. The states also have suffered actual injury from the confusion OCC has created regarding the application of state laws restricting the use of the term "bank." *See Id.* at 13 (citing Compl. ¶ 143). The states are also suffering actual injury from the budgetary and resource allocation complications arising from the ability of state-regulated entities to convert to federally chartered nonbanks with no advance notice. *Id*.

Second, CSBS's new facts establish jurisdiction under the two "future injury" tests. The Court already has held that there will be actual injury at the point OCC decides to grant a charter. *See CSBS I*, 313 F. Supp. 3d at 298. Prior to that point, CSBS is entitled to demonstrate that injury is "certainly impending," or that there is a "substantial risk" of injury. This begins with OCC's July 2018 final decision to implement the Nonbank Charter Program and to accept applications. While now espousing the opposite position before this Court, OCC's counsel previously conceded in the *Vullo* litigation that this final decision supports justiciability:

> THE COURT: Do you have any quibble with me that at the moment, if they ever decide to proceed, that that would be a ripe and appropriate time to get to the merits?
>
> MR. CONNOLLY: I don't want to foreclose any arguments that the government might have, depending on what posture we are in, certainly if a decision is made to issue 5.20(e)(1) charters to non-depository fintech companies, and that decision is presumably going to come hand and glove with, the doors are open now to the acceptance of these applications, certainly then we are talking about a final decision being made and a process being in motion that DFS is certainly more plausibly going to be able to argue leads to imminent harm.

See Vullo v. Office of the Comptroller of the Currency, No. 17-cv-03574, Transcript of Proceedings at p. 22 (Doc.15-1).[2]

Since the OCC's July 31, 2018 decision, other new facts--none disputed by OCC--further buttress this showing. Not only has OCC touted its "hundreds of meetings" with potential applicants as part of a pre-vetting process towards charter approval, but it has stressed its progress towards this goal and the imminence of a charter. For example, during a fintech event in November 2018, Comptroller Otting stated that a "number of institutions are currently going through the application process, and the agency expects to receive its first application by the end of [2018] or early next year." Doc. 15-2 (p. 2 of 3).

OCC argues that "there is no guarantee that an application for an SPNB Charter will ever be filed." Opp. at 5. But this is irrelevant. "'Certainly impending' does not mean that the injury must be *certain* to occur." *Peterson v. Transp. Workers Union of Am*., 75 F. Supp. 3d 131, 136 (D.D.C. 2014) (emphasis in original) (*citing Clapper v. Amnesty Int'l USA*, 1 568 U.S. 398, 414, n.5 (2013)) ("Our cases do not uniformly require plaintiffs to demonstrate that it is literally certain that the harms they identify will come about.").

To diminish the import of CSBS's new facts, the Opposition avoids discussion of the future injury tests. In a footnote, OCC cites a single case on the "certainly impending" test, *Clapper v. Amnesty Int'l USA*, but does not even attempt to draw a parallel to that case's challenge to a foreign intelligence surveillance program, where the plaintiffs' "argument rest[ed] on their highly speculative fear" that their future communications with foreign contacts would be intercepted

[2] OCC's Opposition claims that CSBS is "precluded from re-litigating" standing, *see* Opp. at 1, but the decision to move forward with the Nonbank Charter Program alone is clearly a "material occurrence" that satisfies the "curable defect exception" to claim preclusion. *See* Opposition to Motion to Dismiss (Doc. 15) at p. 11. Indeed, in *Vullo*, OCC's counsel admitted that "we would likely be in a very different posture" once OCC made the final decision to accept applications. *See* Transcript of Proceedings (Doc. 15-1) at pp. 11-12.

under the specific challenged statute. See Opp. at 5, n.2; 568 U.S. at 410. Here, by contrast, OCC is publically touting its progress with applications and the imminence of a charter grant. *See*, *e.g.*, Doc. 15-2. Based upon OCC's own actions, the harm to CSBS's members is highly probable--the specific timing of that harm is not directly relevant. *See Pub. Citizen, Inc. v. Trump*, Civ. Act. 17-253 (RDM), 2019 U.S. Dist. LEXIS 20670, *53 (D.D.C. Feb. 8, 2019) (rejecting government's 12(b)(1) argument that plaintiffs' "timeline [of plan to purchase new cars within the next 5-7 years is] too long to support standing" under the "certainly impending" test, and explaining that, "[t]o the contrary, 'standing depends on the probability of harm, not its temporal proximity'") (*quoting Orangeburg, South Carolina v. FERC*, 862 F.3d 1071, 1078 (D.C. Cir. 2017)). Finally, OCC's opposition brief does not even acknowledge the "substantial risk" test.

C. OCC Cannot Reasonably Dispute that it is Accepting Applications and that Approval is Imminent.

OCC never challenges any of these new facts, leaving it undisputed that the OCC is accepting applications and that a number of interested applicants are working towards the OCC's imminent granting of a charter. OCC never injects any equivocation into its final July 31, 2018 decision to move forward with the Nonbank Charter Program and its acceptance of applications. Nowhere does OCC suggest that it might change course or cancel the Program. OCC never disavows, denies, qualifies, or attempts to explain away any of its numerous statements about the "hundreds of meetings" it has held with potential applicants, and its statements stressing the imminence of a decision.

The Lybarger Declaration states that "each charter application is unique, presenting different factual and supervisory issues." Lybarger Dec., Doc. 18-1, ¶ 17. But if anything, this only strengthens CSBS's case for jurisdictional discovery. Mr. Lybarger also declares that "[a]s

of this date, no application for an SPNB Charter has been filed with the OCC." *Id*, ¶ 2. Yet he does not deny that OCC's *draft* application process allows for the extensive vetting of applicants even before a formal application is submitted. Nor does he deny that draft applications currently may be under review, or that a formal application could be filed at any moment. He does not claim that there is any *minimum* time involved to approve a charter. Simply put, nowhere does Mr. Lybarger disavow the imminence of a charter grant.

Rather, most of the Lybarger Declaration addresses the empirical data CSBS used to show that OCC has a history of granting new charter and charter conversion applications quite promptly, and at a very high rate. *See Id.* ¶¶ 10-17. But tellingly, the Lybarger Declaration does not deny or refute CSBS's *substantive* conclusion on this point: that a charter grant *is* impending. OCC merely attacks CSBS's supposedly "inaccurate data" underlying this conclusion--not the conclusion itself. Opp. at 5, n.2.

And for what it is worth, OCC's criticism of the CSBS data is frankly baffling. OCC argues "it is not possible to derive information relating back to 1991 from the public website," because according to the Lybarger Declaration, only the last five years' of data is available on OCC's Corporate Applications Search Tool ("CAST"). *Id*. (citing Lybarger Decl. at ¶ 11). But this is demonstrably false. As Mr. Townsley explains in his attached declaration and as is apparent from the accompanying screenshots, a CAST user can retrieve data dating back several decades simply by running multiple searches in five-year increments. *See* Declaration of M. Townsley dated Feb. 26, 2019 ("Townsley Decl.") (Ex. A hereto) at ¶ 6 and Ex 1 thereto.

OCC also argues that Mr. Townsley's analysis was inaccurate, claiming that it "includes information regarding charter conversion applications, which is not available on CAS." *See* Opp. at 5, n.2; Lybarger Decl. at ¶ 12. Again, this assertion is incredible, because conversion

applications are a defined search option on the site, and the data accompanying CSBS's brief plainly shows that such data was available. "Townsley Decl." at ¶ 7 and Ex. 2 thereto. And as Mr. Townsley explains, even if conversions were excluded from his timeframe calculation, the minimum time for application processing from receipt to preliminary approval would be merely one day, and the minimum time from preliminary approval to final approval would be merely one day as well. *Id*. at ¶ 8.[3] Likewise, Mr. Townsley explains that even if applications that were withdrawn, deleted, or abandoned prior to preliminary approval are excluded from the calculation of the OCC's application denial rate, the denial rate does not change meaningfully and is still less than 1.5%. *Id*. at ¶ 10.

D. Discovery Will Provide Additional Evidence of CSBS's Injury.

In the event that the Court finds jurisdictional standing and ripeness still lacking, notwithstanding all of these new facts, discovery will provide additional evidence establishing jurisdiction. Discovery will show the formation of corporate entities whose activities the OCC contends are *already* subject to retroactive preemption. Likewise, discovery will further establish future injury under the "impending injury" and "substantial risk" tests by showing exactly where OCC stands on the path towards issuing a charter (to the extent the Court has any doubts).

[3] In any event, the swift approval of conversion applications is highly relevant here. Mr. Lybarger's public statements and the OCC's Licensing Manual Supplement have repeatedly indicated that the Nonbank Charter Program would, as with a conversion, be for existing companies with established operations. *See* "*Considering Charter Applications from Financial Technology Companies*," Compl. Ex. C (Doc. 1-3); "Is the OCC's fintech charter really 'perfect' for mortgage lenders?" *American Banker*, Jan. 27, 2019 (Ex. B hereto) ("'[W]e're starting to see lot of interest in the charter from existing mortgage lenders, which obviously, I think the charter may be perfect for that,' Stephen Lybarger, deputy comptroller of licensing at the OCC, said during a legal conference in Washington Jan. 12."). And as with *de novo* chartering, the charter conversion process involves an application, an initial conditional approval, and a final approval resulting in the grant of a charter. *See* OCC Licensing Manual - Conversions to Federal Charter, at p. 1 (Ex. C hereto).

In its prior ruling, the Court described the path to a Nonbank Charter as occurring in four stages. *See CSBS I,* 313 F. Supp. 3d at 296 ("before the OCC charters a Fintech, (1) the OCC must decide to finalize a procedure for handling those applications; (2) a Fintech company must choose to apply for a charter; (3) the particular Fintech must substantively satisfy regulatory requirements; and (4) the OCC must decide to grant the charter to the particular Fintech."). Discovery will even more clearly establish that these stages do not occur in a linear, isolated fashion; rather, OCC's own process (including its extensive pre-filing meetings and draft application process) allows for progress to be made toward multiple stages concurrently.

Based upon OCC's own public statements regarding the "hundreds of meetings" the Comptroller has held with interested applicants, the extensive vetting permitted by the draft application process, and OCC's public proclamations that a charter will be granted imminently, it is clear that OCC has made meaningful progress toward each of the four stages previously identified by the Court:

> (1) Finalization of procedure for handling applications: This is unquestionably complete, and OCC does not argue otherwise.
>
> (2) Company decision to apply: OCC's own public statements show that a number of applicants have made this decision. For example, in January 2019, Comptroller Otting stated, as reported by the media, "that a number of fintech companies are finalizing their applications." *See* Doc. 15-5. The Licensing Manual Supplement makes clear that if a company submits a draft application, then it has decided to apply. *See* Compl. Ex. C at p. 4 (Doc. 1-3).
>
> (3) Satisfaction of regulatory requirements: This is already well underway. OCC's evaluation of potential applicants occurs during the extensive meetings OCC has described and during the draft application process. OCC's vetting begins well before a final application is submitted or preliminary approval is granted. As Comptroller Otting put it in November 2018, a "number of institutions are currently going through the application process." (Doc. 15-2).
>
> (4) Decision to grant the charter to the particular Fintech: This is also underway, as the OCC considers this decision during its "hundreds of meetings" and prior to formal application. The Comptroller himself has said that this decision is expected

no later than mid-year 2019, if not "early" 2019. (Compl. Ex. J, Doc. 1-10; Doc 15-2).[4]

OCC wrongly contends that subject matter jurisdiction will not exist until the fourth stage is complete. Opp. at 1-2. This is simply wrong. *CSBS I,* 313 F. Supp. 3d at 295-98. To the extent that the Court has any reservations about CSBS's showing, discovery will reveal exactly how close OCC is to this point, if it has not already reached it.

III. The Jurisdictional Discovery CSBS Seeks is Narrowly Tailored, and It Can Be Further Narrowed as the Court Deems Appropriate.

OCC essentially concedes the "quite liberal" standard for jurisdictional discovery applicable in this Circuit. *See* Opp. at 4 ("While discovery is normally granted freely…"); *see Davis v. United States*, 196 F. Supp. 3d 106, 120 (D.D.C. 2016); *see also Citizens for Responsibility & Ethics in Wash. v. Office of Admin.*, C.A. No. 07-964 (CKK), 2008 U.S. Dist. LEXIS 111094, *10 (D.D.C. Feb. 11, 2008) (same, and collecting cases). Nevertheless, OCC provides no reason--certainly none supported by the case law--to deny jurisdictional discovery here. Rather, as explained below, OCC's arguments are irrelevant and contradictory.

A. CSBS Has Satisfied the Applicable Liberal Standard for Granting Jurisdictional Discovery.

OCC asserts that "a plaintiff must make a good-faith showing that discovery will reveal facts sufficient to establish jurisdiction." Opp. at 4 (*citing Caribbean Broad. Sys. Ltd. v. Cable & Wireless PLC,* 148 F.3d 1080, 1090 (D.C. Cir. 1998)). But as OCC's own citation to *Caribbean*

[4] The Court's prior decision did not explain what it means for OCC to "charter a fintech" or to "issue" a charter--*i.e.*, the Court did not distinguish between preliminary approval and final approval. *See CSBS I*, 313 F. Supp. 3d at 298. Thus, to the extent the Court considers the final stage to be satisfied by the grant of preliminary charter approval, OCC could complete this stage even earlier. Moreover, as previously noted in CSBS's opposition to OCC's Motion to Dismiss, final approval is likely to occur even more quickly than a traditional charter application because no input from the Federal Reserve Board or the FDIC will be required. Doc. 15 at p. 9.

makes clear, the "good faith" standard applies to jurisdictional discovery for *personal jurisdiction*. *See* 148 F.3d at 1090 ("in order to get jurisdictional discovery a plaintiff must have at least a good faith belief that such discovery will enable it to show that the court has personal jurisdiction over the defendant"). CSBS certainly makes its request for discovery in good faith, but "good faith" is not the standard for seeking discovery to establish subject matter jurisdiction. *Cf, Natural Resources Defense Council v. Pena*, 147 F. 3d 1012, 1024 (D.C. Cir. 1998) ("[D.C. Circuit] precedent allow[s] jurisdictional discovery and fact-finding if allegations indicate its likely utility."); *Davis*, 196 F. Supp. 3d 106 at 120 ("if a party demonstrates that it can supplement its jurisdictional allegations through discovery, then jurisdictional discovery is justified.")

In fact, OCC relies upon a string of cases all addressing discovery to establish personal jurisdiction, not subject matter jurisdiction as here. *See* Opp. at 4-5 (*citing Acker v. Royal Merch. Bank & Fin. Co*., 1999 U.S. Dist. LEXIS 24081 (D.D.C. Feb. 10, 1999); *App Dynamic ehf v. Vignisson*, 87 F. Supp. 3d 322 (D.D.C. 2015); *Shaheen v. Smith*, 994 F. Supp. 2d 77 (D.D.C. 2013)). According to OCC, these cases require plaintiff to present some facts that *could* establish jurisdiction.[5] But this is a *non-sequitur* here. As explained at length, CSBS shows that the facts already *do* establish jurisdiction--including under the "certainly impending" and "substantial risk" of harm tests--and CSBS brings this Motion only in the alternative.

OCC's remaining cited cases can be distilled to the same argument: that all of the facts necessary to determine jurisdiction are already before the Court or are public record and, thus, CSBS's cited cases are irrelevant. *See* Opp. at 6 (citing *Davis*, 196 F. Supp. 3d at 120-21; and

[5] Strangely, OCC separately accuses CSBS of improperly relying upon precedent involving personal jurisdiction. *See* Opp. at 6 (citing *GTE New Media Services, Inc. v. BellSouth Corp*., 199 F.3d 1343, 1343, 1352 (D.C. Cir. 2000); *Lopes v. Jetsetdc, LLC*, 4 F. Supp. 3d 238, 240 (D.D.C. 2014)). Actually, CSBS did not directly cite *GTE*. CSBS cited *Davis*, which in turn cited it. *See* 196 F. Supp. 3d at 120. And CSBS cited *Lopes* for the simple principle that courts resolve factual disputes to decide jurisdiction, which OCC concedes.

Natural Resources Defense Council, 147 F. 3d 1012) and Opp. at 8-9 (attempting to distinguish *Wilderness Society*, 824 F.2d 4, on the grounds that it limits discovery to facts "directly relevant" to the subject matter jurisdiction dispute). But OCC ignores the well-settled ability of CSBS to establish subject matter jurisdiction through prospective harm--which this Court's prior decision in this case supports. CSBS's requested discovery bears directly on showing this future harm (as well as on actual injury based on retroactive preemption), to the extent the current showing is deemed insufficient.[6]

Specifically, the targeted discovery CSBS seeks satisfies this liberal standard because each requested category of information is directly relevant to bolstering the Comptroller's statements that a Nonbank Charter is imminent and to demonstrating the significant progress OCC has made in its chartering efforts. The number of interested applicants, existence of draft applications, and the number and nature of OCC's meetings with applicants demonstrate this progress. The status of expected formal applications, as well as the nature of the anticipated applicants (including their current status as state-licensed or regulated entities) further illustrates how close OCC is to issuing a charter for that nonbank, the extent to which harm to the states' visitorial and regulatory powers may have already occurred, and the imminence of the potential preemption of state law.

[6] OCC's offer to notify the Court and CSBS "when an applicant makes public notice required under 12 C.F.R. § 5.8" (Opp. at 3) has no bearing here. First, as explained herein, ample progress toward the granting of a Nonbank Charter can be made (and has been made) well before a formal application is submitted. Moreover, OCC's offer is tellingly narrow and insufficient. Rather than simply agreeing to provide notice upon receipt of an application, OCC ties its offer to Section 5.8. But OCC has reserved for itself broad discretion to waive the Section 5.8 notice requirement. *See* 12 C.F.R. § 5.8 (". . . the OCC *may* require or give public notice . . . in any manner the OCC determines appropriate for the particular filing.") (emphasis added); *see also* 12 C.F.R. § 5.2 (allowing OCC to "adopt materially different procedures for a particular filing").

B. OCC's Concerns Regarding the Scope, Confidentiality or Nature of the Requested Discovery Can Be Addressed, and Do Not Justify a Blanket Denial of Discovery.

OCC never disputes that this information is relevant to determining the status of OCC's chartering activities, including whether OCC will issue a charter by mid-2019 as the Comptroller has asserted. *See* Compl. Ex. J (Doc. 1-10). It argues only that the information is exempted from discovery because some of it *might* be "non-public." Doc. No. 18 at 9. But "confidentiality" is not a grounds for denying a litigant its Rule 26 right to discovery. Fed. R. Civ. Pro. 26(b) ("Parties may obtain discovery regarding *any nonprivileged matter* that is relevant to any party's claim or defense and proportional to the needs of the case . . ."") (emphasis added); *Chembio Diagnostic Sys., Inc. v. Saliva Diagnostic Sys., Inc.*, 236 F.R.D. 129, 135 (E.D.N.Y. 2006) ("Generally, discovery is only limited when sought in bad faith, to harass or oppress the party subject to it, when it is irrelevant, or privileged. . . There is no absolute privilege for trade secrets and similar confidential information."). Indeed, courts routinely order the production of "confidential" information. *See, e.g.*; *English v. Wash. Metro. Area Transit Auth*., 323 F.R.D. 1, 23 (D.D.C. 2017) ("Confidential materials are routinely produced in discovery, and a protective order can be used to safeguard sensitive personal information."); *see also Mike v. Dymon, Inc*., 1996 U.S. Dist. LEXIS 17329, at *10 (D. Kan. Nov. 15, 1996) (holding that "[c]onfidentiality generally does not constitute grounds to withhold discovery" and requiring disclosure of "confidential" information).[7]

Rather than seeking to exclude discovery of relevant information completely, it is more appropriate for OCC to seek a protective order from the Court. Fed. R. Civ. Pro. 26(c)(1)(G). Such an order would allow OCC, like any other producing party, to designate those portions of its

[7] *Cf Public Emples. for Envtl. Responsibility v. Beaudreau*, 2012 U.S. Dist. LEXIS 199850, *27 (D.D.C. Nov. 9, 2010) (compelling agency to un-redact confidential business information and include it in administrative record for APA review).

discovery responses as "Confidential" or "Attorneys' Eyes Only," thereby negating any concerns regarding potential public disclosure. *See*, *e.g.*, *Nuskey v. Lambright*, 251 F.R.D. 3, 11 (D.D.C. 2008) (rejecting privacy concerns as "negligible" in light of stipulated protective order and compelling disclosure); *Marshall v. Dist. of Columbia Water & Sewage Auth.*, 214 F.R.D. 23, 27 (D.D.C. 2003) (accord). This is standard practice. *See, e.g.*, *Huthnance v. District of Columbia*, 255 F.R.D. 285, 296-97 (D.D.C. 2008) (collecting cases and noting that protective orders balance a plaintiff's right to discovery and privacy interests of individuals). *See also* 6 Moore's Federal Practice - Civil § 26.101 (2018) (explaining "if information is relevant but also sensitive or confidential, the court can fashion an order protecting it from dissemination beyond that necessary to permit a meaningful preparation of the case.").

Yet, even a protective order may ultimately be unnecessary here because all or most of the information CSBS seeks is not confidential. A protective order applies only to those responsive documents the producing party demonstrates are truly confidential. *See, e.g.*, *Foltz v. State Farm Mut. Auto. Ins. Co*., 331 F.3d 1122, 1130 (9th Cir. 2003) ("A party asserting good cause bears the burden, for each particular document it seeks to protect, of showing that specific prejudice or harm will result if no protective order is granted."); *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1122 (3d Cir. 1986) ("It is correct that the burden of justifying the confidentiality of each and every document sought to be covered by a protective order remains on the party seeking the protective order; any other conclusion would turn Rule 26(c) on its head.").

CSBS does not ask for confidential or proprietary financial data. Rather, it asks only for basic information regarding the *status* of OCC's chartering process. It is difficult to see how general facts regarding the number of companies with whom OCC has met, the number of draft applications it has received, or how far along OCC is in the review process implicate any

proprietary business interest. Nor is it likely that a company's name and state of incorporation would be deemed "non-public." Moreover, because OCC's own procedures encourage the segregation of confidential information from non-confidential information,[8] OCC should be able to comply with its discovery obligations without the need for a protective order (and to the extent CSBS's requests call for the production of confidential information, such information should be easy to identify and separate).

OCC's remaining efforts to resist discovery merit little consideration. OCC's attempts to apply Freedom of Information Act ("FOIA") exemptions to this discovery dispute are misplaced. FOIA concerns *public* disclosure of information, something a protective order could easily address. Further, this Circuit has already held that if a document requested through FOIA "would be 'routinely' or 'normally' disclosed [in civil discovery] upon a showing of relevance," it must also be disclosed under FOIA. *Burka v. United States HHS* 87 F.3d 508, 516, 521 (D.C. Cir. 1996) (reversing district court because defendant failed to meet burden of demonstrating application of FOIA exemption). Finally, "the 'burden is on the agency' to show that requested material falls within a FOIA exemption." *Petroleum Inf. Corp. v. US Dept. of Interior*, 976 F.2d 1429, 1433 (D.C. Cir. 1992) (citing 5 U.S.C. § 552(a)(4)(B)). Because OCC never identifies the specific information or explains why it would meet a specific exemption, it could not carry its burden even under FOIA.[9]

---

[8] OCC's Licensing Manual orders "the applicant [to] separate confidential information from nonconfidential information" and "encourages applicants to . . . separate [proprietary material] into its own separate confidential section of the filing." *See, Comptroller's Licensing Manual, General Policies and Procedures* at 4 (Ex. D hereto)(notwithstanding "confidential" designation OCC "may include the information in the public file after giving notice to the submitter).

[9] Even under FOIA, OCC would be required to segregate and publicly disclose the non-confidential information. *See Fed. Open Mkt. Comm. of Fed. Res. Sys. v. Merrill*, 443 U.S. 340, 364 (1979) ("If the District Court on remand concludes that the Directives would be afforded protection, then it should also consider whether the operative portions of the Domestic Policy

OCC also fails to articulate any basis for its contention that discovery will make CSBS a "monitor" over the chartering process or have a "chilling effect" on applicants. OCC cites no authority for the proposition that it can avoid discovery because of unsupported fears and speculation. Nor does it explain why applicants would be concerned by the production of the information CSBS seeks, what adverse steps CSBS purportedly could take toward applicants to "chill" their interest in the Nonbank Charter, or how these concerns can trump CSBS's right to discovery in support of its claims. Even if these concerns were more than wild speculation, they would only be enough to support a protective order or alternative procedure, not outright denial of discovery. *See*, *e.g.*, *Silano v. Wheeler*, 2013 U.S. Dist. LEXIS 173869, at *8-9 (D. Conn. Dec. 12, 2013) (plaintiff may withhold otherwise discoverable data only upon a showing of "good cause" *and* proof that the other, non-confidential sources provide plaintiff with the same information).[10]

In any event, should the Court instruct it to, CSBS would certainly be willing to work with OCC (like any party to a discovery dispute) to identify methods to address any of OCC's more precisely articulated and justified concerns--for example, by potentially accepting anonymized data, redacted versions of documents, summary data or, in extreme cases, information marked attorneys' eyes only. At a minimum, however, CSBS is entitled to know:

- How many entities have expressed interest in the Nonbank Charter;
- How many entities have had meetings with OCC officials regarding the Nonbank Charter;
- How many draft applications OCC has received;

Directives can feasibly be segregated from the purely descriptive materials therein, and the latter made subject to disclosure or publication without delay.").

[10] If there has been a "chilling" effect on applicants, it is more likely the result of OCC's continued effort to hold the present legal dispute in abeyance.

- The status of any draft applications and the OCC's Charter Application Checklist;
- The status of any anticipated formal applications;
- Whether any applicant has submitted articles of association or an organizational certificate; and
- Basic information regarding interested applicants, *e.g.* nature of business, where located, current licensure and state regulatory status.

In short, each of OCC's purported concerns can be addressed, and none of these concerns justify a wholesale denial of CSBS's right to jurisdictional discovery.

Date: February 26, 2019

Respectfully submitted,

/s/ Jennifer Ancona Semko

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CERTIFICATE OF SERVICE

In accordance with LCvR 5.3, I hereby certify that on February 26, 2019, a true and correct copy of the foregoing was served on all counsel of record through the Court's CM/ECF system.

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Attorney for Plaintiff

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CONFERENCE OF STATE BANK SUPERVISORS, Plaintiff, v. OFFICE OF THE COMPTROLLER OF THE CURRENCY, and JOSEPH M. OTTING, COMPTROLLER OF THE CURRENCY, Defendants.	C.A. No. 1:18-CV-02449 (DLF)

DECLARATION OF MICHAEL TOWNSLEY IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

I, Michael Townsley, declare and state as follows:

1. I am over the age of twenty-one (21), and I am competent to make this Declaration. I am employed as Policy Counsel to the Conference of State Bank Supervisors ("CSBS"), the Plaintiff in this matter.

2. I have personal knowledge of the facts stated herein and submit this Declaration in support of CSBS's Alternative Motion For Leave to Conduct Jurisdictional Discovery.

3. I have reviewed OCC's Opposition to Plaintiff's Alternative Motion for Leave to Conduct Jurisdictional Discovery, including the Declaration of Stephen A. Lybarger, which is attached as Exhibit 1. OCC's opposition brief and Mr. Lybarger's Declaration contain several inaccurate assertions about my prior Declaration dated February 5, 2019 (Doc. 15-7) and the accompanying data retrieved from OCC's Corporate Applications Search Tool ("CAST") that was attached as Exhibit A to my prior Declaration (Doc. 15-8).

4. I reiterate that the data attached as Exhibit A to my February 5 Declaration is a true and correct copy of data retrieved from OCC's CAST database.

5. Mr. Lybarger asserts in his Declaration that CAST "only produces public records dating back exactly five years from the present day," but this is incorrect. Although Mr. Lybarger is correct that CAST allows a user to only search for data in five-year increments, older data can be retrieved by simply modifying search parameters. CAST produces records dating back exactly five years from the selected "End Date," which need not be the present day.

6. Thus, a user can retrieve data dating back multiple decades simply by running multiple searches in five-year increments. For example, attached are true and correct copies of screen shots of six CAST searches a user can perform to retrieve charter and conversion application data covering the period January 1, 1991 to February 19, 2019 (attached *in globo* as Exhibit 1 hereto).

7. Mr. Lybarger also asserts that information regarding charter conversion applications is not available on CAST, but this is also demonstrably false. First, the data attached to my February 5 Declaration, retrieved directly from CAST, includes a number of data records for which the application "Type" is described as "Conversions." Additionally, the CAST search feature lists a number of application types from which the user can choose when running a search. "Conversions" is one of the Domestic Bank Application types that can be searched, as is reflected in the attached screen shot from CAST (Exhibit 2 hereto).

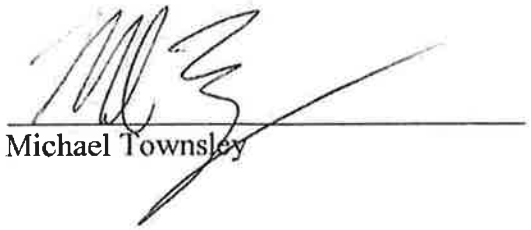
8. Mr. Lybarger contends that information concerning charter conversions should not be included in the timeframe calculations listed in my prior Declaration, to avoid misleading calculations. But the CAST data retrieved and referenced in my February 5 Declaration shows that only four charter conversion applications are designated as receiving preliminary and final approval on the same day, and omission of these applications from the calculations in my February 5 Declaration would not meaningfully change the figures calculated. Additionally, even if all

conversion applications are excluded, the minimum time for application processing from receipt to preliminary approval would be 1 day, and the minimum time from preliminary approval to final approval would be 1 day.

9. Mr. Lybarger also states that it is "unclear" whether the figures listed in Paragraph 5 of my Declaration include "withdrawals of applications following preliminary approval." But my Declaration plainly lists 83 applications "Withdrawn or Expired Prior to Final Approval." For the avoidance of doubt, this represents applications withdrawn or expired after preliminary approval but prior to final approval.

10. Mr. Lybarger asserts that the calculation of the OCC's application denial rate (1.07%) in Paragraph 7 of my February 5 Declaration is misleading because it "appears to include in the denominator withdrawn applications, which may have been denied if not withdrawn." This calculation is intended to represent the percentage of applications denied out of all applications received; thus, excluding withdrawn applications would have been misleading. Regardless, even if applications that were withdrawn, deleted, or abandoned prior to preliminary approval are excluded from the calculation of the OCC's application denial rate, the rate does not change meaningfully. The denial rate would be only 1.21%, which represents 15 applications denied out of 1,396 applications received, minus 160 applications withdrawn, deleted, or abandoned prior to preliminary approval.

I declare under penalty of perjury that the foregoing is true and correct.



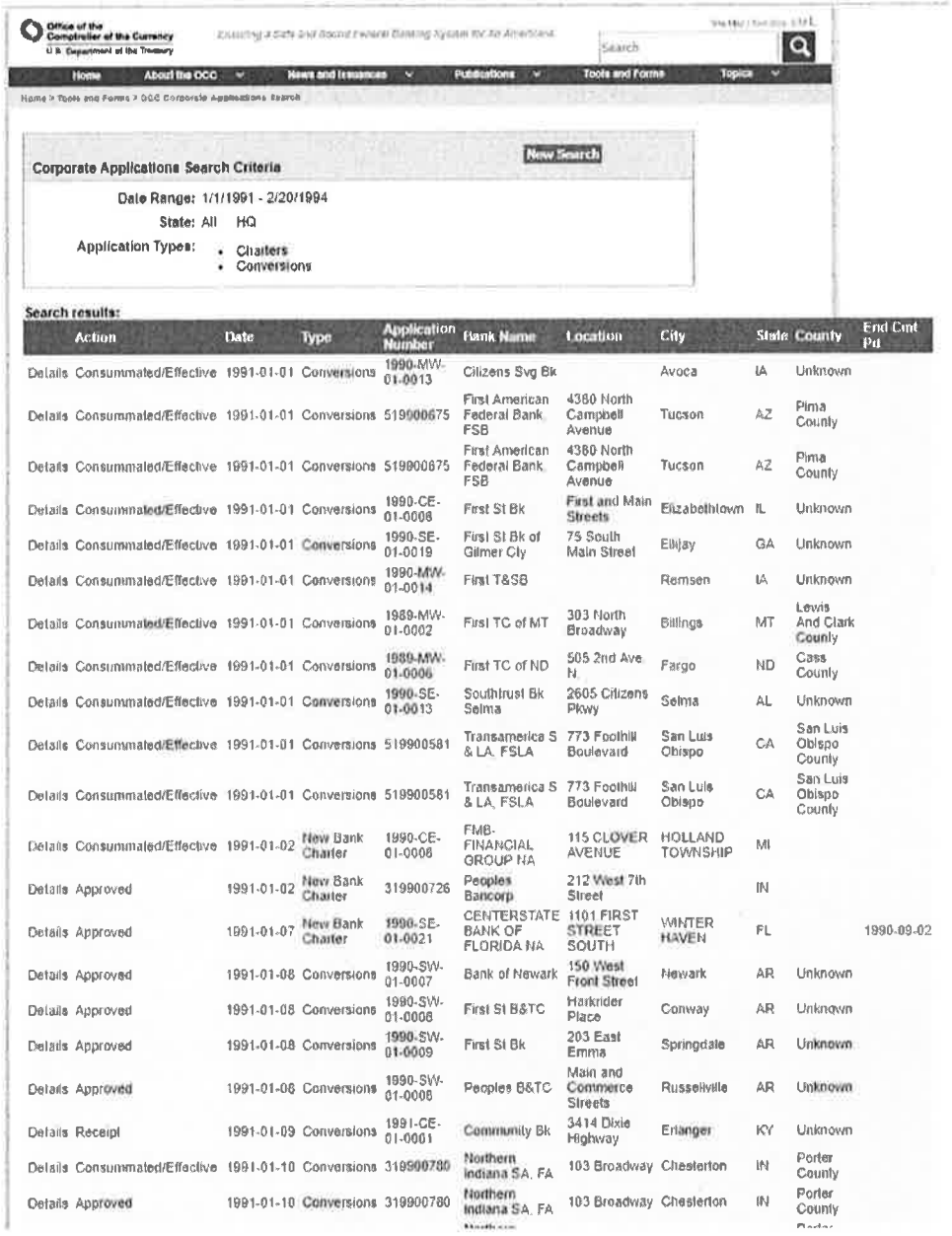
Michael Townsley

02/26/2019

Date

EXHIBIT 1

to M. Townsley Declaration



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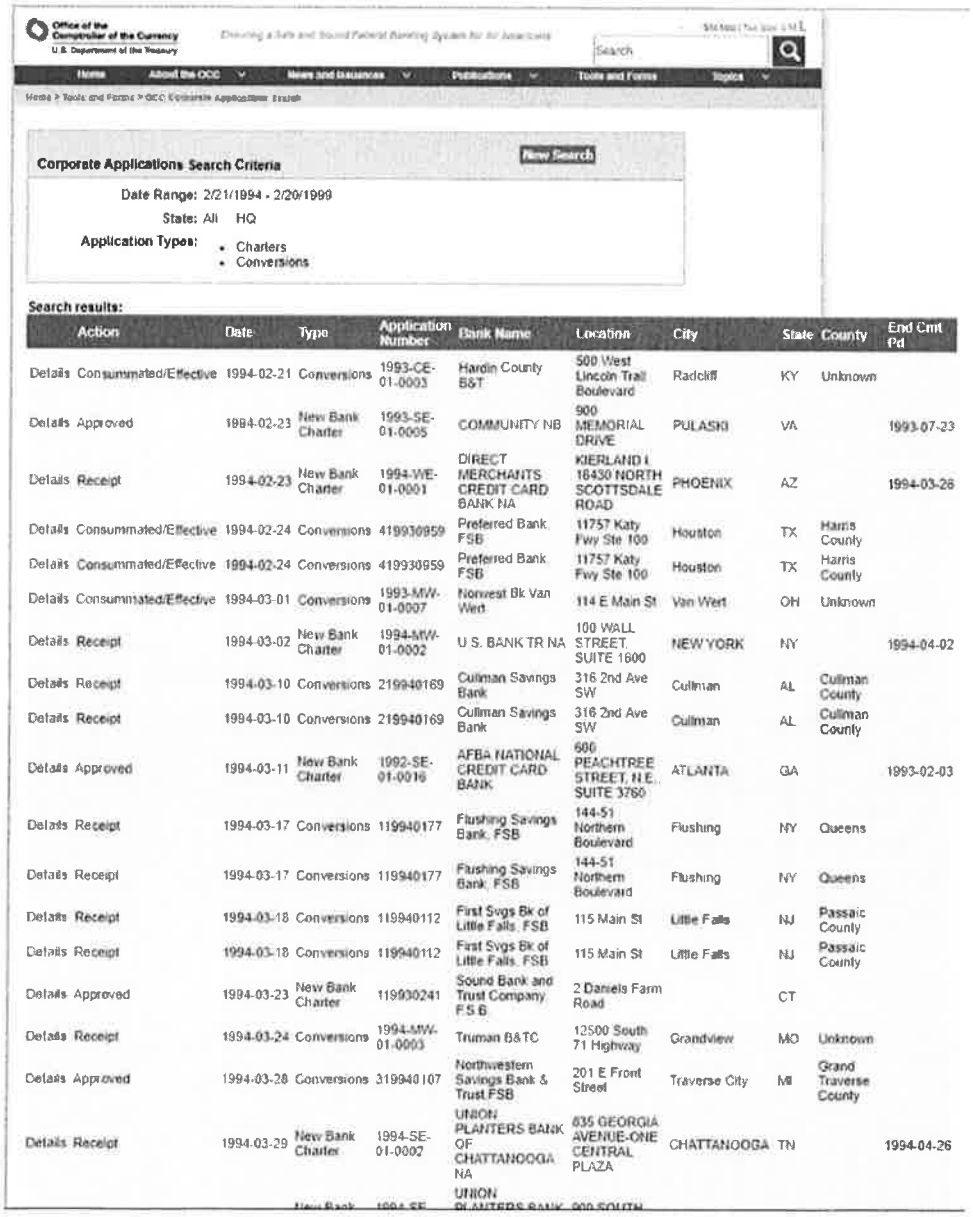
Corporate Applications Search Criteria — New Search

Date Range: 1/1/1991 - 2/20/1994
State: All HQ
Application Types:
- Charters
- Conversions

Search results:

Action		Date	Type	Application Number	Bank Name	Location	City	State	County	End Cnt Pd
Details	Consummated/Effective	1991-01-01	Conversions	1990-MW-01-0013	Citizens Svg Bk		Avoca	IA	Unknown	
Details	Consummated/Effective	1991-01-01	Conversions	519000675	First American Federal Bank, FSB	4360 North Campbell Avenue	Tucson	AZ	Pima County	
Details	Consummated/Effective	1991-01-01	Conversions	519000675	First American Federal Bank, FSB	4360 North Campbell Avenue	Tucson	AZ	Pima County	
Details	Consummated/Effective	1991-01-01	Conversions	1990-CE-01-0008	First St Bk	First and Main Streets	Elizabethtown	IL	Unknown	
Details	Consummated/Effective	1991-01-01	Conversions	1990-SE-01-0019	First St Bk of Gilmer Cty	75 South Main Street	Ellijay	GA	Unknown	
Details	Consummated/Effective	1991-01-01	Conversions	1990-MW-01-0014	First T&SB		Remsen	IA	Unknown	
Details	Consummated/Effective	1991-01-01	Conversions	1989-MW-01-0002	First TC of MT	303 North Broadway	Billings	MT	Lewis And Clark County	
Details	Consummated/Effective	1991-01-01	Conversions	1989-MW-01-0006	First TC of ND	505 2nd Ave N	Fargo	ND	Cass County	
Details	Consummated/Effective	1991-01-01	Conversions	1990-SE-01-0013	Southtrust Bk Selma	2605 Citizens Pkwy	Selma	AL	Unknown	
Details	Consummated/Effective	1991-01-01	Conversions	519000581	Transamerica S & LA, FSLA	773 Foothill Boulevard	San Luis Obispo	CA	San Luis Obispo County	
Details	Consummated/Effective	1991-01-01	Conversions	519000581	Transamerica S & LA, FSLA	773 Foothill Boulevard	San Luis Obispo	CA	San Luis Obispo County	
Details	Consummated/Effective	1991-01-02	New Bank Charter	1990-CE-01-0008	FMB-FINANCIAL GROUP NA	115 CLOVER AVENUE	HOLLAND TOWNSHIP	MI		
Details	Approved	1991-01-02	New Bank Charter	319000726	Peoples Bancorp	212 West 7th Street		IN		
Details	Approved	1991-01-07	New Bank Charter	1990-SE-01-0021	CENTERSTATE BANK OF FLORIDA NA	1101 FIRST STREET SOUTH	WINTER HAVEN	FL		1990-09-02
Details	Approved	1991-01-08	Conversions	1990-SW-01-0007	Bank of Newark	150 West Front Street	Newark	AR	Unknown	
Details	Approved	1991-01-08	Conversions	1990-SW-01-0008	First St B&TC	Harkrider Place	Conway	AR	Unknown	
Details	Approved	1991-01-08	Conversions	1990-SW-01-0009	First St Bk	203 East Emma	Springdale	AR	Unknown	
Details	Approved	1991-01-08	Conversions	1990-SW-01-0006	Peoples B&TC	Main and Commerce Streets	Russellville	AR	Unknown	
Details	Receipt	1991-01-09	Conversions	1991-CE-01-0001	Community Bk	3414 Dixie Highway	Erlanger	KY	Unknown	
Details	Consummated/Effective	1991-01-10	Conversions	319000780	Northern Indiana SA, FA	103 Broadway	Chesterton	IN	Porter County	
Details	Approved	1991-01-10	Conversions	319000780	Northern Indiana SA, FA	103 Broadway	Chesterton	IN	Porter County	



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Corporate Applications Search Criteria New Search

Date Range: 2/21/1994 - 2/20/1999
State: All HQ
Application Types:
- Charters
- Conversions

Search results:

Action	Date	Type	Application Number	Bank Name	Location	City	State	County	End Cmt Pd
Details Consummated/Effective	1994-02-21	Conversions	1993-CE-01-0003	Hardin County B&T	500 West Lincoln Trail Boulevard	Radcliff	KY	Unknown	
Details Approved	1994-02-23	New Bank Charter	1993-SE-01-0005	COMMUNITY NB	900 MEMORIAL DRIVE	PULASKI	VA		1993-07-23
Details Receipt	1994-02-23	New Bank Charter	1994-WE-01-0001	DIRECT MERCHANTS CREDIT CARD BANK NA	KIERLAND I 16430 NORTH SCOTTSDALE ROAD	PHOENIX	AZ		1994-03-26
Details Consummated/Effective	1994-02-24	Conversions	419930959	Preferred Bank FSB	11757 Katy Fwy Ste 100	Houston	TX	Harris County	
Details Consummated/Effective	1994-02-24	Conversions	419930959	Preferred Bank FSB	11757 Katy Fwy Ste 100	Houston	TX	Harris County	
Details Consummated/Effective	1994-03-01	Conversions	1993-MW-01-0007	Norwest Bk Van Wert	114 E Main St	Van Wert	OH	Unknown	
Details Receipt	1994-03-02	New Bank Charter	1994-MW-01-0002	U S. BANK TR NA	100 WALL STREET, SUITE 1600	NEW YORK	NY		1994-04-02
Details Receipt	1994-03-10	Conversions	219940169	Cullman Savings Bank	316 2nd Ave SW	Cullman	AL	Cullman County	
Details Receipt	1994-03-10	Conversions	219940169	Cullman Savings Bank	316 2nd Ave SW	Cullman	AL	Cullman County	
Details Approved	1994-03-11	New Bank Charter	1992-SE-01-0016	AFBA NATIONAL CREDIT CARD BANK	600 PEACHTREE STREET, N.E., SUITE 3760	ATLANTA	GA		1993-02-03
Details Receipt	1994-03-17	Conversions	119940177	Flushing Savings Bank, FSB	144-51 Northern Boulevard	Flushing	NY	Queens	
Details Receipt	1994-03-17	Conversions	119940177	Flushing Savings Bank, FSB	144-51 Northern Boulevard	Flushing	NY	Queens	
Details Receipt	1994-03-18	Conversions	119940112	First Svgs Bk of Little Falls, FSB	115 Main St	Little Falls	NJ	Passaic County	
Details Receipt	1994-03-18	Conversions	119940112	First Svgs Bk of Little Falls, FSB	115 Main St	Little Falls	NJ	Passaic County	
Details Approved	1994-03-23	New Bank Charter	119930241	Sound Bank and Trust Company FSB	2 Daniels Farm Road		CT		
Details Receipt	1994-03-24	Conversions	1994-MW-01-0003	Truman B&TC	12500 South 71 Highway	Grandview	MO	Unknown	
Details Approved	1994-03-28	Conversions	319940107	Northwestern Savings Bank & Trust,FSB	201 E Front Street	Traverse City	MI	Grand Traverse County	
Details Receipt	1994-03-29	New Bank Charter	1994-SE-01-0002	UNION PLANTERS BANK OF CHATTANOOGA NA	835 GEORGIA AVENUE-ONE CENTRAL PLAZA	CHATTANOOGA	TN		1994-04-26
		New Bank	1994-SE	UNION PLANTERS BANK	900 SOUTH				

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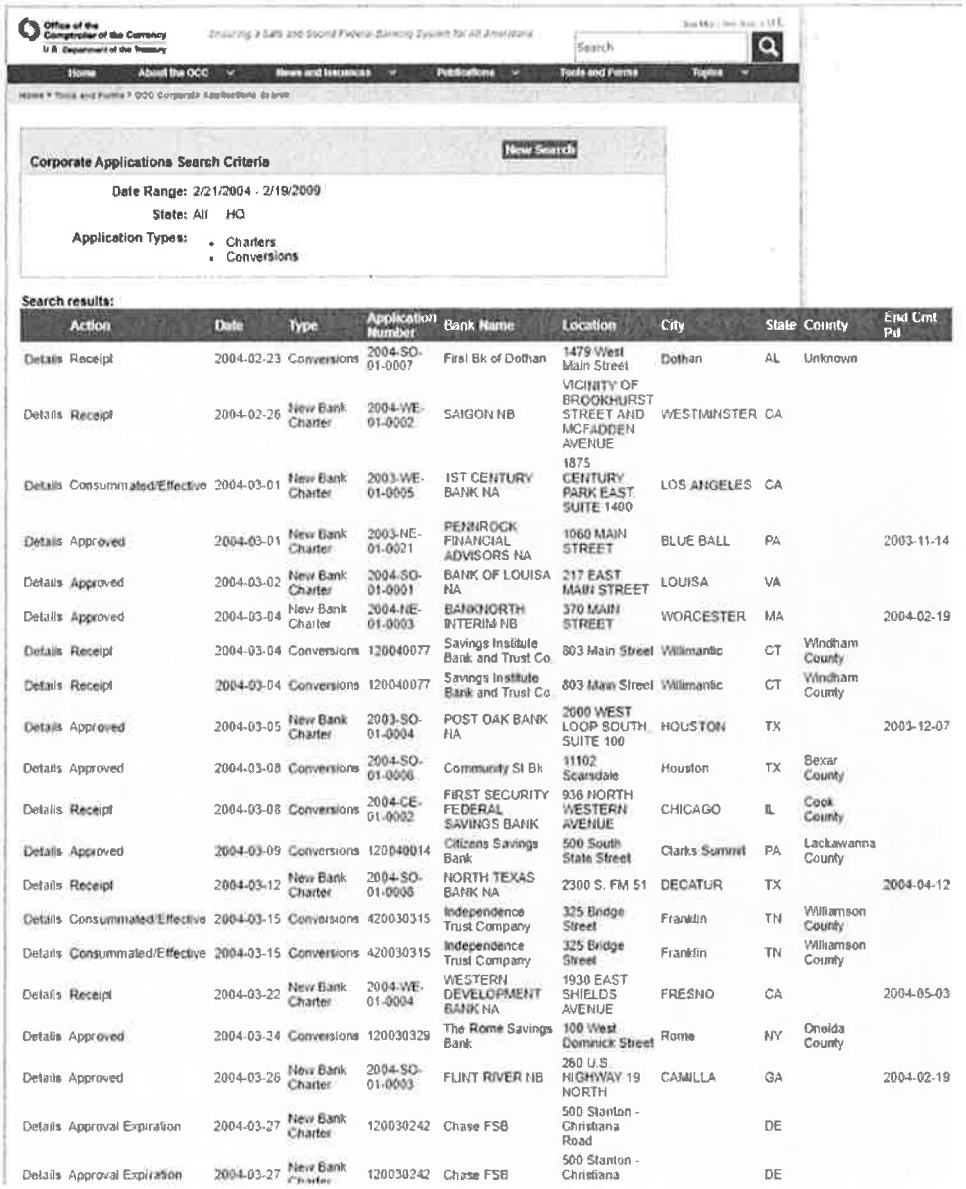
Corporate Applications Search Criteria — New Search

Date Range: 2/21/1999 - 2/20/2004
State: All HQ
Application Types:
- Charters
- Conversions

Search results:

Action	Date	Type	Application Number	Bank Name	Location	City	State	County	End Cnst Pd
Details Approved	1999-02-22	New Bank Charter	1998-SE-01-0030	UNITED AMERICAS BANK NA	3788 ROSWELL ROAD	ATLANTA	GA		1998-11-14
Details Consummated/Effective	1999-02-23	Conversions	419980558	Florida Parishes Bank	300 W Morris Ave	Hammond	LA	Tangipahoa Parish	
Details Consummated/Effective	1999-02-23	Conversions	419980556	Florida Parishes Bank	300 W Morris Ave	Hammond	LA	Tangipahoa Parish	
Details Receipt	1999-02-23	New Bank Charter	419990071	Marine Bank	2921 S. 168th Street	Omaha	NE		
Details Receipt	1999-02-23	New Bank Charter	419990071	Marine Bank	2921 S. 168th Street	Omaha	NE		
Details Consummated/Effective	1999-02-23	New Bank Charter	1998-NE-01-0012	METLIFE BANK NA	334 MADISON AVENUE	MORRISTOWN	NJ		1998-11-15
Details Receipt	1999-02-23	New Bank Charter	1999-MW-01-0002	OLD MISSOURI NB	3570 SOUTH NATIONAL	SPRINGFIELD	MO		1999-03-20
Details Receipt	1999-02-24	New Bank Charter	319990133	Classic Bank	344 17th St	Ashland	KY		
Details Receipt	1999-02-24	New Bank Charter	319990133	Classic Bank	344 17th St	Ashland	KY		
Details Receipt	1999-02-24	New Bank Charter	319990126	Country Trust Bank	808 IAA Drive	Bloomington	IL		
Details Receipt	1999-02-24	New Bank Charter	319990126	Country Trust Bank	808 IAA Drive	Bloomington	IL		
Details Consummated/Effective	1999-02-24	New Bank Charter	519970552	San Luis Trust Bank, FSB	1001 Marsh Street	San Luis Obispo	CA		
Details Consummated/Effective	1999-02-24	New Bank Charter	519970552	San Luis Trust Bank, FSB	1001 Marsh Street	San Luis Obispo	CA		
Details Withdrawn	1999-02-25	New Bank Charter	219980481	The Private Bank	3455 Peachtree Road, NW		GA		
Details Withdrawn	1999-02-25	New Bank Charter	219980481	The Private Bank	3455 Peachtree Road, NW		GA		
Details Consummated/Effective	1999-02-26	Conversions	119980335	American Eagle Savings Bank	3915 Chichester Ave	Boothwyn	PA	Delaware County	
Details Consummated/Effective	1999-02-26	Conversions	119980335	American Eagle Savings Bank	3915 Chichester Ave	Boothwyn	PA	Delaware County	
Details Receipt	1999-02-26	New Bank Charter	119990085	Fidelity Personal Trust Company, FSB	100 Summer Street, 15th Floor	Boston	MA		
Details Receipt	1999-02-26	New Bank Charter	119990085	Fidelity Personal Trust Company, FSB	100 Summer Street, 15th Floor	Boston	MA		
Details Receipt	1999-02-26	New Bank Charter	319990111	Morgan Keegan Trust Company, F.S.B.	50 North Front Street - 15th Floor	Memphis	TN		
Details Receipt	1999-02-26	New Bank Charter	319990111	Morgan Keegan Trust Company, F.S.B.	50 North Front Street - 15th Floor	Memphis	TN		
Details Receipt	1999-02-26	New Bank Charter	319990149	Unified Banking Company	2353 Alexandria Drive	Lexington	KY		
Details Receipt	1999-02-26	New Bank Charter	319990149	Unified Banking	2353 Alexandria	Lexington	KY		



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Corporate Applications Search Criteria — New Search

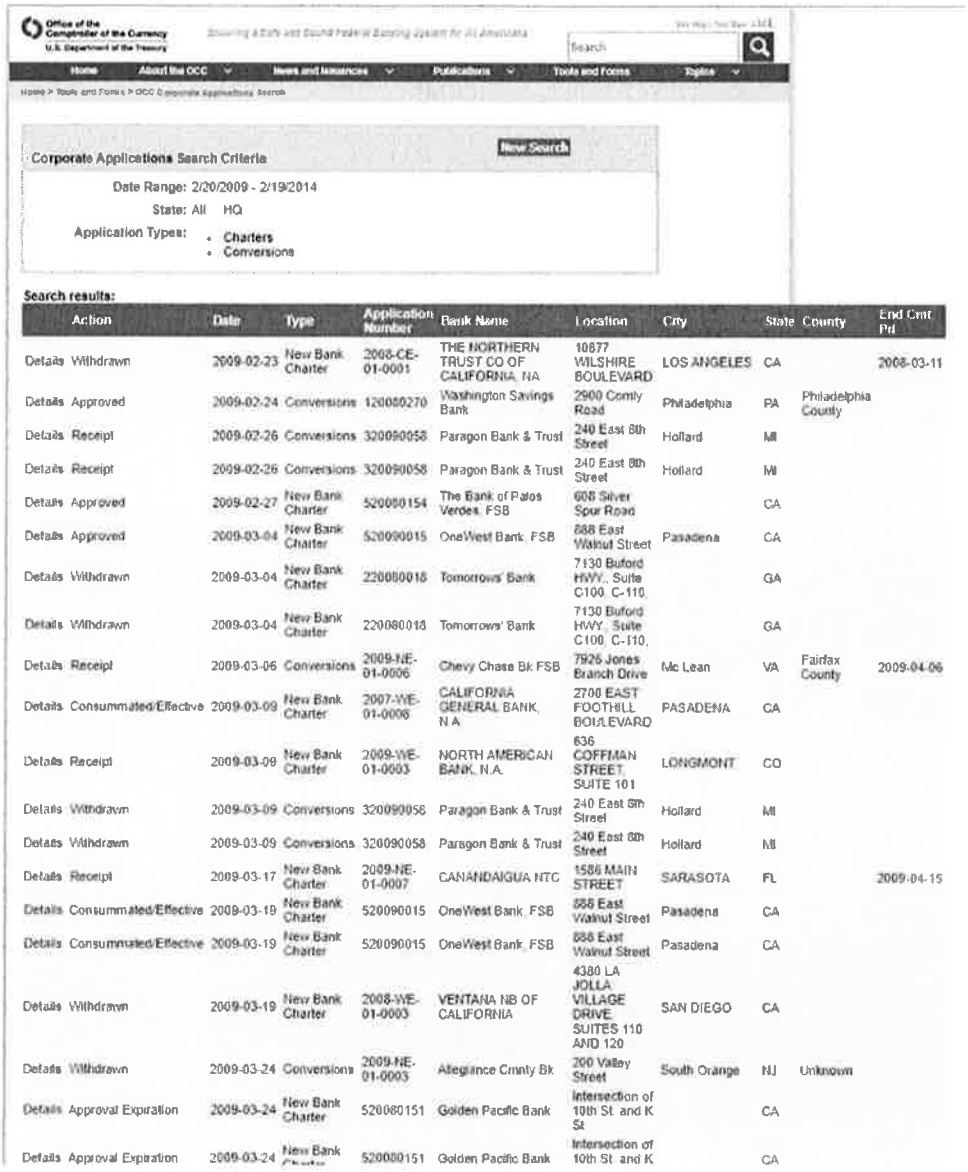
Date Range: 2/21/2004 - 2/19/2009

State: All HQ

Application Types:
- Charters
- Conversions

Search results:

Action	Date	Type	Application Number	Bank Name	Location	City	State	County	End Cmt Pd
Details Receipt	2004-02-23	Conversions	2004-SO-01-0007	First Bk of Dothan	1479 West Main Street	Dothan	AL	Unknown	
Details Receipt	2004-02-26	New Bank Charter	2004-WE-01-0002	SAIGON NB	VICINITY OF BROOKHURST STREET AND MCFADDEN AVENUE	WESTMINSTER	CA		
Details Consummated/Effective	2004-03-01	New Bank Charter	2003-WE-01-0005	1ST CENTURY BANK NA	1875 CENTURY PARK EAST SUITE 1400	LOS ANGELES	CA		
Details Approved	2004-03-01	New Bank Charter	2003-NE-01-0021	PENNROCK FINANCIAL ADVISORS NA	1060 MAIN STREET	BLUE BALL	PA		2003-11-14
Details Approved	2004-03-02	New Bank Charter	2004-SO-01-0001	BANK OF LOUISA NA	217 EAST MAIN STREET	LOUISA	VA		
Details Approved	2004-03-04	New Bank Charter	2004-NE-01-0003	BANKNORTH INTERIM NB	370 MAIN STREET	WORCESTER	MA		2004-02-19
Details Receipt	2004-03-04	Conversions	120040077	Savings Institute Bank and Trust Co	803 Main Street	Willimantic	CT	Windham County	
Details Receipt	2004-03-04	Conversions	120040077	Savings Institute Bank and Trust Co	803 Main Street	Willimantic	CT	Windham County	
Details Approved	2004-03-05	New Bank Charter	2003-SO-01-0004	POST OAK BANK NA	2000 WEST LOOP SOUTH SUITE 100	HOUSTON	TX		2003-12-07
Details Approved	2004-03-08	Conversions	2004-SO-01-0006	Community St Bk	11102 Scarsdale	Houston	TX	Bexar County	
Details Receipt	2004-03-08	Conversions	2004-CE-01-0002	FIRST SECURITY FEDERAL SAVINGS BANK	936 NORTH WESTERN AVENUE	CHICAGO	IL	Cook County	
Details Approved	2004-03-09	Conversions	120040014	Citizens Savings Bank	500 South State Street	Clarks Summit	PA	Lackawanna County	
Details Receipt	2004-03-12	New Bank Charter	2004-SO-01-0008	NORTH TEXAS BANK NA	2300 S. FM 51	DECATUR	TX		2004-04-12
Details Consummated/Effective	2004-03-15	Conversions	420030315	Independence Trust Company	325 Bridge Street	Franklin	TN	Williamson County	
Details Consummated/Effective	2004-03-15	Conversions	420030315	Independence Trust Company	325 Bridge Street	Franklin	TN	Williamson County	
Details Receipt	2004-03-22	New Bank Charter	2004-WE-01-0004	WESTERN DEVELOPMENT BANK NA	1930 EAST SHIELDS AVENUE	FRESNO	CA		2004-05-03
Details Approved	2004-03-24	Conversions	120030329	The Rome Savings Bank	100 West Dominick Street	Rome	NY	Oneida County	
Details Approved	2004-03-26	New Bank Charter	2004-SO-01-0003	FLINT RIVER NB	260 U.S. HIGHWAY 19 NORTH	CAMILLA	GA		2004-02-19
Details Approval Expiration	2004-03-27	New Bank Charter	120030242	Chase FSB	500 Stanton - Christiana Road		DE		
Details Approval Expiration	2004-03-27	New Bank Charter	120030242	Chase FSB	500 Stanton - Christiana		DE		



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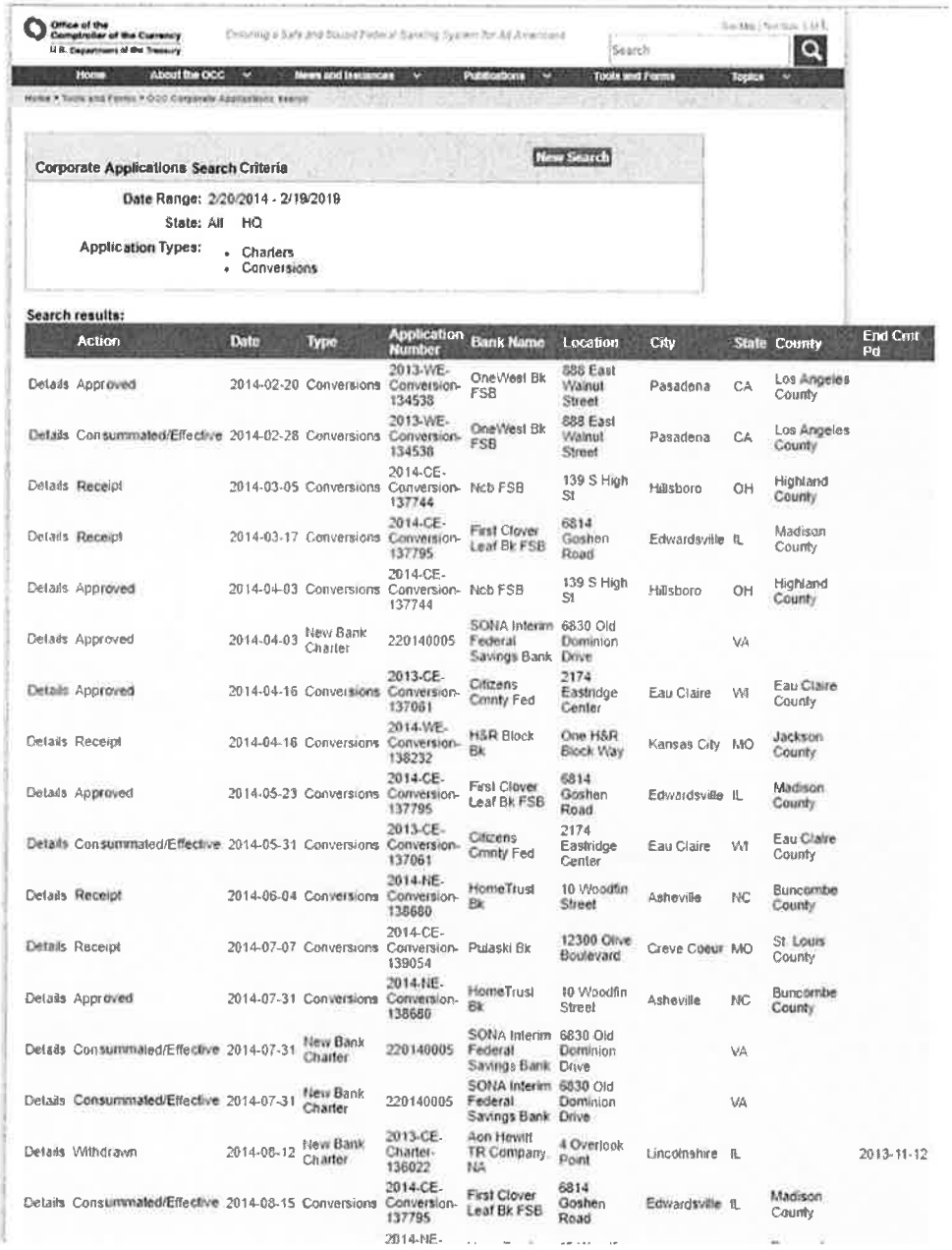
Corporate Applications Search Criteria — New Search

Date Range: 2/20/2009 - 2/19/2014
State: All HQ
Application Types:
- Charters
- Conversions

Search results:

Action	Date	Type	Application Number	Bank Name	Location	City	State	County	End Cmt Pd
Details Withdrawn	2009-02-23	New Bank Charter	2008-CE-01-0001	THE NORTHERN TRUST CO OF CALIFORNIA, NA	10877 WILSHIRE BOULEVARD	LOS ANGELES	CA		2008-03-11
Details Approved	2009-02-24	Conversions	120080270	Washington Savings Bank	2900 Comly Road	Philadelphia	PA	Philadelphia County	
Details Receipt	2009-02-26	Conversions	320090058	Paragon Bank & Trust	240 East 8th Street	Holland	MI		
Details Receipt	2009-02-26	Conversions	320090058	Paragon Bank & Trust	240 East 8th Street	Holland	MI		
Details Approved	2009-02-27	New Bank Charter	520080154	The Bank of Palos Verdes, FSB	606 Silver Spur Road		CA		
Details Approved	2009-03-04	New Bank Charter	520090015	OneWest Bank, FSB	888 East Walnut Street	Pasadena	CA		
Details Withdrawn	2009-03-04	New Bank Charter	220080018	Tomorrows' Bank	7130 Buford HWY., Suite C100, C-110,		GA		
Details Withdrawn	2009-03-04	New Bank Charter	220080018	Tomorrows' Bank	7130 Buford HWY., Suite C100, C-110,		GA		
Details Receipt	2009-03-06	Conversions	2009-NE-01-0006	Chevy Chase Bk FSB	7926 Jones Branch Drive	Mc Lean	VA	Fairfax County	2009-04-06
Details Consummated/Effective	2009-03-09	New Bank Charter	2007-WE-01-0008	CALIFORNIA GENERAL BANK, N.A.	2700 EAST FOOTHILL BOULEVARD	PASADENA	CA		
Details Receipt	2009-03-09	New Bank Charter	2009-WE-01-0003	NORTH AMERICAN BANK, N.A.	636 COFFMAN STREET, SUITE 101	LONGMONT	CO		
Details Withdrawn	2009-03-09	Conversions	320090058	Paragon Bank & Trust	240 East 8th Street	Holland	MI		
Details Withdrawn	2009-03-09	Conversions	320090058	Paragon Bank & Trust	240 East 8th Street	Holland	MI		
Details Receipt	2009-03-17	New Bank Charter	2009-NE-01-0007	CANANDAIGUA NTC	1586 MAIN STREET	SARASOTA	FL		2009-04-15
Details Consummated/Effective	2009-03-19	New Bank Charter	520090015	OneWest Bank, FSB	888 East Walnut Street	Pasadena	CA		
Details Consummated/Effective	2009-03-19	New Bank Charter	520090015	OneWest Bank, FSB	888 East Walnut Street	Pasadena	CA		
Details Withdrawn	2009-03-19	New Bank Charter	2008-WE-01-0003	VENTANA NB OF CALIFORNIA	4380 LA JOLLA VILLAGE DRIVE, SUITES 110 AND 120	SAN DIEGO	CA		
Details Withdrawn	2009-03-24	Conversions	2009-NE-01-0003	Allegiance Cmnty Bk	200 Valley Street	South Orange	NJ	Unknown	
Details Approval Expiration	2009-03-24	New Bank Charter	520080151	Golden Pacific Bank	Intersection of 10th St. and K St		CA		
Details Approval Expiration	2009-03-24	New Bank Charter	520080151	Golden Pacific Bank	Intersection of 10th St. and K		CA		



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Corporate Applications Search Criteria — New Search

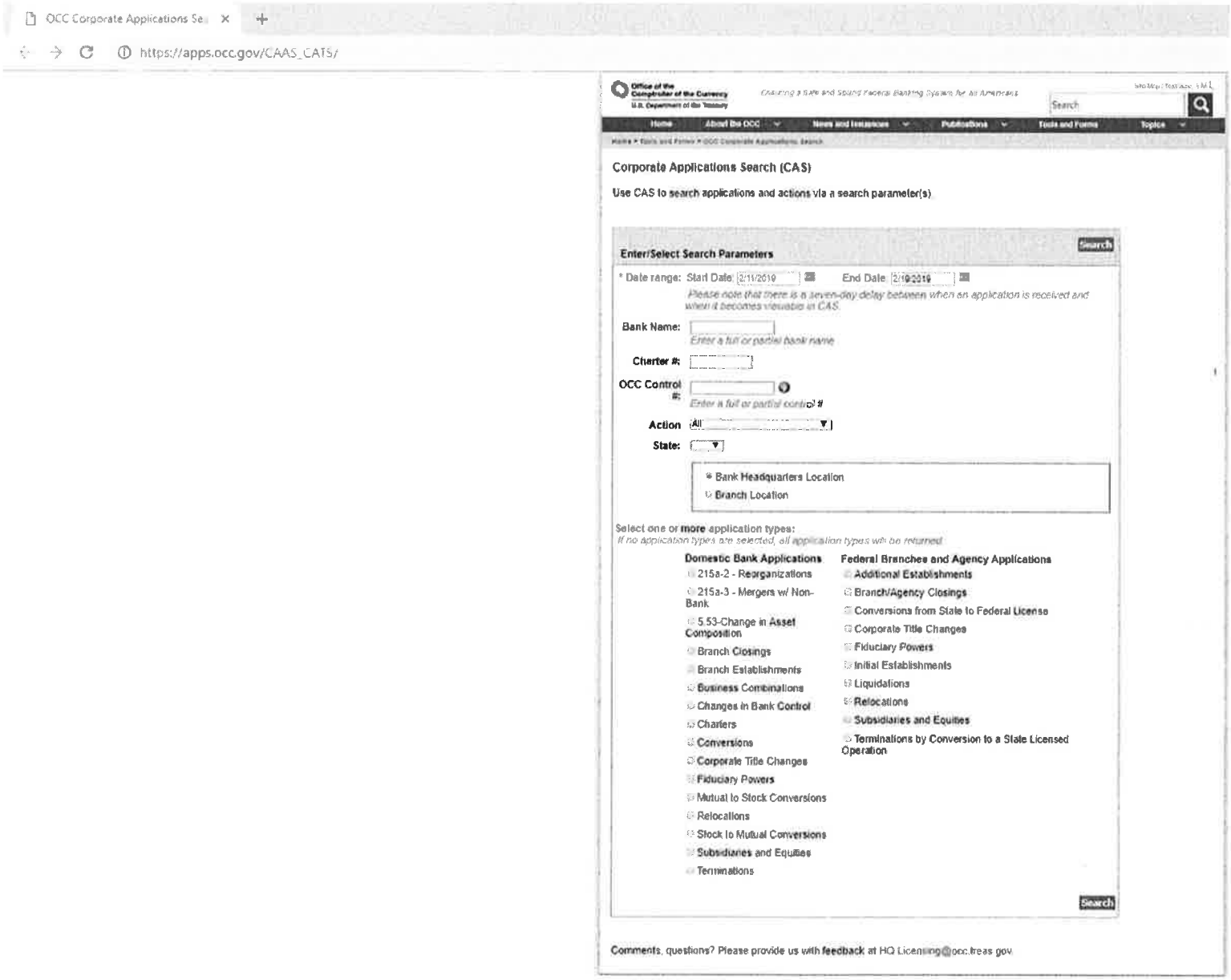
Date Range: 2/20/2014 - 2/19/2019
State: All HQ
Application Types:
- Charters
- Conversions

Search results:

Action	Date	Type	Application Number	Bank Name	Location	City	State	County	End Cmt Pd
Details Approved	2014-02-20	Conversions	2013-WE-Conversion-134538	OneWest Bk FSB	888 East Walnut Street	Pasadena	CA	Los Angeles County	
Details Consummated/Effective	2014-02-28	Conversions	2013-WE-Conversion-134538	OneWest Bk FSB	888 East Walnut Street	Pasadena	CA	Los Angeles County	
Details Receipt	2014-03-05	Conversions	2014-CE-Conversion-137744	Ncb FSB	139 S High St	Hillsboro	OH	Highland County	
Details Receipt	2014-03-17	Conversions	2014-CE-Conversion-137795	First Clover Leaf Bk FSB	6814 Goshen Road	Edwardsville	IL	Madison County	
Details Approved	2014-04-03	Conversions	2014-CE-Conversion-137744	Ncb FSB	139 S High St	Hillsboro	OH	Highland County	
Details Approved	2014-04-03	New Bank Charter	220140005	SONA Interim Federal Savings Bank	6830 Old Dominion Drive		VA		
Details Approved	2014-04-16	Conversions	2013-CE-Conversion-137061	Citizens Cmnty Fed	2174 Eastridge Center	Eau Claire	WI	Eau Claire County	
Details Receipt	2014-04-16	Conversions	2014-WE-Conversion-138232	H&R Block Bk	One H&R Block Way	Kansas City	MO	Jackson County	
Details Approved	2014-05-23	Conversions	2014-CE-Conversion-137795	First Clover Leaf Bk FSB	6814 Goshen Road	Edwardsville	IL	Madison County	
Details Consummated/Effective	2014-05-31	Conversions	2013-CE-Conversion-137061	Citizens Cmnty Fed	2174 Eastridge Center	Eau Claire	WI	Eau Claire County	
Details Receipt	2014-06-04	Conversions	2014-NE-Conversion-138680	HomeTrust Bk	10 Woodfin Street	Asheville	NC	Buncombe County	
Details Receipt	2014-07-07	Conversions	2014-CE-Conversion-139054	Pulaski Bk	12300 Olive Boulevard	Creve Coeur	MO	St. Louis County	
Details Approved	2014-07-31	Conversions	2014-NE-Conversion-138680	HomeTrust Bk	10 Woodfin Street	Asheville	NC	Buncombe County	
Details Consummated/Effective	2014-07-31	New Bank Charter	220140005	SONA Interim Federal Savings Bank	6830 Old Dominion Drive		VA		
Details Consummated/Effective	2014-07-31	New Bank Charter	220140005	SONA Interim Federal Savings Bank	6830 Old Dominion Drive		VA		
Details Withdrawn	2014-08-12	New Bank Charter	2013-CE-Charter-136022	Aon Hewitt TR Company NA	4 Overlook Point	Lincolnshire	IL		2013-11-12
Details Consummated/Effective	2014-08-15	Conversions	2014-CE-Conversion-137795	First Clover Leaf Bk FSB	6814 Goshen Road	Edwardsville	IL	Madison County	
			2014-NE-						

EXHIBIT 2

to M. Townsley Declaration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Corporate Applications Search (CAS)
Use CAS to search applications and actions via a search parameter(s).
Enter/Select Search Parameters
Search
* Date range: Start Date: 2/11/2019
End Date: 2/19/2019
Please note that there is a seven-day delay between when an application is received and when it becomes viewable in CAS.
Bank Name:
Enter a full or partial bank name
Charter #:
OCC Control #:
Enter a full or partial control #
Action
All
State:
Bank Headquarters Location
Branch Location
Select one or more application types:
If no application types are selected, all application types will be returned.
Domestic Bank Applications
215a-2 - Reorganizations
215a-3 - Mergers w/ Non-Bank
5.53-Change in Asset Composition
Branch Closings
Branch Establishments
Business Combinations
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Stock to Mutual Conversions
Subsidiaries and Equities
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Federal Branches and Agency Applications
Additional Establishments
Branch/Agency Closings
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Initial Establishments
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EXHIBIT B

Is the OCC's fintech charter really 'perfect' for mortgage lenders?

American Banker Online - Powered by Dow Jones · Rachel Witkowski

US | January 27, 2019 · 12:00am

WASHINGTON — As suspense builds over which financial technology firm will be the first to apply for a special-purpose federal charter from the Office of the Comptroller of the Currency, a side discussion has emerged over which financial services sector has the most to gain — or lose — from the new licensing option.

An OCC official turned heads earlier this month when he suggested the charter may be best tailored for lenders — including mortgage companies and marketplace lenders — that are interested in certain aspects of federal chartering but not in becoming a full-fledged traditional bank. “Some lending activities include what we’ve seen from online lenders today and the marketplace lenders. Also, I think we’re starting to see lot of interest in the charter from existing mortgage lenders, which obviously, I think the charter may be perfect for that,” Stephen Lybarger, deputy comptroller of licensing at the OCC, said during a legal conference in Washington Jan. 12.

Despite state legal challenges of the charter, Comptroller of the Currency Joseph Otting says he still expects a company to formally apply this quarter. The charter is designed to afford benefits such as the avoidance of state licensing. But those benefits are narrower than those of a commercial bank, thus relieving fintechs of certain regulatory hassles. For example, the charter likely will not include Federal Deposit Insurance Corp. backing of deposits.

Lybarger highlighted the lack of deposit insurance as a draw for firms that are not interested in obtaining all the powers — and regulatory burdens — of becoming a traditional bank.

“The unique thing is . . . we don’t expect those banks to take deposits and we don’t expect them to be insured,” he said.

Some industry watchers concur that the charter may correspond best with the profile of a nonbank digital lender, which has access to liquidity other than deposits.

Lenders may benefit most from the ability of a federal charter to export interest rates across state lines. OCC-chartered banks only must apply the interest-rate rules of their home state, avoiding usury caps in other states.

"By applying for the OCC charter, the federal preemption does give fintechs more certainty," said Crystal Sumner, head of legal and compliance at Blend, a digital mortgage technology vendor.

Others agreed that the preemption ability of a digital lender was one of the most attractive aspects to the OCC's charter. Yet that benefit may still be uncertain for marketplace lenders that sell loans across state lines.

“A big part of the value proposition is that it removes the ambiguity as to the legality of the loan, at least as an initial matter,” said Brian Knight, a senior research fellow in the Financial Markets Working Group with the Mercatus Center at George Mason University.

However, Knight added that the greater “challenge” is whether that preemption benefit lasts for the life of the loan and still applies if the debt is sold to another buyer or securitized. A 2015 court ruling in the case Madden v. Midland Funding does not guarantee "valid-when-made" status for loans sold to a buyer in another state.

“For example, if you’re a marketplace lender and you get the OCC’s charter, the question becomes when you want to sell the loan or get that loan in whole or in part off the books, is the buyer going to get the loan as valid-when-made?” Knight said. “If the loan does not remain valid, it harms the buyer and the national bank because no one will buy the loans.”

Lybarger said the first firm to seek the OCC charter would likely need to show that it already has substantial experience under its belt operating in the financial services space.

"One of the key things, I think, that we are looking towards with this particular charter is, coming out the gate with it, is work with existing companies ... and to have something that we can already evaluate," he said.

This likely means the company would already have a near-national presence through state chartering. Even then, Sumner said, the OCC charter would still benefit a digital lender with only having to answer to one federal supervisor.

"If you have a national existence now, you're still dealing with 50 different states and regulatory regimes," she said.

Still, many mortgage lenders question the value of the charter if they have already received licenses from most states. They worry that OCC supervision could end up being too demanding to be worth the benefits, even without the regulatory trigger of FDIC-insured deposits.

With this special-purpose charter, “the OCC is going to think they’re regulating a bank and will go into safety and soundness when there are no deposits to protect,” said Jeff Bode, chief executive and president of the nonbank lender Mid America Mortgage Inc. “I looked at it briefly and I just thought, ‘I don’t want to be regulated in that way.’ I’d rather deal with the various states.”

Bode's company, based in Addison, Texas, began offering a digital mortgage called Click n’ Close last year. The company already has a national presence, with licenses in 47 states and the District of Columbia.

But Bode said that if Mid America Mortgage were licensed in fewer than five states, “I’d be willing to take that risk” of an OCC charter.

Others note that the OCC charter could restrict a mortgage lender's future options if, for example, the lender wanted to expand its liquidity resources and accept consumer deposits down the road in order to make more loans. In that case, the fintech charter would not be sufficient; the company would have to reapply to become a full-blown bank.

For that reason, some observers said, the OCC charter may end up being more suitable for firms that do not provide credit, such as a payments company that is merely processing transactions. However, there is lingering uncertainty for payments companies, too, since the Federal Reserve has yet to make a much-anticipated ruling on whether OCC-chartered fintech firms will be allowed into the Fed's payment system.

The OCC's charter could better suit a “a payments company because it wouldn’t have that need, per se” to hold deposits, said Laurence Platt, a partner at Mayer Brown’s Washington office. “But if you’re already a licensed lender and things are going OK, there’s not a lot of pressure to make the move."

But the lower cost of funding through deposits is partly why some fintech firms are now turning their attention to the FDIC, which is considering an application from Square to form an industrial loan company. The FDIC has not approved an ILC application in more than a decade, but many fintechs now see the FDIC as another pathway to becoming a bank under new leadership at the agency.

FDIC Chairman Jelena McWilliams has repeatedly promised to give ILC applications a fair review, like any other deposit insurance application.

“The OCC really started this conversation with work on the special-purpose charter, but today I would say that both the OCC and FDIC are working thoughtfully to build better ‘on-ramps’ into the regulated federal banking system,” said Nat Hoopes, executive director at the Marketplace Lending Association. “There are always going to be both costs and benefits to becoming a bank, and I’d say that companies are thoughtfully and appropriately exploring all options.”

EXHIBIT C

Office of the
Comptroller of the Currency

COMPTROLLER'S LICENSING MANUAL

Conversions to Federal Charter

Version 1.0, January 2017

Version 1.1, August 2018

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Introduction

Under applicable federal and state law,[1] certain types of depository institutions may convert to a national bank or a federal savings association (FSA). These types of institutions include commercial banks, state banks, state savings associations (mutual form or stock form), trust companies, and credit unions. A stock depository institution may convert to a stock FSA or national bank charter, and a mutual depository institution or a credit union may convert to a mutual FSA. An FSA may convert to a national bank, and a national bank may convert to an FSA.

A depository institution seeking to convert to a national bank or FSA must submit an application and obtain prior approval of the Office of the Comptroller of the Currency (OCC). In addition, a depository institution must include information in the application demonstrating compliance with applicable laws and regulations regarding the permissibility, requirements, and procedures for conversions, including any applicable stockholder or account holder approval requirements.

If the OCC approves the conversion, the institution may not commence business as a national bank or FSA until the OCC grants final approval and issues a federal charter. In addition, the OCC does not grant approval to a national bank or an FSA with a parent holding company until the Board of Governors of the Federal Reserve System (FRB) has approved any applications filed by the holding company.

This booklet contains policies and procedures to guide institutions on converting to a national bank or FSA and discusses exceptions to these requirements. This booklet also contains step-by-step procedures, a glossary, and a reference section. The references include applicable laws, regulations, and OCC issuances to help applicants complete the filing process. Users of this booklet may also want to refer to the "General Policies and Procedures" booklet of the *Comptroller's Licensing Manual* for a discussion of the application process in general.

The process by which a national bank or FSA can convert to a non-federal charter is discussed in the "Termination of Federal Charter" booklet of the *Comptroller's Licensing Manual*.

When it is necessary to distinguish between them, national banks and FSAs are referred to separately. Collectively, OCC-regulated banks are referred to as federal banks or banks in this booklet. Commercial banks, savings banks, savings associations, credit unions, and trust companies are collectively referred to as depository institutions. Refer to the "Glossary" section of this booklet for a comprehensive definition of "depository institution."

[1] References in this booklet to "law" or "laws" include any federal or state law(s) and regulation(s), as applicable. For specific federal banking law and regulation cites, refer to the "References" section.

Key Policies

The OCC, consistent with its chartering policy, permits a depository institution that demonstrates the ability to operate safely and soundly and in compliance with applicable laws, regulations, and policies to convert to a federal charter if the conversion complies with the National Bank Act or the Home Owners' Loan Act (HOLA), and applicable OCC regulations. Section 612 of the Dodd–Frank Wall Street Reform and Consumer Protection Act, however, imposes restrictions on conversions of certain state-chartered banks or savings associations to a federal charter.

If the conversion is not consummated within six months of the date that the OCC approved the application, the approval expires. The OCC does not grant extensions of the approval period except under extenuating circumstances. The OCC expects the conversion to occur as soon as possible after approval.

Decision Criteria

The OCC considers the following when reviewing an application for conversion to a federal charter:

- The applicant's financial condition, management, and regulatory capital requirements.
- The applicant's conformance with statutory and regulatory criteria, including many of the same standards applicable to chartering a de novo federal bank.[2] These standards include
  - maintaining a safe and sound banking system.
  - encouraging fair access to financial services by ensuring federal banks help to meet the credit needs of their communities.
  - ensuring compliance with laws and regulations.
  - promoting fair treatment of customers.
- Whether the applicant has obtained all necessary regulatory and shareholder or member approvals.
- Adequacy of the applicant's policies, practices, and procedures. Correction of any deficiencies may be included as conditions, as appropriate, in an approval decision.
- Community Reinvestment Act (CRA) record of performance.[3] The OCC expects a satisfactory CRA performance record. If the applicant's CRA record is less than satisfactory or CRA issues exist, but the OCC has other compelling reasons to permit the conversion, the conversion may be approved on the condition that the applicant improves its CRA performance record or develops and implements an adequate plan to meet CRA obligations. If the applicant is not currently subject to the CRA, it must describe how CRA regulations will be met, if applicable.

[2] Refer to 12 USC 21 et seq. and 1464(e), and 12 CFR 5.20, 5.21, and 5.22.

[3] The CRA generally does not apply to special purpose banks that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business. Refer to 12 CFR 25.11(c) and 195.11(c).

For conversions to an FSA, the OCC also considers

- if the principals of the applicant, such as organizers, senior executive officers, and directors, are persons of good character and responsibility.
- if a need exists for such an FSA in the community to be served.
- if there is a reasonable probability of the FSA's usefulness and success.
- if the FSA can be established without undue injury to properly conducted, existing local thrift and home financing institutions.

The OCC may deny a conversion application for a federal charter for the following reasons:

- Significant supervisory or safety and soundness concerns.
- Inadequate capital.
- Financial condition concerns.
- Significant weaknesses in management.
- Significant CRA (if applicable) or compliance concerns.
- Ownership issues.
- Inconsistency with applicable law, regulation, or OCC policy.
- Attempted circumvention of pending supervisory action with the current regulator.[4]
- Failure to provide requested information so that the OCC can make an informed decision.

Conditions

The OCC may impose conditions for approvals to protect the safety and soundness of the bank, prevent conflicts of interest, provide customer protections, ensure that approval is consistent with the statutes and regulations, or provide for other supervisory or policy considerations. The OCC may apply these conditions as "regulatory conditions imposed in writing" within the meaning of 12 USC 1818. These enforceable conditions remain in effect after the effective or consummation date of an approved transaction or activity and continue until the OCC removes them.

The OCC may also impose conditions, depending on specific situations, such as

- maintaining a specified minimum capital floor.
- executing a written agreement between the depository institution and its holding company that provides for capital maintenance, liquidity support, or other assurances to the bank, if and when necessary.

[4] If the applicant is subject to a cease-and-desist order (or other formal enforcement action) issued by, or a memorandum of understanding (or other informal enforcement action) entered into with, its financial regulatory agency, the OCC may not approve the conversion unless the OCC gives the applicant's primary federal regulatory agency written notice of the proposed conversion, including a plan to address the significant supervisory matters in a manner consistent with the safe and sound operation of the depository institution, among other requirements, pursuant to section 612 of Dodd–Frank. This requirement does not apply to conversions between national banks and FSAs, that is, one federal charter to another federal charter.

- developing a contingency business plan agreement between the bank and the OCC, setting forth certain actions that the bank will take if it does not achieve business plan projections. The agreement could include the following requirements:
  - Obtaining additional capital.
  - Developing and implementing a corrective action plan or new satisfactory business plan to remedy plan shortfalls or failures.
  - Developing and implementing a contingency plan to sell, merge, or liquidate the bank at no cost to the Federal Deposit Insurance Corporation (FDIC).
- requiring all final third-party relationship contracts to stipulate that the performance of services provided by the third-party service provider to the bank is subject to the OCC's examination.

If a conversion examination identifies a particular weakness in an operational area of a bank that requires strengthening by improved policies, the OCC may impose the following condition:

> The board of directors must adopt and have written policies and procedures concerning [addressing the problem area] to ensure the safe and sound operation of the bank. The board must periodically review these policies and procedures and ensure the bank's compliance.

If the OCC has supervisory concerns regarding an applicant that an external audit could address or monitor, the OCC may impose the following condition:

> Before conversion, the bank's directors must engage an independent, external auditor to perform an audit according to generally accepted auditing standards. The audit must be of sufficient scope to enable the auditor to render an opinion on the bank's (or consolidated holding company's) financial statements. The audit period must begin on the date that the institution converts to a [national bank or FSA] and may end on any calendar quarter-end no later than 12 months after the conversion. The audit will be performed annually for at least [number] years.

If the applicant previously has converted from a mutual to a stock institution, or its parent holding company has converted from a mutual to a stock holding company, the OCC may consider imposing conditions to ensure compliance with relevant regulations governing those transactions. The language of these conditions would differ depending on the situation and the regulations involved. A condition to hold a liquidation account or other conditions dealing with regulations[5] governing mutual to stock form conversions would be included in this category.

[5] Refer to 12 CFR 192.

If the OCC believes there is heightened supervisory risk after a conversion, the OCC may impose the following condition:

> The bank (i) shall give the [appropriate OCC supervisory office] at least sixty (60) days prior written notice of the bank's intent to significantly deviate or change from its business plan or operations[6] and (ii) shall obtain the OCC's written determination of no objection before the bank engages in any significant deviation or change from its business plan or operations. The OCC may impose additional conditions it deems appropriate in a written determination of no objection to a bank's notice.

The OCC considers the imposition of a prior notice condition for a significant deviation from the depository institution's business plan on a case-by-case basis. The financial condition of the depository institution and whether the depository institution or sponsor plans to change its business plan or operations are key considerations in assessing the risks of converting to a federal charter. The OCC may impose the above condition if the depository institution has financial weaknesses, management plans to make significant changes in the business plan or operations of the depository institution, or the OCC believes that the depository institution is vulnerable to a potentially significant adverse change in the short or intermediate term.

For purposes of this condition, a significant deviation or change is defined as a material variance from the bank's business plan or operations, or introduction of any new product, service, or activity or change in market that was not part of the approved business plan, that occurs after the proposed transaction has been consummated. Significant deviations may include, but are not limited to, deviations in the bank's

- projected growth, such as planning significant growth in a product or service.
- strategy or philosophy, such as significantly reducing the emphasis on its targeted niche (e.g., small business lending) in favor of significantly expanding another area (e.g., funding large commercial real estate projects).
- lines of business, such as initiating a new program for subprime lending, automobile lending, credit cards, or transactional services that elevate the bank's risk profile.
- funding sources, such as shifting from core deposits to brokered deposits.
- scope of activities, such as entering new, untested markets.
- stock benefit plans, including the introduction of plans that were not previously reviewed during the chartering process by the OCC.
- relationships with a parent company or affiliate, such as a shift to significant reliance on a parent or affiliate as a funding source or provider of back-office support.

Even though an applicant may disclose its plan to change the bank's operations in the application, the heightened supervisory risk may nonetheless warrant imposing this condition because the bank may subsequently fail to accomplish the original plan's objectives or the bank may subsequently deviate from the plan. The condition also may be appropriate if the applicant discloses future plans to offer a new product or service, or enter a new market, but

[6] If the deviation from the business plan is the subject of an application filed with the OCC, the OCC does not require any further notice to the supervisory office.

no formal plans exist at the time that the application is filed, and implementation of these plans would occur after OCC approval.

Deviations in financial performance alone are not significant deviations under this condition. The OCC, however, still may consider the underlying reasons for the deviation in financial performance to be a significant deviation.

Application Process

Prefiling Communications

Before an applicant files to convert, the OCC encourages it to consult with the appropriate OCC licensing office to discuss the application process, the possible need for a conversion examination (for non-federal banks), the need for a review of policies and procedures, any unusual or complex issues, if a legal opinion needs to be included with the filing, and the benefits of scheduling a prefiling meeting. If a prefiling meeting is appropriate, it is usually held in the OCC district office in which the application will be filed. At the applicant's request, the meeting may be held at another location or by teleconference.

Filing the Application

A depository institution that wishes to convert to a federal bank submits to the appropriate OCC district licensing office a conversion application, signed by the depository institution's president or other authorized officer.

The application requires information on the institution's status and condition, reports of condition and income, and audited financial statements; an opinion on the legality of the conversion (unless the requirement is waived by the OCC); and other information. When an insured depository institution converts to a federal bank, it does not need to reapply for FDIC insurance for the converted entity. A filing with the FRB, however, may be necessary. For example, when a stock FSA owned by a savings and loan holding company seeks to convert to a national bank, the holding company must file with the FRB to become a bank holding company. Likewise, an FRB filing may also be required when a bank owned by a holding company seeks to convert to an FSA (other than an FSA that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act). In such cases, the bank's parent holding company must file with the FRB to become a savings and loan holding company.

Publication

Generally, a public notice under 12 CFR 5.8 does not apply to a conversion filing unless the OCC determines that the application presents a significant or novel policy, supervisory, or legal issue for which a public notice is necessary.

A public notice may be required, however, when a conversion application is accompanied by another application that requires a public notice under 12 CFR 5.8. In this instance, a public notice describing the entire transaction may be necessary to ensure that the public has a full understanding of the transaction. If a notice is required, the depository institution must publish notice of the proposed conversion in a newspaper of general circulation in the community or communities in which the institution proposes to engage in business. The OCC provides specific requirements for the notice of publication. Refer to the "Public Notice and Comments" booklet of the *Comptroller's Licensing Manual* for further information.

Expedited Review

Applications to convert a federal charter to another form of federal charter (i.e., existing national banks and FSAs) are eligible for expedited review under applicable regulations.[7] Applications by non-federally chartered depository institutions to convert to a federal charter are not eligible for expedited review.

If the OCC processes an application under expedited time frames, the agency deems the application automatically approved as of the 60th day after the filing is received by the appropriate licensing office. A filing or an adverse public comment regarding the filing, however, may present significant supervisory, CRA (if applicable), or compliance concerns, or raise significant legal or policy issues. In these situations, the OCC notifies the applicant before that date that the filing is not eligible for expedited review.

[7] Refer to 12 CFR 5.23(d)(4) and 5.24(h).

Specific Requirements

Corporate Title

If the resulting institution is a national bank, the bank's title must include the word "national."[8] The word "national" must be spelled out on all legal documents, such as the bank's organization certificate[9] and articles of association (if the articles contain the bank's title). For conversion to either a national bank or an FSA, the proposed title may not misrepresent the nature of the national bank or FSA or the services it offers.

Shareholder Approval

A state bank converting to a national bank must have the approval of shareholders who together own not less than 51 percent[10] of the institution's capital stock. If applicable state law requires a greater percentage, shareholders who together own this greater percentage must approve the proposed conversion. Under the National Bank Act, if the institution's charter or bylaws require a more stringent approval threshold, the institution must adhere to this threshold. If the converting state bank's holding company is the sole shareholder, the holding company may authorize the conversion through a board resolution. All holding companies, however, must follow state law requirements. For an FSA converting to a national bank, any applicable stockholder or account holder approval is required.[11]

For a state institution converting to an FSA, state law or the institution's charter, as applicable, governs the required shareholder approval. For a national bank converting to an FSA, shareholders who together own at least two-thirds of each class of the bank's capital stock must approve the conversion.[12]

Directors' Approval

National Banks

Conversion to a national bank requires the approval of the majority of the institution's board of directors.[13] A majority of the directors must execute the organization certificate, which states that shareholders who together own at least 51 percent of the capital stock, or a greater

[8] Refer to 12 USC 22 and 35.

[9] Refer to 12 USC 22.

[10] Refer to 12 USC 35.

[11] Refer to 12 CFR 5.24(f).

[12] Refer to 12 USC 214a and 12 CFR 5.23(f).

[13] Refer to 12 USC 35.

amount if required by applicable state law, have authorized the directors to execute the organization certificate and articles of association, and to change or convert the depository institution to a national bank. Refer to Authority for Conversion to National Bank.

In addition, a majority of the board must sign the articles of association, with a minimum of five signatures required. The directors, after executing the articles of association and the organization certificate, are authorized and have the power to execute all other documents and do what may be necessary to complete the conversion to a national bank.

Original versions of the articles of association and the organization certificate should be submitted to the appropriate licensing office with the conversion application. The applicant may execute a second set of originals or keep a copy for its records. The organization certificate must be notarized. The same people should execute the organization certificate and the articles of association. The converting depository institution's board should adopt bylaws appropriate for the resulting charter.

FSAs

Conversion to an FSA requires the approval of a majority of the institution's board of directors. The secretary of the institution must certify that a majority of the bank's board has resolved to apply for conversion. Refer to Certification of Application for Conversion to an FSA. A proposed FSA may not commence business as an FSA until the OCC grants final approval and issues a charter. Institutions converting to an FSA must adopt bylaws consistent with the requirements of 12 CFR 5.21 and 5.22.

State and Federal Law Considerations

A depository institution wanting to convert to a federal bank must include with the application, unless the OCC otherwise advises, an opinion of counsel stating that the conversion does not contravene applicable state or federal law. If the proposal presents unusual legal issues, a comprehensive opinion of counsel may be required. These issues may include

- noncompliance with state law.
- whether a state-chartered institution converting to a national bank meets the definition of a "state bank" as that term is defined for the purposes of 12 USC 35 and 12 CFR 5.24.
- unusual ownership structure or if the institution is not a stock-form depository institution (mainly refers to credit unions converting to FSAs).
- branch retention.
- nonconforming asset retention, including nonconforming subsidiaries.
- main office or home office location.
- interstate operations.
- whether the institution wishes to exercise fiduciary powers.
- noncompliance with residency or citizenship requirements (national banks only).

The OCC reserves the right to require an opinion of counsel if it determines one is necessary.

Branch Authorization

A converting depository institution may retain existing branches as a national bank or FSA if such retention is consistent with applicable law. The applicant must identify all branches that it will retain following the conversion.

All approved but unopened branches[14] must be authorized to open in accordance with OCC policy and applicable regulations (12 CFR 5.30 and 5.31). The application must include approval documents for these branches from the state banking department and either the FDIC or FRB, as appropriate. Any facilities that would be identified as branches under national bank or FSA laws (brick and mortar and nontraditional branches) but are not currently considered branches under state law must also be authorized.

The applicant should certify that the resulting branch structure complies with applicable state and federal branching laws and should list the requirements of those laws in the application. For conversions to national banks, the certification should include consideration of compliance with any applicable geographic limitations and any quantitative and qualitative factors of state law. Refer to the "Branches and Relocations" booklet of the *Comptroller's Licensing Manual*. This requirement for certification of state law compliance does not apply to institutions converting to FSAs, which must certify compliance with 12 USC 1464(r) for any interstate branches, if applicable.

Provided the branches are legally permissible, if the OCC approves the conversion, the approval will include authorization for the converting depository institution's existing branches, any approved but unopened branches, and any branches newly approved by the OCC. For those branches that are not opened at consummation, the institution must notify the OCC of the opening dates, no later than 10 days after the openings, so the OCC may complete its records. The OCC allows the institution 18 months from the conversion approval date to open these approved branches if not inconsistent with applicable law. The branch approvals and authorizations automatically terminate for any branches not opened within that time period, unless the OCC grants an extension.

Main or Home Office Location

Under certain circumstances and as part of the conversion, an institution may wish to designate that the main or home office of the resulting national bank or FSA, respectively, will be at a site other than the current main or home office site of the institution being converted. In such cases, the applicant should consult with the OCC. If the main or home office relocation occurs before conversion, the OCC has no jurisdiction (unless the depository institution is a national bank or FSA), but it may affect the OCC's evaluation of

[14] Approved but unopened branches of a converting depository institution are branches that have been legally approved by the applicant's current regulators, but the branches have not opened at the time of the effective date of the conversion. The OCC generally honors these branch approvals without requiring new branch applications with the OCC, provided the branches remain legal after conversion.

the application. If the relocation occurs immediately after the conversion, an application with the OCC to relocate the office may be required. For institutions converting to national banks, designations of the main office location (city or village, county and state) must be reflected in the organization certificate,[15] and generally are stated in the articles of association. For institutions converting to FSAs, such designations must be reflected in the federal mutual or stock charters.[16]

Activities of Subsidiaries

An applicant seeking to convert to a federal bank must identify all subsidiaries, service corporation investments, bank service company investments, and other equity investments that it will retain following the conversion. The conversion application should include a complete description of the activities and all other information that would be required for a national bank or FSA to establish or acquire an operating, statutory, or financial subsidiary or other investment under the notice, certification, or application provisions of applicable laws and regulations.[17]

The OCC analyzes the permissibility of the activities and whether the performance of such activities by federal banks is consistent with the safe and sound operation of the bank and maintenance of a safe and sound banking system. The OCC requests a legal analysis if the permissibility of the subsidiary's activities or of the equity investment is unclear. Refer to the "Subsidiaries and Equity Investments" booklet of the *Comptroller's Licensing Manual* for specific information. The OCC's decision on the operating, statutory, or financial subsidiary's activities and on the permissibility of other equity investments is included in the conversion decision as applicable. If the OCC approves the conversion, but objects to an operating, statutory, or financial subsidiary, or objects to an equity investment, it instructs the applicant to divest the subsidiary or the equity investment before consummation or within a specific period of time as may be necessary to enable the nonconforming subsidiary to be resolved without undue hardship, generally two years.

Nonconforming Assets and Activities

Permanent Retention

The OCC may permit[18] a state depository institution converting to a national bank to permanently retain assets it holds that otherwise would be nonconforming assets. The OCC considers a request from an FSA converting to a national bank to retain nonconforming assets, generally not for more than two years.

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[15] Refer to 12 USC 22.

[16] Refer to 12 CFR 5.21 and 5.22.

[17] Refer to 12 CFR 1, 5.34, 5.35, 5.36, 5.38, 5.39, 5.58, and 5.59.

[18] Refer to 12 USC 35.

The applicant must identify all nonconforming assets (including nonconforming subsidiaries) that it holds and request prior approval to permanently retain them. Full details regarding the asset should be provided, including a description, when the assets were acquired, and their value. An approval to permanently retain the assets may be subject to conditions and an OCC determination of the carrying value of the retained assets.

The applicant should submit a legal opinion describing how the nonconforming assets comply with laws that pertain to the pre-converted state-chartered institution if the applicant wishes to permanently retain the assets after conversion.

Temporary Retention

The OCC may give[19] a converting depository institution a reasonable period of time, generally not to exceed two years after conversion, to divest or conform any nonconforming assets or activities, including nonconforming subsidiaries, not being permanently retained. A reasonable period of time is given so that the converting depository institution may take the necessary action without undue hardship.

The OCC considers if any conditions are appropriate in granting permission to retain non-conforming assets or activities, and the carrying value of the assets.

If the applicant wishes to divest or conform nonconforming assets or activities, the application must identify and provide information regarding the assets or activities. In addition, the application should describe the plan to divest or conform those assets or activities and should outline the period of time needed.

Noncontrolling Interests

The OCC may permit a converting depository institution to permanently or temporarily retain noncontrolling interests held in other entities and in other equity investments if such retention is consistent with applicable law. The applicant must identify all noncontrolling interests that it will retain after the conversion. The applicant should identify whether it desires permanent or temporary retention, whether conformance or divestiture will be necessary, and any time frame necessary for conformance or divestiture. In addition, information must be provided that would normally be provided if applying to establish or acquire a noncontrolling interest pursuant to 12 CFR 5.36(e) or 5.58.

Business Plan

The depository institution should include a business plan in the application if it has been chartered less than three years; if there will be a significant change in the institution's operations, strategy, market area, funding, loan composition, portfolio, products, or services after the conversion; or if the OCC deems one appropriate. If the OCC does not require a business plan, the depository institution should submit a representation that no significant

[19] Refer to 12 CFR 5.23(d)(2)(iii) and 5.24(e)(3).

changes will be made to the institution's operations for a period of three years after conversion.

Capital

Federal banks are subject to certain statutory and regulatory minimum capital requirements. Institutions considering conversions should refer to 12 CFR 3 for the required minimal acceptable capital ratios for national banks and FSAs, and 12 CFR 6, which specifies supervisory actions restricting the activities of federal banks categorized as undercapitalized, significantly undercapitalized, or critically undercapitalized.

The adequacy of the capital structure should be discussed in the application relative to internal and external risks; operational and financial assumptions, including technology, branching, and operating expenses; and any off-balance-sheet activities.

For institutions converting to national banks, capital stock may be divided into shares of no more than $100 each, as set forth in 12 USC 52, or a lesser amount as provided in the articles of association. Common stock may be par value stock or no par stock.

Federal mutual savings associations issue no capital stock and therefore have no stockholders. Mutual savings associations build capital almost exclusively through retained earnings.

Directors

Depository institution directors may continue to be directors after the conversion until successors are elected or appointed in accordance with applicable provisions of law, the institution's articles of association or charter, and its bylaws.[20]

A national bank's board must consist of at least five directors. If a national bank's board consists of more than 25 directors, prior notice must be provided to the OCC and the OCC must approve an exemption to the 25-director limit.[21] Every national bank director must own qualifying shares of the capital stock upon conversion to a national bank in compliance with 12 USC 72 and 12 CFR 7.2005. Directors must also submit to the OCC a signed oath (either individually or jointly). In addition, national banks may adopt bylaws that provide for staggered terms for their directors.[22] National bank directors may hold office for no more than three years, and thereafter must be reelected. Furthermore, the president of a national bank must be a member of the board.[23]

[20] Refer to 12 CFR 5.23(g) and 5.24(i).

[21] Refer to 12 USC 71a.

[22] Refer to 12 USC 71.

[23] Refer to 12 USC 76.

An FSA's board must consist of no fewer than five and no more than 15 directors, as set by the association's bylaws, unless otherwise approved by the OCC.[24] Directors of mutual or stock FSAs may be elected for a one- to three-year term until their successors are elected and qualified. Bylaws may be adopted to provide for staggered terms.[25] Directors of a mutual FSA are required to be members of the association; directors of a stock FSA, however, need not be stockholders of the association unless the bylaws so require. In addition, there is no requirement for an FSA's president to be a board member unless the bylaws so require. Each director must also submit to the OCC a signed oath.

Citizenship and Residency Requirements

All national bank directors must comply with the residency and citizenship requirements set forth in 12 USC 72. The law requires that every director of a national bank be a citizen of the United States for the entire term of service. If the converting depository institution wishes to elect or appoint one or more non-U.S. citizens to its board of directors, the institution may request a waiver of the citizenship requirement from the OCC. The OCC may waive the requirement of citizenship for no more than a minority of the total number of directors of any national bank. Additional information on waivers is in the "National Bank Director Waivers" booklet of the *Comptroller's Licensing Manual*.

The law also requires that a majority of a national bank's directors reside in the state where the bank is located (that is, the state in which the bank has its main office or branches) or within 100 miles of its main office for at least one year immediately preceding their election. In addition, directors must maintain their state residency or reside within 100 miles of the location of the main office during their term in office. The OCC may waive the residency requirement in certain circumstances upon request. Additional information on waivers is contained in the "National Bank Director Waivers" booklet of the *Comptroller's Licensing Manual*.

An FSA's board of directors is not subject to citizenship and residency requirements. The composition of the board, however, is subject to the following requirements of 12 CFR 163.33:

- A majority of the directors must not be salaried officers or employees of the savings association or of any subsidiary thereof.
- Not more than two of the directors may be members of the same immediate family.
- Not more than one director may be an attorney with a particular law firm.

Compensation Arrangements

The applicant should describe all outstanding and proposed stock awards, options, warrants, or other similar stock-based compensation plans offered as compensation to the depository

[24] Refer to 12 CFR 5.21 and 5.22.

[25] Refer to 12 CFR 5.21(j)(2)(viii) and 5.22(l)(2).

institution's directors, executive officers, principal shareholders, and other insiders. Such disclosure should be made regardless of whether a compensation arrangement is at the bank or holding company level.

Ownership

Applicants must submit in the application a list of individuals, directors, and shareholders who directly or indirectly or acting in concert with one or more persons or companies, or together with members of his or her immediate family, own, control, or hold or will own, control, or hold 10 percent or more of the institution's stock, as applicable. Depending on the circumstances, persons who control the converting depository institution under the definition in 12 CFR 5.50 may be required to file a change in bank control notice. Additional information on the requirements of 12 CFR 5.50 may be found in the "Change in Bank Control" booklet of the *Comptroller's Licensing Manual.*

Background Investigations

In addition to the above requirements, applicants must also submit a list of directors and senior officers. Applicants must indicate any positions and offices currently held, or to be held, by these individuals with the institution, the institution's holding company, or its affiliates. Applicants may be required to submit an Interagency Biographical and Financial Report and fingerprint cards on these individuals. The OCC reserves the right to require submission of either or both sections of the report. As appropriate, the OCC may conduct background investigations on certain directors, executive officers, or principal shareholders. Additional information on the background check process is in the "Background Investigations" booklet of the *Comptroller's Licensing Manual*.

Insurance

Fidelity Bond

The federal bank's board of directors is responsible for the adequacy of the fidelity bond and other insurance needs.

Before a federal bank opens for business, its board must assess the four factors listed in 12 CFR 7.2013 and obtain adequate fidelity bond coverage. The four factors are

- internal auditing safeguards employed.
- number of employees.
- amount of deposit liabilities.
- amount of cash and securities normally held by the bank.

Credit Insurance

Pursuant to 12 USC 24(Seventh) and 12 CFR 2, national banks may underwrite, reinsure, or act as agent in the sale of credit life, accident, disability, and health (credit-related insurance products) in connection with consumer and mortgage loans made by the national bank and affiliated and unaffiliated lenders without geographic restriction. National banks that sell credit life insurance to loan customers must credit all income and handle bonus and incentive plans and bank compensation related to that activity as described in 12 CFR 2.[26] The institution's directors should select a means of marketing the insurance to accomplish that objective. The directors are responsible for ensuring that the program complies with all federal and state banking and applicable insurance laws.

FSAs may sell credit-related insurance on an agency basis without geographic restriction. FSAs may also underwrite or reinsure credit insurance through operating subsidiaries and, with OCC approval, through service corporations.

Federal Home Loan Bank Membership

National banks and FSAs may be members of the Federal Home Loan Bank (FHLB) system but are not required to be members. If the converting depository institution is a member of the FHLB system and at any time ceases to be a member, it must use its best efforts, including contacting the appropriate FHLB or the Federal Housing Finance Agency, to dispose of any stock in the FHLB. The OCC will consider the stock a nonconforming asset if the institution is not a member of the FHLB system. Once membership has been terminated, the FHLB has discretion and may also require that any FHLB advances be repaid at that time.

Federal Reserve Membership

National banks must be members of the Federal Reserve System.[27] If not already a member, a depository institution converting to a national bank must also apply to purchase the required amount of stock in the appropriate Federal Reserve Bank.[28]

FSAs cannot be members of the Federal Reserve System.[29] They may, however, avail themselves of services provided by the Federal Reserve Banks.

[26] Refer to OCC Bulletin 2010-24, "Interagency Guidance on Sound Incentive Compensation Policies."

[27] Refer to 12 USC 222.

[28] Refer to 12 CFR 209.

[29] Refer to 12 USC 321.

Fiduciary Powers

An institution seeking to convert to a national bank or FSA and exercise fiduciary powers must request and obtain prior OCC approval. This requirement applies uniformly to all depository institutions seeking to expand or exercise fiduciary powers regardless of whether they currently exercise them. If the converting depository institution requests approval to exercise fiduciary powers, the institution must also comply with the procedures in 12 CFR 5.26. Refer to the "Fiduciary Powers" booklet of the *Comptroller's Licensing Manual*. A separate trust application is not required, but an applicant should include a request for approval or expansion of fiduciary powers as part of its conversion application that includes all relevant information.

Risk Management

A federal bank should have an internal audit system, internal controls, and information systems that are appropriate for the institution's size, complexity, and geographic diversity and the nature, scope, and risk of the institution's activities.[30] The internal audit function should provide for adequate monitoring of the institution's internal controls. Some federal banks may elect to adopt a system that incorporates independent reviews instead of dedicated audit staff. Refer to the "Internal and External Audits" booklet of the *Comptroller's Handbook*. Federal banks should conduct their internal audit and outsourced internal audit activities in accordance with OCC Bulletin 2003-12, "Interagency Policy Statement on the Internal Audit and Internal Audit Outsourcing." Bank staff responsible for implementing sound risk management systems performs those duties independent of the bank's risk-taking activities.

All insured depository institutions with $500 million or more in consolidated total assets are required by 12 CFR 363 to have an independent external audit of their financial statements. In addition, under 12 CFR 11, federal banks registered under the Securities Exchange Act of 1934 are required to have external audits. For federal banks with less than $500 million in total assets, the external audit function should comply with OCC Bulletin 1999-37, "Interagency Policy Statement on External Auditing Programs." This policy statement reiterates the long-standing OCC philosophy of encouraging all federal banks to have independent external audits of their operations and financial records.

In addition, the OCC has issued enforceable final guidelines and regulations that establish minimum standards for the design and implementation of a risk governance framework for large insured banks with over $50 billion in average total consolidated assets under OCC Bulletin 2014-45, "Heightened Standards for Large Banks: Integration of 12 CFR 30 and 12 CFR 170," and 12 CFR 30. These guidelines and regulations also establish minimum standards for an institution's board of directors in overseeing the framework. Refer to appendix C of the "Charters" booklet of the *Comptroller's Licensing Manual* for further information on risk management.

[30] Refer to 12 CFR 30, appendix A.

Conversion of Special Purpose Banks

Special purpose depository institutions may convert to federally chartered banks. These banks offer limited products or services, serve a limited customer base or narrowly defined market niche, incorporate nontraditional elements, or have a narrowly focused business plan. Special purpose banks must meet the same statutory and regulatory requirements as other federally chartered banks, unless applicable laws or regulations provide otherwise. The OCC requires each special purpose bank to indicate the nature of its operations in its articles of association or charter.

Applicants should tailor the contents of the conversion application consistent with the nature of its special purpose line of business. The OCC's review of a special purpose proposal may exceed traditional processing time frames because of the time needed to evaluate the supervisory risks associated with these proposals. Refer to the "Charters" booklet of the *Comptroller's Licensing Manual* for a discussion of the types of special purpose banks, the supervisory risk associated with each, and the OCC's expectations and requirements for these banks. Applicants also should refer to OCC Bulletin 1996-11, "Community Reinvestment Act: Guidelines for Approval for a Strategic Plan & Wholesale or Limited Purpose Institution."

Liquidation Account

A mutual savings association undertaking a mutual-to-stock conversion is required to create a liquidation account in a dollar amount equal to its net worth as of the latest practicable date before the conversion. Each eligible account holder and supplemental eligible account holder has a pro rata inchoate interest in the liquidation account. This interest cannot increase but is reduced by any subsequent decrease in the person's account balance as of the end of any subsequent fiscal year of the savings association. The interest is eliminated if the account holder closes his or her account. The liquidation account is recalculated on an annual (fiscal year) basis. Thus, the liquidation account created in the conversion preserves the liquidation rights of account holders to the net worth of the mutual association existing at the time of conversion.

In the event of liquidation, eligible and supplemental eligible account holders who hold accounts from the time of the conversion until liquidation are entitled to a priority distribution from the institution's net worth, after creditors, but before any distributions are made to stockholders. The liquidation account is not recorded in the financial statements of the converted institution and does not otherwise restrict the use of the capital of the converted association. The liquidation account must be disclosed in the footnotes to the financial statements.

If the converted institution subsequently is involved in a merger or acquisition, the resulting depository institution must assume the liquidation account. For example, if a stock FSA (acquiring association) acquires a stock FSA that was originally a mutual savings association (target association), the acquiring association must assume the target association's liquidation account. In the event the acquiring association engages in a complete liquidation, the target

association's eligible and supplemental eligible account holders who continue to have deposits at the acquiring association would be entitled to a distribution (pursuant to the distribution priorities).

For purposes of this booklet, when a depository institution with an existing liquidation account converts to a federal charter, the resulting national bank or FSA is expected to maintain the liquidation account. If it does not, the conversion would be considered a liquidation for purposes of the liquidation account.

Home Owners' Loan Act Requirements

An institution that converts to an FSA is required to be a qualified thrift lender (QTL) under the HOLA QTL test in 12 USC 1467a(m) or the Internal Revenue Service tax code Domestic Building and Loan Association (DBLA) test in 26 USC 7701(a)(10) and 26 CFR 301.7701-13A. An FSA may use either test and may switch from one test to the other. An FSA must meet the standard of the QTL test nine out of every 12 months; the DBLA test is an annual measure. If the institution converting to an FSA does not meet the QTL test, the applicant must include a plan to achieve compliance within a reasonable time and a request for an exception from the OCC.

Under the QTL test, an FSA must hold 65 percent of its portfolio as qualified thrift investments (QTI). There are two categories of QTI: assets that are includable without limit and assets that are limited to 20 percent of portfolio assets.[31]

In addition to QTL requirements, HOLA imposes requirements regarding the composition of an FSA's assets.[32] Under HOLA and its implementing regulations, there is no limit on the residential home loans that an FSA can make, invest in, or purchase. Commercial loans, however, are limited to 20 percent of total assets, provided that amounts in excess of 10 percent of total assets may be used only for small business loans. Nonresidential real estate loans are limited to 400 percent of an FSA's capital, while consumer loans (including commercial paper and corporate debt securities) are limited to 35 percent of total assets.[33]

National banks are not required to be QTLs or meet the QTL or DBLA tests. There are no limitations by law or regulation on the aggregate amount of mortgage, consumer, or commercial loans a national bank may hold; national banks, however, should exercise prudent risk management of concentrations of credit.

[31] Refer to 12 USC 1467a(m) for further information on QTI and the "Qualified Thrift Lender" booklet of the *Comptroller's Handbook*.

[32] Refer to 12 USC 1464(c) and 12 CFR 160.

[33] Refer to 12 USC 1464(c) and 12 CFR 160 for further information on FSA loan limits.

Dodd–Frank Requirements

State-chartered banks or savings associations converting to federal banks are subject to section 612 of Dodd–Frank. Section 612 imposes restrictions on such conversions while the institution is subject to a cease-and-desist order (or other enforcement order) issued by, or a memorandum of understanding entered into with, its current federal banking agency or state bank supervisor with respect to a significant supervisory matter. For state banks and state savings associations, the conversion is also prohibited if the institution is subject to a final enforcement action by a state attorney general. The OCC rarely grants exceptions and only in cases in which the institution has already substantially addressed the matters in the enforcement action or there are substantial changes in circumstances (e.g., new ownership or new management). Refer to OCC Bulletin 2012-39, "Interagency Statement on Section 612 of the Dodd–Frank Act: Restrictions on Conversions of Troubled Banks."

Conversion Examination

The OCC usually conducts a conversion examination to obtain relevant information about the condition of the institution and its qualifications to convert before making its decision. If the OCC schedules a conversion examination, the OCC may assess a separate fee. The OCC has the authority to waive the examination fee.

Provided the OCC is approving the application and an examination fee was paid (or waived), the licensing office may provide a copy of the examination findings to the applicant with the conversion decision, if warranted. The report of findings includes a clear warning against improper use or disclosure of the report.[34] Management is responsible for correcting deficient practices found in the conversion examination as directed by the OCC if the conversion consummates. The OCC may share the information obtained in the examination with institution-affiliated parties and other regulators.

Post-Conversion Supervisory Activities

The OCC strives to deliver to federal banks high-quality bank supervision focused on the accurate evaluation and management of risks. Supervisory efforts are directed toward identifying material or emerging concerns and problems and ensuring that they are corrected appropriately.

The OCC supervises its federal banks through continuous on- and off-site supervisory activities and periodic monitoring. These activities help the OCC determine the condition of individual banks and the overall stability of the federal banking system. Details regarding the supervision of federal banks are provided in the "Bank Supervision Process," "Community Bank Supervision," and "Large Bank Supervision" booklets of the *Comptroller's Handbook*. Examiners also perform a periodic business plan analysis for those banks that were required to submit a business plan during the conversion process.

[34] Refer to 12 CFR 4.

Examinations

All converted insured national depository institutions, including converted insured trust banks, must receive full-scope examinations as prescribed by 12 USC 1820(d). Generally, an insured converted national bank or FSA must receive a full-scope examination within 12 months of the date of its last full-scope examination conducted by a federal banking agency or its last examination by its state regulator, if the examination met Federal Financial Institutions Examination Council guidelines. The time period may be extended to 18 months from its last examination if the bank meets the standard statutory criteria for such an extension. Qualifying well-capitalized and well-managed national banks and FSAs with less than $1 billion in total assets may be eligible for an 18-month examination cycle. The timing of the first full-scope examination may be influenced by whether a conversion examination was performed; if increased risks, concerns, or weaknesses are identified; or if the converted bank is pursuing a nontraditional strategy.

A converted uninsured trust bank or an uninsured trust bank formed exclusively from the business existing in a national or state-chartered bank normally will receive a full-scope examination within 12 months of the date of its last full-scope examination conducted by a federal banking agency. The time period may be extended to 18 months from its last examination if the bank meets the standard criteria for such an extension.

Procedures: Standard

Prefiling

1. (Suggested) Request a prefiling meeting to discuss the proposal, discuss the factors that may influence the OCC's review of the application, and review the procedures for conversion to a national bank or FSA.

Filing the Application

2. Submit a complete conversion application, signed by the institution's president or other duly authorized officer, to the appropriate licensing office.

Organization Procedures

3. Identify any material changes to the filing and provide notice of such changes to the licensing office.

4. After receiving OCC approval, complete all steps required to convert. Refer to the completion certifications for national bank or FSA conversions and other applicable documents.

5. Apply for and receive any other required regulatory approvals, and provide copies of those approvals to the OCC.

6. If a conversion examination was conducted, verify that pertinent deficiencies found have been corrected.

7. Submit the completion certifications (referenced above) to the licensing office certifying the conversion's completion and attesting to the satisfactory resolution of any conditions imposed in the approval letter.

Glossary

Depository institution: Generally means any commercial bank (including private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, or an industrial bank or credit union chartered in the United States and having its principal office located in the United States. This definition includes national banks and FSAs. For purposes of this booklet, mutual and stock forms of depository institutions may apply to convert to a federal mutual savings association or federal stock savings association, respectively. The OCC allows federal credit unions to convert to federal mutual savings associations. A state bank, a stock state savings association, or a federal stock savings association may convert to a national bank.

Eligible bank or eligible savings association: A national bank or FSA that

- is well capitalized as defined at 12 CFR 6.4(b)(1).
- has a composite CAMELS composite rating of 1 or 2.
- has a satisfactory or outstanding CRA rating, if applicable.[35]
- has a consumer compliance rating of 1 or 2 under the Uniform Interagency Consumer Compliance Rating System.
- is not subject to a cease-and-desist order, consent order, formal written agreement, or prompt corrective action directive or, if subject to any such order, agreement, or directive, is informed in writing by the OCC that the bank may be treated as an "eligible bank."

Eligible depository institution: A national bank or FSA that meets the criteria for an "eligible bank" or "eligible savings association" and is FDIC-insured.

Fiduciary powers: The authority that the OCC permits a national bank or FSA to exercise pursuant to 12 USC 92a and 1464(n), respectively. National banks and FSAs may exercise the powers afforded fiduciaries under the laws of the state(s) in which the national bank or FSA is operating. For each individual state, an FSA may conduct fiduciary activities in the capacity of trustee, executor, administrator, or guardian, or in any other fiduciary capacity the state permits for its state banks, trust companies, or other corporations that compete with FSAs in the state. If the national bank or FSA conducts fiduciary activities in more than one state, the bank may designate from among those states the state used for section 92a or 1464(n) purposes, respectively.

Savings association or savings bank: Includes a mutual or stock-owned state savings association and a savings and loan association.

State bank: This term includes any bank, banking association, trust company, savings bank (other than a mutual savings bank), or other banking institution engaged in the business of

[35] The CRA does not apply to an uninsured bank or a special purpose bank or savings association as described in 12 CFR 25.11(c) and 195.11(c), as applicable, or a credit union.

receiving deposits and incorporated under the laws of any state or any territory of the United States, Puerto Rico, or the Virgin Islands, or operating under the code of law for the District of Columbia. Mutual savings banks are specifically excluded from this definition by 12 USC 214(a). A mutual savings bank or any other "state bank," as defined above, that has a mutual form of ownership may need to convert to a stock form of ownership before converting to a national bank.

References

In this section, "NB" denotes that the referenced law, regulation, or issuance applies to national banks, and "FSA" denotes that the reference applies to federal savings associations.

Accounting
Comptroller's Licensing Manual, "Business Combinations" (NB and FSA)

Articles of Association, Charters, and Bylaws

Law	12 USC 21 (NB), 1464 (FSA)
Regulation	12 CFR 5.21 and 5.22 (FSA)

Audits

Regulation	12 CFR 11 (NB), 162 (FSA), 30 and 363 (NB and FSA)

Comptroller's Handbook, "Internal and External Audits" (NB and FSA)
OCC Bulletin 1999-37, "Interagency Policy Statement on External Auditing Programs" (NB and FSA)
OCC Bulletin 2003-12, "Interagency Policy Statement on Internal Audit and Internal Audit Outsourcing" (NB and FSA)

Background Investigation

Regulation	28 CFR 16.34 and 50.12 (NB and FSA)

Bank Secrecy Act

Regulation	12 CFR 21.21 (NB and FSA) 31 CFR 1010 and 1020 (NB and FSA)

Branches

Law	12 USC 36 (NB), 1464(m) and 1464(r) (FSA)
Regulation	12 CFR 5.30 (NB), 5.31 (FSA)

Capital

Law	12 USC 35, 36, 52, 56, and 60 (NB), 1464(s) and 1464(t) (FSA)
Regulation	12 CFR 3 and 6 (NB and FSA)

Community Reinvestment Act

Law	12 USC 2901–2908 (NB and FSA)
Regulation	12 CFR 25 (NB), 195 (FSA)

OCC Bulletin 1996-11, "Community Reinvestment Act: Guidelines for Approval for a Strategic Plan & Wholesale or Limited Purpose Institution" (NB and FSA)

Conversion

Law	12 USC 35 and 214d (NB), 1464(i) (FSA)
Regulation	12 CFR 5.23 (FSA), 5.24 (NB)

Corporate Powers and Investment Securities

Law	12 USC 24, 35, and 83 (NB), 1464 and 1831e (FSA)
Regulation	12 CFR 1 and 7.2020 (NB), 160.30 (FSA)

OCC, "Summary of the Powers of National Banks and Federal Savings Associations" (NB and FSA)

Decisions

Regulation	12 CFR 5.13 (NB and FSA)

Depository Institution Management Interlocks Act

Law	12 USC 3201–3208 (NB and FSA)
Regulation	12 CFR 26 (NB and FSA)

Directors

Law	12 USC 71 and 71a (NB)

Citizenship

Law	12 USC 72 (NB)

Composition

Regulation	12 CFR 163.33 (FSA)

Election

Law	12 USC 61, 71, and 75 (NB)
Regulation	12 CFR 5.21 and 5.22 (FSA), 7.2003 and 7.2006 (NB)

Oath of

Law	12 USC 73 (NB)
Regulation	12 CFR 7.2008 (NB)

President as

Law	12 USC 76 (NB)
Regulation	12 CFR 7.2012 (NB)

Qualifications

Law	12 USC 72 (NB)
Regulation	12 CFR 7.2005 (NB), 163.33 (FSA), 5.20 (NB and FSA)

Residency
Law 12 USC 72 (NB)

Responsibilities
Regulation 12 CFR 5.21 and 5.22 (FSA), 7.2010 (NB)

The Director's Book: Role of Directors for National Banks and Federal Savings Associations (NB and FSA)

Expedited Review
Regulation 12 CFR 5.23(d)(4) (FSA), 5.24(g) (NB), 5.3 and 5.13 (NB and FSA)

Factors Considered in Granting/Retention of Deposit Insurance
Law 12 USC 1814(c) (NB and FSA)

Authorizing Certificate
Law 12 USC 1815 and 1816 (NB and FSA)

Federal Reserve Membership
Law 12 USC 222 and 501a (NB)
Regulation 12 CFR 209 (NB)

Fidelity Insurance
Law 12 USC 1828(e) (NB and FSA)
Regulation 12 CFR 7.2013 (NB)

Fiduciary Power
Law 12 USC 92a (NB), 1464(n) (FSA)
Regulation 12 CFR 5.26 (NB and FSA)

Filing Fee
Regulation 12 CFR 5.5 and 8.6 (NB and FSA)

Investigation, Examination, and Required Information
Law 12 USC 481 (NB)
Regulation 12 CFR 5.7 and 8.6 (NB and FSA)

Investment in Bank Premises
Law 12 USC 29 and 371d (NB)
Regulation 12 CFR 5.37 (NB and FSA), 7.1000 (NB)

Non-Controlling Investments
Regulation 12 CFR 5.36(e) (NB)

Organization Certificate
Law 12 USC 1814 and 1816 (NB and FSA)

Authority to Transact Banking Business
Law 12 USC 26 and 27 (NB)

Capital Stock Certificates
Law 12 USC 52 (NB)

Filing/Preservation of
Law 12 USC 23 (NB)

Organization
Law 12 USC 22 (NB)

Organization of National Bank or Federal Savings Association
Law 12 USC 21, 21a, 22, 23, and 24 (NB), 1464 (FSA)
Regulation 12 CFR 5.20 (NB and FSA)

Place of Business
Law 12 USC 81 (NB)

Prohibited Lottery Activities
Law 12 USC 25a (NB), 1463 (FSA)

Public Notice
Regulation 12 CFR 5.8 (NB and FSA)

Security Devices and Procedures
Law 12 USC 1882 (NB and FSA)
Regulation 12 CFR 21 (NB), 168 (FSA)

Shareholders' List
Law 12 USC 62 (NB)

State Banks
Law 12 USC 35, 214 (NB)

Statutory Subsidiaries
Law 12 USC 29 and 371d (NB), 1464 and 1828(m) (FSA)
Regulation 12 CFR 5.36(d) (NB), 5.37(d)(4) (FSA)

Subsidiaries and Equities

Agricultural Credit Corporation
Law 12 USC 24(Seventh) (NB)

Bank Service Companies
Law 12 USC 1861–1867 (NB and FSA)
Regulation 12 CFR 5.35 (NB and FSA)

Financial Subsidiaries
Law 12 USC 24a (NB)
Regulation 12 CFR 5.39 (NB)

Operating Subsidiaries
Law 12 USC 24(Seventh) (NB), 1828(m) (FSA)
Regulation 12 CFR 5.34 (NB), 5.38 (FSA)

OCC Bulletin 2004-55, "Annual Report on Operating Subsidiaries: Final Rule" (NB)

Other Equity Investments
Law 12 USC 24(Seventh) (NB), 1464 (FSA)
Regulation 12 CFR 5.36 (NB), 5.58 (FSA)

Service Corporations
Law 12 USC 1464(c)(4)(B) (FSA)
Regulation 12 CFR 5.59 (FSA)

Small Business Investment Companies
Law 12 USC 682(b) (NB), 1464(c)(4)(D) (FSA)
Regulation 12 CFR 7.1015 (NB)

Title Changes
Law 12 USC 22, 30, and 35 (NB), 1464 (FSA)
Regulation 12 CFR 5.20(f) and 5.42 (NB and FSA)

Table of Updates Since Publication

Version 1.0: Published January 19, 2017			
Version number	**Date**	**Reason**	**Affected pages**
1.1	August 17, 2018	Corrected booklet title and hyperlink	12
1.1	August 17, 2018	Added links to Oath of Bank Directors	14, 15
1.1	August 17, 2018	Corrected booklet title and hyperlink	15

EXHIBIT D

Office of the
Comptroller of the Currency

COMPTROLLER'S LICENSING MANUAL

General Policies and Procedures

July 2017

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Introduction

The *Comptroller's Licensing Manual* is a collection of booklets that explain the Office of the Comptroller of the Currency (OCC) policies and procedures that pertain to a national bank or federal savings association (FSA) (collectively, banks) or other entities when engaging in various corporate transactions, such as organizing a new bank, a business combination, establishing or closing a branch, establishing subsidiaries, making certain changes to capital or debt, and other transactions.

The "General Policies and Procedures" booklet is an introduction to the other booklets that compose the *Comptroller's Licensing Manual* and should be used alongside the other booklets to prepare specific types of applications or notices (collectively, filings). This booklet describes how to submit filings to the OCC, the filing process, and how the OCC reviews and makes decisions on filings. This booklet is a procedural guide only and might not list all factors that may be assessed during the OCC's analysis.

Key Policies

Information Technology

Central Application Tracking System

Required filings may be submitted in paper to the appropriate OCC licensing office, but the OCC strongly encourages electronic filings. The OCC's electronic filing system, called the Central Application Tracking System (CATS), allows applicants[1] to complete and submit certain filings online. Some forms can be completely filled out online, while other forms and supporting documents may be completed offline and uploaded individually.

CATS is accessed through BankNet, the OCC's secure website for communicating with and receiving information from banks. All banks can access BankNet after proper registration in the BankNet system. For more information about filing licensing applications or notices through CATS, including BankNet registration instructions and CATS user manuals, refer to the Licensing Division home page on the OCC's website.

BankNet Large File Transfer Tool

BankNet users can securely transmit files of any size to the OCC by using the BankNet Large File Transfer tool. The tool automatically encrypts the files as they upload into the OCC folder selected to receive the transfer. For more information on access and use of the tool, visit the BankNet Communications Center.

Secure E-Mail

The OCC has a secure e-mail system for communication between OCC employees and bank representatives. When an OCC employee sends a secure e-mail message, the recipient receives a notification that an encrypted e-mail was sent. The recipient follows the link in the notification to retrieve the message. If the recipient is not registered for OCC encrypted e-mail, the recipient is prompted to register before the message can be read. For more information and to register for this service, visit the BankNet Communications Center.

General Filing Instructions

Prefiling Discussions and Meetings

The OCC encourages potential applicants to contact the OCC to discuss corporate proposals before filing applications or notices. Prefiling communications can be informal discussions (for example, telephone or conference calls) or more formalized prefiling meetings.

[1] "Applicant" refers to a person or entity that submits a notice or application to the OCC.

An applicant can request a prefiling meeting with licensing staff to review a proposed transaction and the applicable processing steps. The OCC may require a prefiling meeting to discuss the submission requirements and appropriate policies and procedures relating to a proposed filing (for example, charters). As discussed in 12 CFR 5.4(f), the OCC decides whether to require a prefiling meeting on a case-by-case basis.[2]

Applicants requesting OCC approval of an activity or transaction involving novel, precedential, or highly complex or sensitive issues should contact licensing staff in the appropriate OCC licensing office to discuss the issues before submitting the filing. This prefiling discussion facilitates the applicant's ability to prepare the filing effectively and completely. It also enhances the OCC's ability to process the filing.

The processing office for most filings is the OCC licensing office responsible for the state in which the bank is located (refer to Licensing Office Contacts). Innovative filings, filings by certain of the largest banks, and filings from banks supervised by the Washington field office are usually processed in the OCC's Headquarters licensing office in Washington, D.C.

Responsibility

The OCC expects each applicant to accurately and completely prepare its filing. Each applicant certifies that its filing and supporting materials submitted to the OCC contain no material misrepresentations or omissions. Any person who misrepresents or omits facts in a filing or supporting materials may be subject to enforcement actions or other penalties, including criminal penalties, provided in 18 USC 1001 and 1014.

Each applicant should

- submit all necessary information about the proposed transaction to help the OCC reach an informed decision.
- provide complete and accurate responses to the questions contained in all relevant application and notice forms (refer to the *Comptroller's Licensing Manual* page on the OCC's website). If the answer is "not applicable," "unknown," or "none," the applicant should so state. Answers of "unknown" should be explained.
- provide a cross-reference to a specific cite or location of documents attached as supporting information. Applicants do not need to duplicate information supplied on another form or in another exhibit of the same filing.
- determine compliance with all applicable statutes and regulations.

Each applicant must notify the OCC of any significant change to a proposal, whether the change occurs before or after the OCC's initial decision. If the OCC discovers a material misrepresentation or omission after deciding the filing, it may nullify or revoke its decision.

[2] A mutual FSA converting to stock form is the one instance when a prefiling meeting is mandatory. Refer to 12 CFR 192.100.

Requests for Confidential Treatment

An applicant or an interested person submitting information to the OCC may request that specific information be treated as confidential when the materials are submitted. The request should

- indicate precisely which portions of a document are considered confidential.
- discuss the justification for the requested treatment and specifically demonstrate the harm (for example, loss of competitive position or invasion of privacy) that would result from public release of the information.
- generally not extend to an entire filing.

If the OCC does not consider the information to be confidential, the OCC may include that information in the public file after providing notice to the submitter. In addition, the OCC may, at its own initiative, determine that certain information should be treated as confidential and withhold that information from the public file.

Certain filings may include personally identifiable information (PII). The term "PII" refers to information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual. Examples of PII include an individual's first name or first initial and last name, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics (for example, fingerprints), date or place of birth, mother's maiden name, or medical data. If this type of information is lost, compromised, or disclosed without authorization, it can cause substantial harm, embarrassment, inconvenience, or injustice to an individual, including identity theft. Applicants should request confidential treatment for portions of a filing containing PII.

The applicant should separate confidential information from nonconfidential information and label the confidential portion as such. The OCC encourages applicants to further separate PII into its own separate confidential section of the filing. The filing should include a comprehensive index or table of contents that identifies each item or section for which confidential treatment is being requested.

If a filing is submitted through CATS, the applicant is asked to identify each document uploaded into CATS as public, confidential, or PII. The applicant, however, must still request confidential treatment and, where sought, provide justification for that treatment within the filing, as described above.

Sample Forms and Filing Requirements

Sample forms for OCC filings are located on the *Comptroller's Licensing Manual* page on the OCC's website.

In lieu of using the OCC's sample forms, applicants may submit a form, application, or other document that has been submitted to another federal agency, if that submission covers the proposed transaction and contains substantially the same information that the OCC requires.

Each applicant may submit its original filing by one of the following methods: entry into CATS, hand delivery, regular mail, mail with return receipt requested, or express or overnight mail service (for example, FedEx, Express Mail, or United Parcel Service). Applicants may submit additional information by any of those methods or by OCC secure e-mail to the appropriate OCC licensing office.

Fees

The OCC publishes a fee schedule at least annually in a bulletin titled "Office of the Comptroller of the Currency Fees and Assessments." A copy of the current bulletin and notice of any fee suspensions are available in the News and Issuances section on the OCC's website.

Unless the OCC has waived the filing fee requirement, the appropriate fee must be paid by means listed in the bulletin.

The OCC generally does not refund fees. When justified by the OCC's processing cost or in extenuating circumstances, however, the OCC may grant a request for a fee waiver, reduction, or refund (fee concession). To request a fee concession, the applicant should make a written request, including justification, to the appropriate OCC licensing office before or simultaneously with submission of its filing. The OCC decides all requests individually. A fee concession may be warranted for

- a corporate reorganization when numerous affiliates are being combined, but only one analysis is needed.
- a transaction when multiple filings are necessary to comply with statutory or regulatory requirements.
- a filing necessitated by a natural disaster.

Publication

Applicants for certain types of transactions must publish newspaper notices as required by laws or regulations (public notice). A comment period, during which the public may provide comment to the OCC, follows the public notice. The relevant *Comptroller's Licensing Manual* booklets discuss the specific publication requirement for each type of filing. The "Public Notice and Comments" booklet also contains a general discussion of public notice requirements.

Weekly Bulletin

The OCC publishes online the Weekly Bulletin, which provides notice of the OCC's receipt of, and actions taken by the OCC on, applications and notices filed with the OCC for the following: new charters, new branches, mergers, conversions, fiduciary powers, subsidiaries, relocation of main offices and branches, changes in corporate title, branch closings, changes in bank control, terminations, and transactions involving federal branches and agencies. Although the Weekly Bulletin provides additional information to the public, it does not satisfy applicants' public notice requirements.

Communications

The OCC encourages each applicant to appoint a contact person to serve as its primary liaison. To enhance communications between the OCC and the applicant and to expedite handling, the OCC encourages contact persons to use the CATS-assigned OCC control number, which identifies each filing uniquely, on all communications during the filing process.

Interested parties can file written comments to support or oppose a proposed transaction or activity during the public comment period. (Refer to the "Public Notice and Comments" booklet.) The OCC encourages banks and interested persons, including community groups, to communicate continuously on matters of material interest, not only when an application is filed.

When public comments are received, the OCC provides the commenter with a copy of the decision letter upon deciding the filing. (Refer to the "Public Notice and Comments" booklet.) A member of Congress who files a congressional inquiry also receives a copy of the OCC's decision from the OCC's Congressional Relations Division.

Requests for Copies of Public Portion of Applications and Notices

While a filing is pending with the OCC, the OCC licensing office may provide the public portion of a filing to any person who requests it. The public file consists of those portions of the filing, supporting data, and supplementary information that was submitted by the applicant and by interested persons and not afforded confidential treatment.

To obtain the public portion of a pending filing, a requestor should submit a written request (using postal mail or e-mail) to the appropriate OCC licensing office.[3] To obtain the public portion of a closed or decided filing, a requestor should submit a written request to the Office of the Comptroller of the Currency, Communications Division, 400 7th St. SW, Suite 3E-218, Washington, DC 20219, or complete a request online.

[3] The OCC posts to the Freedom of Information Act Electronic Reading Room on the OCC website the public portions of all business combination applications.

A requestor seeking information on an application or notice beyond the public file should submit that request online, under the procedures described in 12 CFR 4, subpart B.

The OCC may impose a fee for research and duplication expenses in accordance with 12 CFR 4.17 and at the rate the OCC publishes in the "Notice of Comptroller of the Currency Fees" described in 12 CFR 8.8.

Requests for Comments From Other Agencies

The OCC responds routinely to requests for comments from the following:

- The Federal Deposit Insurance Corporation (FDIC) and the Board of Governors of the Federal Reserve System (FRB) on anti-money laundering efforts of banks involved in a merger.
- The FDIC and the FRB on proposed acquisitions under the Change in Bank Control Act.
- The FRB on Regulation K[4] applications from national banks, acquisitions of banks by existing bank holding companies, or proposed holding company formations by banks.
- The FRB regarding applications filed pursuant to 12 USC 1842 involving the acquisition of bank shares or assets of a national bank.[5]

Filing Review Process

Licensing staff review each filing upon receipt to determine whether the filing contains all information necessary to reach a decision. Licensing staff

- request additional information from the applicant, if the filing does not contain all required information.
- solicit input from appropriate OCC staff (for example, legal, supervision, and compliance).
- process each filing in a timely manner.

Please refer to the booklets within the *Comptroller's Licensing Manual* for more specific information related to the requirements for each filing type.

Expedited Review and Standard Review

For certain filings, the OCC grants an eligible bank expedited review. For this purpose, "eligible bank or eligible savings association" means a national bank or FSA that (1) is well

[4] Regulation K addresses foreign operations of FRB member banks and applications pertaining to the establishment of foreign branches. Edge Act and Agreement corporations, investments in foreign companies and subsidiaries, and requests to engage in new activities are not specifically authorized by the regulation.

[5] Refer to 12 USC 1842(b). If the OCC disapproves of the application within 30 days of the FRB's request for comments, the FRB must hold a hearing on the application and decide whether to approve the application based on the information presented at the hearing.

capitalized as defined in 12 CFR 6.4; (2) has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System; (3) has a Community Reinvestment Act (CRA) rating of "outstanding" or "satisfactory," if applicable; (4) has a consumer compliance rating of 1 or 2 under the Uniform Interagency Consumer Compliance Rating System; and (5) is not subject to a cease-and-desist order, consent order, formal written agreement, or prompt corrective action directive, or, if subject to any such order, is informed in writing by the OCC that the national bank or FSA may be treated as an "eligible bank or eligible savings association" for purposes of 12 CFR 5. (Refer to 12 CFR 5.3.) Refer to the applicable *Comptroller's Licensing Manual* booklet for further details on whether expedited treatment is available.

When an applicant submits two or more related filings jointly, if not all the submissions meet the qualifications for expedited review, expedited procedures do not apply to any of the filings, and the OCC follows standard review procedures. If all the filings qualify for expedited review, they are decided as of the end of the longest applicable time period, unless the OCC has advised the applicant that the filings will not be given expedited treatment.

The OCC notifies the applicant in writing if the expedited review period has been extended or if a filing is removed from expedited review. The OCC may extend the expedited review period or remove a filing from expedited review if it concludes that the filing, or an adverse comment regarding the filing, presents a significant supervisory, CRA, or compliance concern, or raises a significant legal or policy issue that requires additional OCC review.[6]

If one or more adverse public comments are received, the OCC will not extend the expedited review period or remove a filing from expedited review if it determines the adverse comments

- do not raise a significant supervisory, CRA (if applicable), or compliance concern;
- do not raise a significant legal or policy issue that requires additional OCC review;
- are frivolous or filed primarily as a means of delaying action on the filing; or
- raise a CRA concern that the OCC determines has been satisfactorily resolved.[7] (Refer to the "Public Notice and Comments" booklet.)

Additional Information Requests

Although the OCC strives to ask applicants for additional information or opinions at the earliest possible date, it may make that request at any time during the processing of a filing. At the same time that it requests additional information, the OCC provides the applicant with a due date for its response. A request for additional information does not suspend the review period for filings accorded expedited review. Failure to provide the information within the time frame required, however, could result in a filing being removed from expedited review, delayed, conditionally approved, denied, deemed materially deficient, or deemed abandoned.

[6] Refer to 12 CFR 5.13(a)(2)(i).

[7] Refer to 12 CFR 5.13(a)(2)(ii).

If additional information substantially changes the nature of the original filing, the OCC may direct an applicant to republish the public notice and provide the public with another opportunity for comment.

Consolidated Entity

In its analysis of a filing, the OCC considers the activities, resources, and condition of affiliates of the applicant that reasonably may reflect on or affect the applicant.

For example, the OCC recognizes that the strength of a parent company, combined with the direct support it offers, might mitigate supervisory concerns about an applicant. Conversely, the OCC recognizes when the applicant's condition may be affected by the less than satisfactory condition of its parent or affiliate companies. Accordingly, the OCC considers the extent to which the applicant's condition is affected by the overall condition of the consolidated entity.

Approval or Conditional Approval

The OCC determines whether approval is consistent with applicable laws, regulations, policies, and safety and soundness considerations. Criteria applicable to each type of filing are contained in the respective *Comptroller's Licensing Manual* booklet.

The OCC may condition its approval of an application or notice if it determines that one or more conditions are necessary or appropriate to ensure that approval is consistent with applicable laws, regulations, and OCC policies. Examples of possible conditions include

- conditions that limit the activities that a bank subsidiary may conduct or that set standards for how certain activities may be conducted.
- supervisory conditions that require adherence to a capital or CRA plan.

Conditions that the OCC imposes in the approval of an application or notice are enforceable under 12 USC 1818. The conditions remain in effect after the effective date or consummation date of an approved transaction or activity and continue until the OCC removes them. In decision letters that include references to enforceability, the following language is inserted in a separate paragraph that follows the list of conditions:

> This condition of approval is a condition "imposed in writing by a federal banking agency in connection with any action or any application, notice, or other request" within the meaning of 12 USC 1818. As such, the condition is enforceable under 12 USC 1818.

Safeguard Agreements

In certain cases, the OCC conditions approval of a filing on the applicant entering into and complying with certain safeguard agreements. The OCC typically imposes such conditions in transactions involving limited purpose banks, such as trust banks and credit card banks, to

address the specific risks inherent in those banks. The OCC may also impose conditions that require a bank to enter into safeguard agreements to address unique issues or provide additional support for the bank in other situations.

The OCC may use the following safeguard agreements, among others:

- **Operating Agreement (OA):** An OA is a written agreement between the OCC and a bank that sets forth specific requirements to which a bank must adhere. The requirements typically include, among others, minimum capital and liquidity levels, prior notice of significant changes to a bank's business plan, and board and committee independence standards.[8]
- **Capital Assurance and Liquidity Maintenance Agreement (CALMA):** A CALMA is a written agreement between a bank and its parent company that requires the parent company to provide financial support if the bank is unable to meet its capital or liquidity minimums as required in the OA.
- **Capital and Liquidity Support Agreement (CSA):** A CSA is similar to a CALMA and is used in addition to the CALMA when the parent company is not a bank holding company or savings and loan holding company regulated by the FRB.

Consummation Requirements

The OCC imposes standard requirements on many filings that must be met before completing the proposed transaction (for example, opening a bank or a branch or completing a merger). In addition, the OCC imposes other consummation requirements that applicants must satisfy before the OCC will issue a letter certifying that the proposed transaction was completed. Please refer to the booklets in the *Comptroller's Licensing Manual* for more specific information related to the requirements for each filing type.

Denial

The OCC may deny a filing if

- a significant supervisory, CRA, or compliance concern exists with respect to the applicant or proposal.
- approval would be inconsistent with applicable law, regulation, or OCC policy.
- the applicant fails to provide, within the time frame required, information that the OCC requested to make an informed decision.

Materially Deficient

The OCC may return a filing without a decision if it finds the filing to be materially deficient. A filing is materially deficient if it lacks sufficient information for the OCC to make a determination under the applicable statutory or regulatory criteria.

[8] OAs issued in the context of a licensing filing are not enforcement actions.

Abandonment

A filing must contain information required by the applicable regulation and the appropriate form, and as described in the appropriate booklet of the *Comptroller's Licensing Manual.* If an applicant fails to provide required or additional requested information within the time period specified by the OCC, the OCC may deem the filing abandoned and return the filing to the applicant.

Time Considerations

12 USC 4807 requires that the OCC (and all other federal banking agencies) take final action on any application before the end of a one-year period beginning on the date on which a completed application is received. Applicants may waive this requirement for any filing; the OCC, however, expects to render a decision on each filing well in advance of the one-year deadline.

Post-Decision Issues

Satisfaction Survey

The OCC includes a Satisfaction Survey with certain decision letters to applicants. The OCC welcomes comments and uses them to improve licensing policies and procedures.

Extension of Time

When the OCC approves or conditionally approves a filing, the approval expires at a specified date if the applicant does not consummate the transaction or commence the new or expanded activity by that date. The OCC normally does not grant extensions. In extenuating circumstances, however, an applicant may request an extension of the approval from the appropriate OCC licensing office. The applicant must provide sufficient information to prove that the reason for the delay is beyond its control.

Nullifying a Decision

After rendering a decision on a filing, the OCC may nullify its decision if it discovers

- a material misrepresentation or omission.
- the decision is contrary to law, regulation, or OCC policy.
- approval was granted due to a clerical or administrative error, or a material mistake of law or fact.

Appeal

An applicant may appeal an OCC decision under policy and procedures discussed in OCC Bulletin 2013-15, "Bank Appeals Process: Guidance for Bankers." Applicants may file an informal appeal with the appropriate OCC licensing office director or a formal appeal to the Deputy Comptroller for Licensing or the Ombudsman.

Removal or Modification of Condition of Approval

An applicant may request that the OCC remove or modify a condition that was imposed in a final decision. The request should be in writing and include the OCC control number, a description of the condition imposed that the bank wishes to modify or have removed, and a detailed justification for such modification or removal. A board of directors' resolution approving the request to modify or remove the condition should accompany the request.

Copy of the OCC Decision on a Filing

Final decisions on filings are available to the public. Requests for those decisions should be directed to the Office of the Comptroller of the Currency, Communications Division, 400 7th St. SW, Suite 3E-218, Washington, DC 20219. Requests for final decisions generally are answered within 20 business days of receipt.

Specific Requirements

Filings for Undercapitalized Banks

Pursuant to 12 USC 1831o, an undercapitalized bank[9] shall not acquire, directly or indirectly, any interest in any company or depository institution, establish or acquire any additional branch office, or engage in any new line of business unless the OCC has accepted the bank's capital restoration plan, the bank is implementing the plan, and the OCC has determined that the proposed action is consistent with and will further the achievement of the plan; or the FDIC determines that the proposed action will further the purposes of 12 USC 1831o.

Community Reinvestment Act

Congress enacted the CRA to require federal bank and thrift regulators to encourage insured depository institutions to help meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institutions. In accordance with the CRA, the OCC considers an applicant's record of CRA performance in deciding applications for the following:

- Establishment of a domestic branch
- Relocation of a main, home, or branch office

[9] Refer to 12 CFR 6.4(c) for the definition of an undercapitalized bank.

- Business combination
- Conversion to a federal charter

On the Interpretations and Actions page of its website, the OCC publishes decision letters that address CRA-related issues in licensing applications. (Refer to the "Public Notice and Comments" booklet for further discussion of the effect of CRA on an application.)

National Historic Preservation Act and National Environmental Policy Act

The OCC considers historical preservation and environmental factors in deciding filings for the following:

- New bank charters
- Establishment of federal branches and agencies
- Establishment of domestic branches and seasonal agencies
- Relocation of existing bank offices

Regarding these filings, the applicant should not take any action that may affect a historic property or the quality of the human environment before contacting the OCC. Such actions include site preparation, demolition, alteration, renovation, and construction. (Please refer to the appropriate booklets of the *Comptroller's Licensing Manual* for additional discussion of the applicable National Historic Preservation Act and National Environmental Policy Act requirements.)

Glossary

Applicant: A person or entity that submits a notice or application to the OCC.

Application: A submission requesting prior OCC approval to engage in various corporate activities or transactions.

Appropriate OCC licensing office: (1) The licensing office in the location where the bank's supervisory office is located; (2) Headquarters licensing for the five largest banks and those banks supervised out of Washington, D.C.

Complete filing: A filing that is fully responsive to each request for information included in the relevant form and includes any information the OCC may subsequently request, or otherwise provides adequate information when considered together with other information available to the OCC for its decision.

Filing: An application or a notice submitted to the OCC.

Eligible bank or eligible savings association: As defined in 12 CFR 5.3(g), a bank that

- has a composite CAMELS rating of 1 or 2.
- has a consumer compliance rating of 1 or 2.
- has a satisfactory or better CRA rating. (This factor does not apply to an uninsured bank, an uninsured federal branch, or a special purpose bank covered by 12 CFR 25.11(c)(3) or 195.11(c)(2).)
- is well capitalized as defined in 12 CFR 6.4.
- is not subject to a cease-and-desist order, consent order, formal written agreement, or prompt corrective action directive, or, if subject to any such order, agreement, or directive, is informed in writing by the OCC that the bank still may be treated as an "eligible bank."

Holding company: Any company that controls or proposes to control a bank regardless of whether the company is a bank holding company under 12 USC 1841(a)(1) or a savings and loan holding company under 12 USC 1467a.

Incomplete filing: A filing that is not fully responsive to each item of information included in the relevant form or that the OCC determines lacks adequate information, when considered together with other available information, for the OCC to make its decision.

Low- and moderate-income areas: A low-income area is one where median family income is less than 50 percent of the area median family income. A moderate-income area is one where median family income is at least 50 percent and less than 80 percent of the area median family income. An area (or geography) is defined as a census tract delineated by the U.S. Census Bureau in the most recent decennial census.

Notice: A submission notifying the OCC that an applicant (1) intends to engage in certain corporate activities or transactions or (2) has begun certain corporate activities or transactions (see **application** and **filing**).

Public file: For an application or notice, the public file consists of those portions of the filing, supporting data, and supplementary information submitted by the applicant and information submitted by interested persons that have not been afforded confidential treatment by the OCC.

Undercapitalized bank: An FDIC-insured depository institution that meets the criteria established in 12 CFR 6.4(c)(3).

References

In this section, references apply to both national banks (NB) and FSAs unless noted otherwise that the referenced law, regulation, or issuance applies to NBs or FSAs.

Appeals Process
Regulation 12 CFR 5.13(f)

OCC Bulletin 2013-15, "Bank Appeals Process: Guidance for Bankers" (June 7, 2013)

Community Reinvestment Act
Law 12 USC 2901–2908
Regulation 12 CFR 25 (NB), 12 CFR 195 (FSA)

Definitions
Regulation 12 CFR 5.3

Expedited Review of Filings
Regulation 12 CFR 5.13(a)(2)

Extension of Time for Review of Filings
Regulation 12 CFR 5.13(g)

Fees
Regulation 12 CFR 8.8

Freedom of Information Act
Law 5 USC 552
Regulation 12 CFR 4

Misrepresentations or Omissions
Law 18 USC 1001

National Environmental Policy Act
Law 42 USC 4321–4347
Regulation 40 CFR 1500

National Historic Preservation Act
Law 54 USC 300101 et seq.
Regulation 36 CFR 800

Publication Requirement
Regulation 12 CFR 5.8

Public Comment
Regulation 12 CFR 5.10

Public File Availability
Regulation 12 CFR 5.9