

conversion confidential under paragraph (b) of this section.

(b) You may request OTS to keep portions of your application confidential. To do so, you must separately bind and clearly designate as “confidential” any portion of your application for conversion that you deem confidential. You must provide a written statement specifying the grounds supporting your request for confidentiality. OTS will not treat as confidential the portion of your application describing how you plan to meet your Community Reinvestment Act (CRA) objectives. The CRA portion of your application may not incorporate by reference information contained in the confidential portion of your application.

(c) OTS will determine whether confidential information must be made available to the public under 5 U.S.C. 552 and part 505 of this chapter. OTS will advise you before it makes information you designated as “confidential” available to the public.

§ 563b.165 How do I amend my application for conversion?

To amend your application for conversion, you must:

- (a) File an amendment with an appropriate facing sheet;
- (b) Number each amendment consecutively;
- (c) Respond to all issues raised by OTS; and
- (d) Demonstrate that the amendment conforms to all applicable regulations.

NOTICE OF FILING OF APPLICATION AND COMMENT PROCESS

§ 563b.180 How do I notify the public that I filed an application for conversion?

(a) You must publish a public notice of the application in accordance with the procedures in subpart B of part 516 of this chapter. You must simultaneously prominently post the notice in your home office and all branch offices.

(b) Promptly after publication, you must file four copies of any public notice and an affidavit of publication from each publisher. You must file the original and one copy with the Applications Filing Room in Washington, and two copies with the appropriate Re-

gional Office at the addresses in § 516.40 of this chapter.

(c) If OTS does not accept your application for conversion under § 563b.200 and requires you to file a new application, you must publish and post a new notice and allow an additional 30 days for comment.

[69 FR 68250, Nov. 24, 2004]

§ 563b.185 How may a person comment on my application for conversion?

Commenters may submit comments on your application in accordance with the procedures in subpart C of part 516 of this chapter. A commenter must file the original and one copy of any comments with the Applications Filing Room in Washington and two copies with the appropriate Regional Office at the addresses in § 516.40 of this chapter.

[69 FR 68250, Nov. 24, 2004]

OTS REVIEW OF THE APPLICATION FOR CONVERSION

§ 563b.200 What actions may OTS take on my application?

(a) OTS may approve your application for conversion only if:

- (1) Your conversion complies with this part;
- (2) You will meet your regulatory capital requirements under part 567 of this chapter after the conversion; and
- (3) Your conversion will not result in a taxable reorganization under the Internal Revenue Code of 1986, as amended.

(b) OTS will review the appraisal required by § 563b.150(a)(2) in determining whether to approve your application. OTS will review the appraisal under the following requirements.

(1) Independent persons experienced and expert in corporate appraisal, and acceptable to OTS, must prepare the appraisal report.

(2) An affiliate of the appraiser may serve as an underwriter or selling agent, if you ensure that the appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or affect the appraisal.

(3) The appraiser may not receive any fee in connection with the conversion other than for appraisal services.

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(4) The appraisal report must include a complete and detailed description of the elements of the appraisal, a justification for the appraisal methodology, and sufficient support for the conclusions.

(5) If the appraisal is based on a capitalization of your pro forma income, it must indicate the basis for determining the income to be derived from the sale of shares, and demonstrate that the earnings multiple used is appropriate, including future earnings growth assumptions.

(6) If the appraisal is based on a comparison of your shares with outstanding shares of existing stock associations, the existing stock associations must be reasonably comparable in size, market area, competitive conditions, risk profile, profit history, and expected future earnings.

(7) OTS may decline to process the application for conversion and deem it materially deficient or substantially incomplete if the initial appraisal report is materially deficient or substantially incomplete.

(8) You may not represent or imply that OTS approved the appraisal.

(c) OTS will review your compliance record under part 563e of this chapter and your business plan to determine how you will serve the convenience and needs of your communities after the conversion.

(1) Based on this review, OTS may approve your application, deny your application, or approve your application on the condition that you will improve your CRA performance or that you will address the particular credit or lending needs of the communities that you will serve.

(2) OTS may deny your application if your business plan does not demonstrate that your proposed use of conversion proceeds will help you to meet the credit and lending needs of the communities that you will serve.

(d) OTS may request that you amend your application if further explanation is necessary, material is missing, or material must be corrected.

(e) OTS will deny your application if the application does not meet the requirements of this subpart, unless OTS waives the requirement under § 563b.5(c).

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§ 563b.205 May a court review OTS's final action on my conversion?

(a) Any person aggrieved by OTS's final action on your application for conversion may ask the court of appeals of the United States for the circuit in which the principal office or residence of such person is located, or the U.S. Court of Appeals for the District of Columbia Circuit, to review the action under 12 U.S.C. 1464(i)(2)(B).

(b) To obtain court review of the action, this statute requires the aggrieved person to file a written petition requesting that the court modify, terminate, or set aside the final OTS action. The aggrieved person must file the petition with the court within the later of 30 days after OTS publishes notice of OTS's final action in the FEDERAL REGISTER or 30 days after you mail the proxy statement to your members under § 563b.235.

VOTE BY MEMBERS

§ 563b.225 Must I submit the plan of conversion to my members for approval?

(a) After OTS approves your plan of conversion, you must submit your plan of conversion to your members for approval. You must obtain this approval at a meeting of your members, which may be a special or annual meeting, unless you are a state-chartered savings association and state law requires you to obtain approval at an annual meeting.

(b) Your members must approve your plan of conversion by a majority of the total outstanding votes, unless you are a state-chartered savings association and state law prescribes a higher percentage.

(c) Your members may vote in person or by proxy.

(d) You may notify eligible account holders or supplemental eligible account holders who are not voting members of your proposed conversion. You may include only the information in § 563b.135 in your notice.

§ 563b.230 Who is eligible to vote?

You determine members' eligibility to vote by setting a voting record date. You must set a voting record date that is not more than 60 days nor less than