

I. INTRODUCTION

Upon application, a savings bank (as defined in section 3(g) of the Federal Deposit Insurance (FDI) Act) and an insured cooperative bank (as defined in section 3(h) of the FDI Act) shall be deemed to be a savings association pursuant to Section 10(l) of the Home Owners' Loan Act (HOLA), if the appropriate Primary Federal Regulator (PFR) determines that such bank is a qualified thrift lender (QTL), as determined under Section 10(m) of HOLA. This process is called a 10(l) election and allows the institution's parent company (or companies, in the case of a multi-tiered parent company structure) to operate as a savings and loan holding company, rather than as a bank holding company.¹ The 10(l) election can be made by an existing state savings bank or state cooperative bank, or in conjunction with the conversion of a federal savings bank or association to a state savings bank or state cooperative bank. In the latter case, the Case Manager should also use the instruction in *Savings Association Conversions*, Section 11.2 of these Procedures.

The QTL status potentially impacts an institution's ability to engage in certain activities, establish branch offices, pay dividends, or retain certain investments. This Section sets forth the application process for institutions seeking to be deemed a savings association under Section 10(l). The application process is focused on the institution proving it meets either of the two QTL tests described in Section 10(m) of the HOLA. This Section also describes the notification process for institutions seeking to revoke an existing 10(l) election.

II. THE QUALIFIED THRIFT LENDER TEST

Section 10(m) of the HOLA sets forth the QTL test, which requires the following:

- The savings association qualifies as a domestic building and loan association (DBLA) (as defined in section 7701(a)(19) of the Internal Revenue Code of 1986)² or the savings association's qualified thrift investments (QTI)³ equal or exceed 65 percent of the savings association's portfolio assets⁴; and
- The savings association's qualified thrift investments continue to equal or exceed 65 percent of the portfolio assets on a monthly average basis in 9 out of every 12 months.

The institution must remain a QTL to maintain its savings association status. If the level of qualifying assets falls below the QTL thresholds, the institution may become subject to restrictions with respect to certain activities, branching, and dividend payments. The status of the institution's holding company (or companies) as a savings and loan holding company (or companies) may also be impacted. If an institution fails to maintain its QTL status, it may re-qualify as a QTL. The FDIC may grant temporary and limited

¹ Certain activities that are permissible for a savings and loan holding company, such as acquiring, developing, improving, managing, and maintaining real estate, are generally not permissible for a bank holding company.

² In order to meet the domestic building and loan association test, an institution must meet a business operation test and an asset test. The business operations test requires that the business consists primarily of acquiring the savings deposits of the public and investing into loans. The asset test requires the institution to maintain a level of certain defined assets at or above 60 percent of total assets (as of the close of the taxable year or based on the average assets outstanding during the taxable year). However, an institution may alternate between the QTI test and the DBLA test without limitation.

³ As defined in Section 10(m)(4)(C) of the HOLA.

⁴ The term "portfolio assets" means the total assets of the savings association, minus the sum of (i) goodwill and other intangible assets; (ii) the value of property used by the savings association to conduct its business; and (iii) liquid assets of the type required to be maintained under section 6 of the HOLA (12 U.S.C. 1465), as in effect on the day before December 27, 2000, in an amount not exceeding the amount equal to 20 percent of the savings association's total assets (12 U.S.C. 1467a(m)(4)(B)). An institution ceases to be a QTL if the QTI-to-portfolio assets calculation is below 65 percent at month-end in any four of the preceding twelve months.

exceptions from the minimum actual thrift investment percentage required for compliance as a QTL. It is anticipated, however, that any temporary relief or exception⁵ will be rare and subject to close scrutiny.

The institution is responsible for establishing processes to ensure that it remains a QTL. For state savings associations, as well as state savings banks and cooperative banks that have been deemed savings associations, QTL status and QTL monitoring processes will be assessed as part of the normal supervisory process. The supervisory strategy for the institution should be adjusted if the 10(l) election results in a change in the institution's business model or risk profile.

III. FORM OF APPLICATION

A state savings bank or state cooperative bank that seeks to be deemed a savings association for the purposes of Section 10(l) of the HOLA should submit a letter application to the appropriate Regional Office (RO) that includes the reason for the election, the status of any related applications for conversion, and documentation demonstrating that the institution qualifies as a QTL. Documentation could include details of the monthly ratio of QTI to portfolio assets for each of the past 12 months, and either a worksheet that details the ratio calculation, or documentation reflecting that the institution qualifies as a QTL under the Domestic Building and Loan Association (DBLA) test.

IV. ACCEPTING AND PROCESSING THE APPLICATION

Case Managers should review and process 10(l) election applications following the steps below. Refer to Section 1.1 of these Procedures, *Applications Overview*, for general information regarding receipt and acceptance of applications.⁶

1. Establish the application tracking record in the internal system of record within three business days of receipt under Other Applications - HOLA 10(l) Election, and update the appropriate system of record accordingly while reviewing and processing the application. The *Transaction Description* comment should describe the reason for the election and include a brief summary of any conversion, if appropriate, as well as the status of any related applications for conversion. In all cases, dates and comments in the record should be updated regularly to reflect any changes regarding the details of the request, including the current status of the application.
2. Review the application for completeness and request additional information, if necessary. If filings to other agencies are involved, the Case Manager should coordinate with the applicant and the applicable state regulatory authority and PFR to ensure that responses to all information requests are promptly provided to the FDIC.
3. Prior to approving an application, the FDIC must confirm that the institution qualifies as a QTL under one of the two tests.

⁵ Typically, these are granted when the PFR determines that extraordinary circumstances exist, such as when the effects of high interest rates reduce mortgage demand to such a degree that an insufficient opportunity exists for a savings association to meet such investment requirements; or such exception will significantly facilitate an acquisition under section 13(c) or 13(k) of the Federal Deposit Insurance Act; the acquired association will comply with the transition requirements of paragraph (7)(B); and the exemption will not have an undue adverse effect on competing savings associations in the relevant market.

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

4. Review the applicant's QTL calculations for accuracy. If the applicant has not been fully compliant with the QTL test in at least nine of the preceding 12 months, the applicant will generally be given an opportunity to withdraw the application and may submit a new application after the institution has been compliant for at least nine of the preceding 12 months.
5. Complete the appropriate Summary of Investigation (SOI) form - Other Applications.⁷ Designate the type of application as Other - HOLA 10(l) Election. Retrieve the Application Summary Statement from the system of record and attach to the SOI. The narrative portion of the SOI should include the following:
 - A summary of the application, including the reason for the HOLA 10(l) election and any related filings;
 - A description of the institution's business model, financial condition, operating structure (including significant subsidiary/affiliate relationships), and risk profile and any related changes resulting from the 10(l) election;
 - An analysis of management, including any outstanding regulatory recommendations;
 - A summary of the views, actions, and/or recommendations of the other applicable regulatory agencies;
 - Legal analysis;
 - An assessment of QTL compliance; and
 - A statement regarding the RO's recommended action, including any non-standard conditions to be implemented. The Case Manager should obtain the applicant's written agreement to any non-standard conditions. See *Standard and Non-standard Conditions*, Section 1.11 of these Procedures, for additional instructions regarding the imposition of conditions.

The extent to which each of the above items is addressed in the SOI will depend on the facts and circumstances of the specific application. For example, in situations where there are no planned changes in business activities or strategic focus and the institution has historically been satisfactorily rated and managed, commentary can be brief.

6. If approval is being recommended, the Case Manager should prepare a draft approval letter. The approval letter should include the following language:

The FDIC has reviewed the request and has determined that the Bank satisfies the criteria to be a Qualified Thrift Lender (QTL) pursuant to §10(m) of the Home Owners' Loan Act (HOLA), and therefore meets the requirements to be deemed a savings association for purposes of §10(l) of the HOLA. The Bank must remain in compliance with the QTL test to maintain its savings association status, and should establish processes to ensure that it satisfies the QTL test on a continuing basis. If the level of qualifying assets falls below the QTL test thresholds, the Bank may become subject to restrictions with respect to certain new activities, branching, and dividend payments. [if applicable: Further, the Bank's parent company would be required to register as a bank holding company within one year of the Bank failing to maintain QTL status].

If the Bank fails to satisfy the QTL test on a continuing basis, the Bank may requalify as a QTL under certain circumstances. If you have any questions concerning this letter, please contact [insert appropriate name and title].

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

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

V. PROCESSING REQUESTS TO REVOKE AN EXISTING HOLA 10(I) ELECTION

The HOLA and the relevant regulations do not articulate requirements for revocation of a HOLA 10(I) election. With no statutory basis for an application or an application process promulgated in accordance with the Administrative Procedure Act, a notice to the FDIC and the FDIC's non-objection to the notice is sufficient for revocation of an institution's HOLA 10(I) election.

The Case Manager should instruct the institution to submit a letter notification to the RO that includes the reason(s) for the revocation request, and a discussion of any recent or planned changes to the institution's business plan, if relevant. Case Managers should also review the notification in the context of any related applications. Case Managers are to process such notices following the steps below:

1. Establish the application tracking record in the internal system of record within three business days of receipt under Other Applications - HOLA 10(I) Revocation, and update the record while reviewing and processing the request. In all cases, dates and comments in the record should be updated regularly to reflect the current status.
2. Review the notification for completeness and request any additional information, if necessary. If related filings to other agencies are involved, the Case Manager should coordinate with the institution and the applicable state regulatory authority and PFR to ensure that responses to all information requests are promptly provided to the FDIC.
3. Review the notification and communicate any follow-up questions, issues, and/or information needs to the institution and the other applicable regulatory agencies.
4. Complete the appropriate SOI form.⁸ Designate the type of application as Other – HOLA 10(I) revocation. Retrieve the Application Summary Statement from the system of record and attach to the SOI. The narrative portion of the SOI should include or describe the following:
 - Summary of the notice, including the reason for the 10(I) revocation and any related filings;
 - Summary of the institution's business plan and risk profile; and any related changes resulting from the 10(I) revocation; and
 - Statement regarding the RO's recommended action.
5. The Case Manager should prepare the draft approval letter, which should state that the effective date of the revocation is the date the parent company becomes a bank holding company, if applicable, and should request that the institution notify the RO of the consummation date.

⁸ Case Managers should follow the general instructions and SOI requirements for all types of applications found in *Summary of Investigation*, Section 1.2 of these Procedures, as well as the specific instructions in this Section.

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

VI. TIME FRAME FOR PROCESSING

Statutory: None.

RO Processing Guideline: 30 days from receipt of a substantially complete application for the HOLA 10(l) election or notification for the HOLA 10(l) revocation.

VII. PUBLICATION REQUIREMENT

None.

VIII. DELEGATED AUTHORITY

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

IX. REFERENCES

Section 10(l) of the Home Owners' Loan Act (12 U.S.C. §1467a(l))

Section 10(m) of the Home Owners' Loan Act (12 U.S.C. §1467a(m))

FFIEC Instructions for Preparation of Consolidated Reports of Condition and Income, Schedule RC-M, Item No. 15.