

## § 191.6

## 12 CFR Ch. I (1–1–17 Edition)

with an option to purchase will allow the exercise of a due-on-sale clause);

(v) A transfer, in which the transferee is a person who occupies or will occupy the property, which is:

(A) A transfer to a relative resulting from the death of the borrower;

(B) A transfer where the spouse or child(ren) becomes an owner of the property; or

(C) A transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse becomes an owner of the property; or

(vi) A transfer into an inter vivos trust in which the borrower is and remains the beneficiary and occupant of the property, unless, as a condition precedent to such transfer, the borrower refuses to provide the lender with reasonable means acceptable to the lender by which the lender will be assured of timely notice of any subsequent transfer of the beneficial interest or change in occupancy.

(2) A lender shall not impose a prepayment penalty or equivalent fee when the lender or party acting on behalf of the lender.

(i) Declares by written notice that the loan is due pursuant to a due-on-sale clause or

(ii) Commences a judicial or non-judicial foreclosure proceeding to enforce a due-on-sale clause or to seek payment in full as a result of invoking such clause.

(3) A lender shall not impose a prepayment penalty or equivalent fee when the lender or party acting on behalf of the lender fails to approve within 30 days the completed credit application of a qualified transferee of the security property to assume the loan in accordance with the terms of the loan, and thereafter the borrower transfers the security property to such transferee and prepays the loan in full within 120 days after receipt by the lender of the completed credit application. For purposes of this paragraph (b)(3), a *qualified transferee* is a person who qualifies for the loan under the lender's applicable underwriting standards and who occupies or will occupy the security property.

(4) A lender waives its option to exercise a due-on-sale clause as to a specific transfer if, before the transfer, the lender and the existing borrower's prospective successor in interest agree in writing that the successor in interest will be obligated under the terms of the loan and that interest on sums secured by the lender's security interest will be payable at a rate the lender shall request. Upon such agreement and resultant waiver, a lender shall release the existing borrower from all obligations under the loan instruments, and the lender is deemed to have made a new loan to the existing borrower's successor in interest. The waiver and release apply to all loans secured by homes occupied by borrowers made by a Federal savings association after July 31, 1976, and to all loans secured by homes occupied by borrowers made by other lenders after the effective date of this regulation.

(5) Nothing in paragraph (b)(1) of this section shall be construed to restrict a lender's right to enforce a due-on-sale clause upon the subsequent occurrence of any event which disqualifies a transfer for a previously-applicable exception under that paragraph (b)(1).

(c) *Policy considerations.* Paragraph (b) of this section does not prohibit a lender from requiring, as a condition to an assumption, continued maintenance of mortgage insurance by the existing borrower's successor in interest, whether by endorsement of the existing policy or by entrance into a new contract of insurance.

### § 191.6 Interpretations.

The OCC periodically will publish Interpretations under section 341 of the Garn-St Germain Depository Institutions Act of 1982, Public Law 97-320, 96 Stat. 1469, 1505-1507, in the FEDERAL REGISTER in response to written requests sent to the OCC.

### PART 192—CONVERSIONS FROM MUTUAL TO STOCK FORM

Sec.

192.5 What does this part do?

192.10 May I form a holding company as part of my conversion?

192.15 May I form a charitable organization as part of my conversion?

192.20 May I acquire another insured stock depository institution as part of my conversion?

192.25 What definitions apply to this part?

**Subpart A—Standard Conversions**

**PRIOR TO CONVERSION**

192.100 What must I do before a conversion?

192.105 What information must I include in my business plan?

192.110 Who must review my business plan?

192.115 How will the appropriate Federal banking agency review my business plan?

192.120 May I discuss my plans to convert with others?

**PLAN OF CONVERSION**

192.125 Must my board of directors adopt a plan of conversion?

192.130 What must I include in my plan of conversion?

192.135 How do I notify my members that my board of directors approved a plan of conversion?

192.140 May I amend my plan of conversion?

**FILING REQUIREMENTS**

192.150 What must I include in my application for conversion?

192.155 How do I file my application for conversion?

192.160 May I keep portions of my application for conversion confidential?

192.165 How do I amend my application for conversion?

**NOTICE OF FILING OF APPLICATION AND COMMENT PROCESS**

192.180 How do I notify the public that I filed an application for conversion?

192.185 How may a person comment on my application for conversion?

**AGENCY REVIEW OF THE APPLICATION FOR CONVERSION**

192.200 What actions may the appropriate Federal banking agency take on my application?

192.205 May a court review the appropriate Federal banking agency's final action on my conversion?

**VOTE BY MEMBERS**

192.225 Must I submit the plan of conversion to my members for approval?

192.230 Who is eligible to vote?

192.235 How must I notify my members of the meeting?

192.240 What must I submit to the appropriate Federal banking agency after the members' meeting?

**PROXY SOLICITATION**

192.250 Who must comply with these proxy solicitation provisions?

192.255 What must the form of proxy include?

192.260 May I use previously executed proxies?

192.265 How may I use proxies executed under this part?

192.270 What must I include in my proxy statement?

192.275 Filing How do I file revised proxy materials?

192.280 Must I mail a member's proxy solicitation material?

192.285 What solicitations are prohibited?

192.290 What will the appropriate Federal banking agency do if a solicitation violates these prohibitions?

192.295 Will the appropriate Federal banking agency require me to re-solicit proxies?

**OFFERING CIRCULAR**

192.300 What must happen before the appropriate Federal banking agency declares my offering circular effective?

192.305 When may I distribute the offering circular?

192.310 When must I file a post-effective amendment to the offering circular?

**OFFERS AND SALES OF STOCK**

192.320 Who has priority to purchase my conversion shares?

192.325 When may I offer to sell my conversion shares?

192.330 How do I price my conversion shares?

192.335 How do I sell my conversion shares?

192.340 What sales practices are prohibited?

192.345 How may a subscriber pay for my conversion shares?

192.350 Must I pay interest on payments for conversion shares?

192.355 What subscription rights must I give to each eligible account holder and each supplemental eligible account holder?

192.360 Are my officers, directors, and their associates eligible account holders?

192.365 May other voting members purchase conversion shares in the conversion?

192.370 Does the appropriate Federal banking agency limit the aggregate purchases by officers, directors, and their associates?

192.375 How do I allocate my conversion shares if my shares are oversubscribed?

192.380 May my employee stock ownership plan purchase conversion shares?

192.385 May I impose any purchase limitations?

192.390 Must I provide a purchase preference to persons in my local community?

## § 192.5

192.395 What other conditions apply when I offer conversion shares in a community offering, a public offering, or both?

### COMPLETION OF THE OFFERING

192.400 When must I complete the sale of my stock?

192.405 How do I extend the offering period?

### COMPLETION OF THE CONVERSION

192.420 When must I complete my conversion?

192.425 Who may terminate the conversion?

192.430 What happens to my old charter?

192.435 What happens to my corporate existence after conversion?

192.440 What voting rights must I provide to stockholders after the conversion?

192.445 What must I provide my savings account holders?

### LIQUIDATION ACCOUNT

192.450 What is a liquidation account?

192.455 What is the initial balance of the liquidation account?

192.460 How do I determine the initial balances of liquidation sub-accounts?

192.465 Do account holders retain any voting rights based on their liquidation sub-accounts?

192.470 Must I adjust liquidation sub-accounts?

192.475 What is a liquidation?

192.480 Does the liquidation account affect my net worth?

192.485 What provision must I include in my new Federal charter?

### POST-CONVERSION

192.500 What management stock benefit plans may I implement?

192.505 May my directors, officers, and their associates freely trade shares?

192.510 May I repurchase shares after conversion?

192.515 What information must I provide to the appropriate Federal banking agency before I repurchase my shares?

192.520 May I declare or pay dividends after I convert?

192.525 Who may acquire my shares after I convert?

192.530 What other requirements apply after I convert?

### CONTRIBUTIONS TO CHARITABLE ORGANIZATIONS

192.550 May I donate conversion shares or conversion proceeds to a charitable organization?

192.555 How do my members approve a charitable contribution?

192.560 How much may I contribute to a charitable organization?

## 12 CFR Ch. I (1–1–17 Edition)

192.565 What must the charitable organization include in its organizational documents?

192.570 How do I address conflicts of interest involving my directors?

192.575 What other requirements apply to charitable organizations?

### Subpart B—Voluntary Supervisory Conversions

192.600 What does this subpart do?

192.605 How may I conduct a voluntary supervisory conversion?

192.610 Do my members have rights in a voluntary supervisory conversion?

### ELIGIBILITY

192.625 When is a savings association eligible for a voluntary supervisory conversion?

192.630 When is a state-chartered savings bank eligible for a voluntary supervisory conversion?

### PLAN OF SUPERVISORY CONVERSION

192.650 What must I include in my plan of voluntary supervisory conversion?

### VOLUNTARY SUPERVISORY CONVERSION APPLICATION

192.660 What must I include in my voluntary supervisory conversion application?

### APPROPRIATE FEDERAL BANKING AGENCY REVIEW OF THE VOLUNTARY SUPERVISORY CONVERSION APPLICATION

192.670 Will the appropriate Federal banking agency approve my voluntary supervisory conversion application?

192.675 What conditions will the appropriate Federal banking agency impose on an approval?

### OFFERS AND SALES OF STOCK

192.680 How do I sell my shares?

### POST-CONVERSION

192.690 Who may not acquire additional shares after the voluntary supervisory conversion?

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SOURCE: 76 FR 49156, Aug. 9, 2011, unless otherwise noted.

### § 192.5 What does this part do?

(a) *General.* This part governs how a savings association (“you”) may convert from the mutual to the stock form of ownership. Subpart A of this part

## Comptroller of the Currency, Treasury

## § 192.25

governs standard mutual-to-stock conversions. Subpart B of this part governs voluntary supervisory mutual-to-stock conversions. This part supersedes all inconsistent charter and bylaw provisions of Federal savings associations converting to stock form.

(b) *Prescribed forms.* You must use the forms prescribed under this part and provide such information as the appropriate Federal banking agency may require under the forms by regulation or otherwise. The forms required under this part include: Form AC (Application for Conversion); Form PS (Proxy Statement); Form OC (Offering Circular); and Form OF (Order Form). Forms are available on the OCC's web site at <http://www.occ.gov>.

(c) *Waivers.* The appropriate Federal banking agency may waive any requirement of this part or a provision in any prescribed form. To obtain a waiver, you must file a written request with the appropriate Federal banking agency that:

(1) Specifies the requirement(s) or provision(s) you want the appropriate Federal banking agency to waive;

(2) Demonstrates that the waiver is equitable; is not detrimental to you, your account holders, or other savings associations; and is not contrary to the public interest; and

(3) Includes an opinion of counsel demonstrating that applicable law does not conflict with the requirement or provision.

### § 192.10 May I form a holding company as part of my conversion.

You may convert to the stock form of ownership as part of a transaction where you organize a holding company to acquire all of your shares upon their issuance. In such a transaction, your holding company will offer rights to purchase its shares instead of your shares. Regulations of the Board of Governors of the Federal Reserve System address holding company application requirements.

### § 192.15 May I form a charitable organization as part of my conversion?

When you convert to the stock form, you may form a charitable organization. Your contributions to the charitable organization are governed by the

requirements of §§192.550 through 192.575.

### § 192.20 May I acquire another insured stock depository institution as part of my conversion?

When you convert to stock form, you may acquire for cash or stock another insured depository institution that is already in the stock form of ownership.

### § 192.25 What definitions apply to this part?

The following definitions apply to this part and the forms prescribed under this part:

*Acting in concert* has the same meaning as in §5.50(d)(2) of this chapter. The rebuttable presumptions of §5.50(f)(2) of this chapter, other than §5.50(f)(2)(ii)(A) and (B) of this chapter, apply to the share purchase limitations at §§192.355 through 192.395.

*Affiliate of*, or a person *affiliated with*, a specified person is a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified person.

*Associate* of a person is:

(1) A corporation or organization (other than you or your majority-owned subsidiaries), if the person is a senior officer or partner, or beneficially owns, directly or indirectly, 10 percent or more of any class of equity securities of the corporation or organization.

(2) A trust or other estate, if the person has a substantial beneficial interest in the trust or estate or is a trustee or fiduciary of the trust or estate. For purposes of §§192.370, 192.380, 192.385, 192.390, 192.395 and 192.505, a person who has a substantial beneficial interest in your tax-qualified or non-tax-qualified employee stock benefit plan, or who is a trustee or a fiduciary of the plan, is not an associate of the plan. For the purposes of §192.370, your tax-qualified employee stock benefit plan is not an associate of a person.

(3) Any person who is related by blood or marriage to such person and:

(i) Who lives in the same home as the person; or

(ii) Who is your director or senior officer, or a director or senior officer of

§ 192.25

12 CFR Ch. I (1-1-17 Edition)

your holding company or your subsidiary.

*Association members* or *members* are persons who, under applicable law, are eligible to vote at the meeting on conversion.

*Control* (including *controlling*, *controlled by*, and *under common control with* ) means the direct or indirect power to direct or exercise a controlling influence over the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise as described in §5.50 of this chapter.

*Eligibility record date* is the date for determining eligible account holders. The eligibility record date must be at least one year before the date your board of directors adopts the plan of conversion.

*Eligible account holders* are any persons holding qualifying deposits on the eligibility record date.

*IRS* is the Internal Revenue Service.

*Local community includes:*

(1) Every county, parish, or similar governmental subdivision in which you have a home or branch office;

(2) Each county's, parish's, or subdivision's metropolitan statistical area;

(3) All zip code areas in your Community Reinvestment Act assessment area; and

(4) Any other area or category you set out in your plan of conversion, as approved by the appropriate Federal banking agency.

*Offer*, *offer to sell*, or *offer for sale* is an attempt or offer to dispose of, or a solicitation of an offer to buy, a security or interest in a security for value. Preliminary negotiations or agreements with an underwriter, or among underwriters who are or will be in privity of contract with you, are not offers, offers to sell, or offers for sale.

*Person* is an individual, a corporation, a partnership, an association, a joint-stock company, a limited liability company, a trust, an unincorporated organization, or a government or political subdivision of a government.

*Proxy soliciting material* includes a proxy statement, form of proxy, or other written or oral communication regarding the conversion.

*Purchase* or *buy* includes every contract to acquire a security or interest in a security for value.

*Qualifying deposit* is the total balance in an account holder's savings accounts at the close of business on the eligibility or supplemental eligibility record date. Your plan of conversion may provide that only savings accounts with total deposit balances of \$50 or more will qualify.

*Sale* or *sell* includes every contract to dispose of a security or interest in a security for value. An exchange of securities in a merger or acquisition approved by the appropriate Federal banking agency is not a sale.

*Savings account* is any withdrawable account as defined in §161.42 of this chapter, including a demand account as defined in §161.16 of this chapter.

*Solicitation* and *solicit* is a request for a proxy, whether or not accompanied by or included in a form of proxy; a request to execute, not execute, or revoke a proxy; or the furnishing of a form of proxy or other communication reasonably calculated to cause your members to procure, withhold, or revoke a proxy. Solicitation or solicit does not include providing a form of proxy at the unsolicited request of a member, the acts required to mail communications for members, or ministerial acts performed on behalf of a person soliciting a proxy.

*Subscription offering* is the offering of shares through nontransferable subscription rights to:

(1) Eligible account holders under §192.355;

(2) Tax-qualified employee stock ownership plans under §192.380;

(3) Supplemental eligible account holders under §192.355; and

(4) Other voting members under §192.365.

*Supplemental eligibility record date* is the date for determining supplemental eligible account holders. The supplemental eligibility record date is the last day of the calendar quarter before the appropriate Federal banking agency approves your conversion and will only occur if such agency has not approved your conversion within 15 months after the eligibility record date.

*Supplemental eligible account holders* are any persons, except your officers, directors, and their associates, holding qualifying deposits on the supplemental eligibility record date.

*Tax-qualified employee stock benefit plan* is any defined benefit plan or defined contribution plan, such as an employee stock ownership plan, stock bonus plan, profit-sharing plan, or other plan, and a related trust, that is qualified under section 401 of the Internal Revenue Code (26 U.S.C. 401).

*Underwriter* is any person who purchases any securities from you with a view to distributing the securities, offers or sells securities for you in connection with the securities' distribution, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking. Underwriter does not include a person whose interest is limited to a usual and customary distributor's or seller's commission from an underwriter or dealer.

[76 FR 49156, Aug. 9, 2011, as amended at 80 FR 28480, May 18, 2015]

## Subpart A—Standard Conversions

### PRIOR TO CONVERSION

#### § 192.100 What must I do before a conversion?

(a) Your board, or a subcommittee of your board, must meet with the appropriate Federal banking agency before you pass your plan of conversion. The meeting may occur at the appropriate Federal banking agency or your offices at your option. At that meeting you must provide the appropriate Federal banking agency with a written strategic plan that outlines the objectives of the proposed conversion and the intended use of the conversion proceeds.

(b) You should also consult with the appropriate Federal banking agency before you file your application for conversion. The appropriate Federal banking agency will discuss the information that you must include in the application for conversion, general issues that you may confront in the conversion process, and any other pertinent issues.

#### § 192.105 What information must I include in my business plan?

(a) Prior to filing an application for conversion, you must adopt a business plan reflecting your intended plans for deployment of the proposed conversion proceeds. Your business plan is required, under § 192.150, to be included in your conversion application. At a minimum, your business plan must address:

(1) Your projected operations and activities for three years following the conversion. You must describe how you will deploy the conversion proceeds at the converted savings association (and holding company, if applicable), what opportunities are available to reasonably achieve your planned deployment of conversion proceeds in your proposed market areas, and how your deployment will provide a reasonable return on investment commensurate with investment risk, investor expectations, and industry norms, by the final year of the business plan. You must include three years of projected financial statements. The business plan must provide that the converted savings association must retain at least 50 percent of the net conversion proceeds. The appropriate Federal banking agency may require that a larger percentage of proceeds remain in the institution.

(2) Your plan for deploying conversion proceeds to meet credit and lending needs in your proposed market areas. The appropriate Federal banking agencies strongly discourage business plans that provide for a substantial investment in mortgage securities or other securities, except as an interim measure to facilitate orderly, prudent deployment of proceeds during the three years following the conversion, or as part of a properly managed leverage strategy.

(3) The risks associated with your plan for deployment of conversion proceeds, and the effect of this plan on management resources, staffing, and facilities.

(4) The expertise of your management and board of directors, or that you have planned for adequate staffing and controls to prudently manage the growth, expansion, new investment,

## § 192.110

and other operations and activities proposed in your business plan.

(b) You may not project returns of capital or special dividends in any part of the business plan. A newly converted company may not plan on stock repurchases in the first year of the business plan.

### § 192.110 Who must review my business plan?

(a) Your chief executive officer and members of the board of directors must review, and at least two-thirds of your board of directors must approve, the business plan.

(b) Your chief executive officer and at least two-thirds of the board of directors must certify that the business plan accurately reflects the intended plans for deployment of conversion proceeds, and that any new initiatives reflected in the business plan are reasonably achievable. You must submit these certifications with your business plan, as part of your conversion application under § 192.150.

### § 192.115 How will the appropriate Federal banking agency review my business plan?

(a) The appropriate Federal banking agency will review your business plan to determine that it demonstrates a safe and sound deployment of conversion proceeds, as part of its review of your conversion application. In making its determination, the appropriate Federal banking agency will consider how you have addressed the applicable factors of § 192.105. No single factor will be determinative.

(b) If you are a Federal savings association, you must file your business plan with the appropriate OCC licensing office. If you are a state savings association, you must file your business plan with the appropriate FDIC region. The appropriate Federal banking agency may request additional information, if necessary, to support its determination under paragraph (a) of this section. You must file your business plan as a confidential exhibit to the Form AC.

(c) If the appropriate Federal banking agency approves your application for conversion and you complete your conversion, you must operate within

## 12 CFR Ch. I (1–1–17 Edition)

the parameters of your business plan. You must obtain the prior written approval of the appropriate Federal banking agency for any material deviations from your business plan.

### § 192.120 May I discuss my plans to convert with others?

(a) You may discuss information about your conversion with individuals that you authorize to prepare documents for your conversion.

(b) Except as permitted under paragraph (a) of this section, you must keep all information about your conversion confidential until your board of directors adopts your plan of conversion.

(c) If you violate this section, the appropriate Federal banking agency may require you to take remedial action. For example, the appropriate Federal banking agency may require you to take any or all of the following actions:

(1) Publicly announce that you are considering a conversion;

(2) Set an eligibility record date acceptable to the appropriate Federal banking agency;

(3) Limit the subscription rights of any person who violates or aids a violation of this section; or

(4) Take any other action to assure that your conversion is fair and equitable.

## PLAN OF CONVERSION

### § 192.125 Must my board of directors adopt a plan of conversion?

Prior to filing an application for conversion, your board of directors must adopt a plan of conversion that conforms to §§ 192.320 through 192.485 and 192.505. Your board of directors must adopt the plan by at least a two-thirds vote. Your plan of conversion is required, under § 192.150, to be included in your conversion application.

### § 192.130 What must I include in my plan of conversion?

You must include the information included in §§ 192.320 through 192.485 and 192.505 in your plan of conversion. The appropriate Federal banking agency may require you to delete or revise any provision in your plan of conversion if

it determines the provision is inequitable; is detrimental to you, your account holders, or other savings associations; or is contrary to public interest.

**§ 192.135 How do I notify my members that my board of directors approved a plan of conversion?**

(a) *Notice.* You must promptly notify your members that your board of directors adopted a plan of conversion and that a copy of the plan is available for the members' inspection in your home office and in your branch offices. You must mail a letter to each member or publish a notice in the local newspaper in every local community where you have an office. You may also issue a press release. The appropriate Federal banking agency may require broader publication, if necessary, to ensure adequate notice to your members.

(b) *Contents of notice.* You may include any of the following statements and descriptions in your letter, notice, or press release.

(1) Your board of directors adopted a proposed plan to convert from a mutual to a stock savings institution.

(2) You will send your members a proxy statement with detailed information on the proposed conversion before you convene a members' meeting to vote on the conversion.

(3) Your members will have an opportunity to approve or disapprove the proposed conversion at a meeting. At least a majority of the eligible votes must approve the conversion.

(4) You will not vote existing proxies to approve or disapprove the conversion. You will solicit new proxies for voting on the proposed conversion.

(5) The appropriate Federal banking agency, and in the case of a state-chartered savings association, the appropriate state regulator, must approve the conversion before the conversion will be effective. Your members will have an opportunity to file written comments, including objections and materials supporting the objections, with the appropriate Federal banking agency.

(6) The IRS must issue a favorable tax ruling, or a tax expert must issue an appropriate tax opinion, on the tax consequences of your conversion before the appropriate Federal banking agen-

cy will approve the conversion. The ruling or opinion must indicate the conversion will be a tax-free reorganization.

(7) The appropriate Federal banking agency, and in the case of a state-chartered savings association, the appropriate state regulator, might not approve the conversion, and the IRS or a tax expert might not issue a favorable tax ruling or tax opinion.

(8) Savings account holders will continue to hold accounts in the converted savings association with the same dollar amounts, rates of return, and general terms as existing deposits. FDIC will continue to insure the accounts.

(9) Your conversion will not affect borrowers' loans, including the amount, rate, maturity, security, and other contractual terms.

(10) Your business of accepting deposits and making loans will continue without interruption.

(11) Your current management and staff will continue to conduct current services for depositors and borrowers under current policies and in existing offices.

(12) You may continue to be a member of the Federal Home Loan Bank System.

(13) You may substantively amend your proposed plan of conversion before the members' meeting.

(14) You may terminate the proposed conversion.

(15) After the appropriate Federal banking agency, and in the case of a state-chartered savings association, the appropriate state regulator, approves the proposed conversion, you will send proxy materials providing additional information. After you send proxy materials, members may telephone or write to you with additional questions.

(16) The proposed record date for determining the eligible account holders who are entitled to receive subscription rights to purchase your shares.

(17) A brief description of the circumstances under which supplemental eligible account holders will receive subscription rights to purchase your shares.

(18) A brief description of how voting members may participate in the conversion.

## § 192.140

(19) A brief description of how directors, officers, and employees will participate in the conversion.

(20) A brief description of the proposed plan of conversion.

(21) The par value (if any) and approximate number of shares you will issue and sell in the conversion.

(c) *Other requirements.* (1) You may not solicit proxies, provide financial statements, describe the benefits of conversion, or estimate the value of your shares upon conversion in the letter, notice, or press release.

(2) If you respond to inquiries about the conversion, you may address only the matters listed in paragraph (b) of this section.

### § 192.140 May I amend my plan of conversion?

You may amend your plan of conversion before you solicit proxies. After you solicit proxies, you may amend your plan of conversion only if the appropriate Federal banking agency concurs.

#### FILING REQUIREMENTS

### § 192.150 What must I include in my application for conversion?

(a) Your application for conversion must include all of the following information.

(1) Your plan of conversion.

(2) Pricing materials meeting the requirements of § 192.200(b).

(3) Proxy soliciting materials under § 192.270, including:

(i) A preliminary proxy statement with signed financial statements;

(ii) A form of proxy meeting the requirements of § 192.255; and

(iii) Any additional proxy soliciting materials, including press releases, personal solicitation instructions, radio or television scripts that you plan to use or furnish to your members, and a legal opinion indicating that any marketing materials comply with all applicable securities laws.

(4) An offering circular described in § 192.300.

(5) The documents and information required by Form AC. You may obtain Form AC from the appropriate Federal banking agency.

(6) Where indicated, written consents, signed and dated, of any ac-

## 12 CFR Ch. I (1–1–17 Edition)

countant, attorney, investment banker, appraiser, or other professional who prepared, reviewed, passed upon, or certified any statement, report, or valuation for use. *See* Form AC, instruction B(7).

(7) Your business plan, submitted as a separately bound, confidential exhibit. *See* § 192.160.

(8) Any additional information that the appropriate Federal banking agency requests.

(b) The appropriate Federal banking agency will not accept for filing, and will return, any application for conversion that is improperly executed, materially deficient, substantially incomplete, or that provides for unreasonable conversion expenses.

### § 192.155 How do I file my application for conversion?

If you are a Federal savings association, you must file an original and at least one conformed copy of Form AC with the appropriate OCC licensing office. If you are a state savings association, you must file all copies of your application with the appropriate FDIC region.

### § 192.160 May I keep portions of my application for conversion confidential?

(a) The appropriate Federal banking agency makes all filings under this part available to the public, but may keep portions of your application for conversion confidential under paragraph (b) of this section.

(b) You may request that the appropriate Federal banking agency 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. The appropriate Federal banking agency 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) The appropriate Federal banking agency will determine whether confidential information must be made available to the public under 5 U.S.C. 552 and part 4 of this chapter or 12 CFR 309. The appropriate Federal banking agency will advise you before it makes information you designated as “confidential” available to the public.

**§ 192.165 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 the appropriate Federal banking agency; and
- (d) Demonstrate that the amendment conforms to all applicable regulations.

NOTICE OF FILING OF APPLICATION AND COMMENT PROCESS

**§ 192.180 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 §5.8 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 any public notice and an affidavit of publication from each publisher. If you are a Federal savings association, you must file the affidavit and two copies of any public notice with the appropriate OCC licensing office. If you are a state savings association, you must file all copies with the appropriate FDIC region.

(c) If the appropriate Federal banking agency does not accept your application for conversion under §192.200 and requires you to file a new application, you must publish and post a new notice and allow an additional 30 days for comment.

[76 FR 49156, Aug. 9, 2011, as amended at 80 FR 28481, May 18, 2015]

**§ 192.185 How may a person comment on my application for conversion?**

Commenters may submit comments on your application in accordance with the procedures in §5.10 of this chapter. A commenter must file the original and one copy of any comments with the appropriate OCC licensing office for Federal savings association applications and with the appropriate FDIC region for state savings association applications.

[76 FR 49156, Aug. 9, 2011, as amended at 80 FR 28481, May 18, 2015]

AGENCY REVIEW OF THE APPLICATION FOR CONVERSION

**§ 192.200 What actions may the appropriate Federal banking agency take on my application?**

(a) The appropriate Federal banking agency may approve your application for conversion only if:

- (1) Your conversion complies with this part;
- (2) You will meet your regulatory capital requirements under 12 CFR part 3, part 324, or part 390, subpart Z, as applicable after the conversion; and
- (3) Your conversion will not result in a taxable reorganization under the Internal Revenue Code of 1986, as amended.

(b) The appropriate Federal banking agency will review the appraisal required by §192.150(a)(2) in determining whether to approve your application. The appropriate Federal banking agency will review the appraisal under the following requirements.

(1) Independent persons experienced and expert in corporate appraisal, and acceptable to the appropriate Federal banking agency, 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.

(4) The appraisal report must include a complete and detailed description of

## § 192.205

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) The appropriate Federal banking agency 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 the appropriate Federal banking agency approved the appraisal.

(c) The appropriate Federal banking agency will review your compliance record under part 195 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, the appropriate Federal banking agency 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) The appropriate Federal banking agency 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) The appropriate Federal banking agency may request that you amend your application if further explanation is necessary, material is missing, or material must be corrected.

## 12 CFR Ch. I (1–1–17 Edition)

(e) The appropriate Federal banking agency will deny your application if the application does not meet the requirements of this subpart, unless The appropriate Federal banking agency waives the requirement under § 192.5(c).

[76 FR 49156, Aug. 9, 2011, as amended at 79 FR 11317, Feb. 28, 2014]

### **§ 192.205 May a court review the appropriate Federal banking agency's final action on my conversion?**

(a) Any person aggrieved by the appropriate Federal banking agency'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 appropriate Federal banking agency action. The aggrieved person must file the petition with the court within the later of 30 days after the appropriate Federal agency publishes notice of its final action in the FEDERAL REGISTER or 30 days after you mail the proxy statement to your members under § 192.235.

#### VOTE BY MEMBERS

### **§ 192.225 Must I submit the plan of conversion to my members for approval?**

(a) After the appropriate Federal banking agency 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.

## Comptroller of the Currency, Treasury

## § 192.255

(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 § 192.135 in your notice.

### § 192.230 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 20 days before your meeting, unless you are a state-chartered savings association and state law requires a different voting record date.

### § 192.235 How must I notify my members of the meeting?

(a) You must notify your members of the meeting to consider your conversion by sending the members a proxy statement cleared by the appropriate Federal banking agency.

(b) You must notify your members 20 to 45 days before your meeting, unless you are a state-chartered savings association and state law requires a different notice period.

(c) You must also notify each beneficial holder of an account held in a fiduciary capacity:

(1) If you are a Federal savings association, and the name of the beneficial holder is disclosed on your records; or

(2) If you are a state-chartered association and the beneficial holder possesses voting rights under state law.

### § 192.240 What must I submit after the members' meeting?

(a) Promptly after the members' meeting, you must file all of the following information with the appropriate OCC licensing office if you are a Federal savings association, and with the appropriate FDIC region if you are a state savings association.

(1) A certified copy of each adopted resolution on the conversion.

(2) The total votes eligible to be cast.

(3) The total votes represented in person or by proxy.

(4) The total votes cast in favor of and against each matter.

(5) The percentage of votes necessary to approve each matter.

(6) An opinion of counsel that you conducted the members' meeting in compliance with all applicable state or Federal laws and regulations.

(b) Promptly after completion of the conversion, you must submit an opinion of counsel that you complied with all laws applicable to the conversion.

## PROXY SOLICITATION

### § 192.250 Who must comply with these proxy solicitation provisions?

(a) You must comply with these proxy solicitation provisions when you provide proxy solicitation material to members for the meeting to vote on your plan of conversion.

(b) Your members must comply with these proxy solicitation provisions when they provide proxy solicitation materials to members for the meeting to vote on your conversion, pursuant to § 192.280, except where:

(1) The member solicits 50 people or fewer and does not solicit proxies on your behalf; or

(2) The member solicits proxies through newspaper advertisements after your board of directors adopts the plan of conversion. Any newspaper advertisements may include only the following information:

(i) Your name;

(ii) The reason for the advertisement;

(iii) The proposal or proposals to be voted upon;

(iv) Where a member may obtain a copy of the proxy solicitation material; and

(v) A request for your members to vote at the meeting.

### § 192.255 What must the form of proxy include?

The form of proxy must include all of the following:

(a) A statement in bold face type stating that management is soliciting the proxy.

(b) Blank spaces where the member must date and sign the proxy.

(c) Clear and impartial identification of each matter or group of related matters that members will vote upon. You must include any proposed charitable contribution as an item to be voted on separately.

(d) The phrase "Revocable Proxy" in bold face type (at least 18 point).

## § 192.260

(e) A description of any charter or state law requirement that restricts or conditions votes by proxy.

(f) An acknowledgment that the member received a proxy statement before he or she signed the form of proxy.

(g) The date, time, and the place of the meeting, when available.

(h) A way for the member to specify by ballot whether he or she approves or disapproves of each matter that members will vote upon.

(i) A statement that management will vote the proxy in accordance with the member's specifications.

(j) A statement in bold face type indicating how management will vote the proxy if the member does not specify a choice for a matter.

### § 192.260 May I use previously executed proxies?

You may not use previously executed proxies for the plan of conversion vote. If members consider your plan of conversion at an annual meeting, you may vote proxies obtained through other proxy solicitations only on matters not related to your plan of conversion.

### § 192.265 How may I use proxies executed under this part?

You may vote a proxy obtained under this part on matters that are incidental to the conduct of the meeting. You may not vote a proxy obtained under this subpart at any meeting other than the meeting (or any adjournment of the meeting) to vote on your plan of conversion.

### § 192.270 What must I include in my proxy statement?

(a) *Content requirements.* You must prepare your proxy statement in compliance with this part and Form PS.

(b) *Other requirements.* (1) The appropriate Federal banking agency will review your proxy solicitation material when it reviews the application for conversion and will clear the proxy solicitation material.

(2) You must provide a cleared written proxy statement to your members before or at the same time you provide any other soliciting material. You must mail cleared proxy solicitation material to your members within ten

## 12 CFR Ch. I (1-1-17 Edition)

days after the appropriate Federal banking agency clears the solicitation.

### § 192.275 How do I file revised proxy materials?

(a) You must file revised proxy materials as an amendment to your application for conversion. See § 192.155 for where to file.

(b) To revise your proxy solicitation materials, you must file:

(1) Seven copies of your revised proxy materials as required by Form PS;

(2) Seven copies of your revised form of proxy, if applicable; and

(3) Seven copies of any additional proxy solicitation material subject to § 192.270.

(c) You must mark four of the seven required copies to clearly indicate changes from the prior filing.

(d) You must file seven definitive copies of all proxy solicitation material, in the form in which you furnish the material to your members. You must file no later than the date that you send or give the proxy solicitation material to your members. You must indicate the date that you will release the materials.

(e) Unless the appropriate Federal banking agency requests you to do so, you do not have to file copies of replies to inquiries from your members or copies of communications that merely request members to sign and return proxy forms.

### § 192.280 Must I mail a member's proxy solicitation material?

(a) You must mail the member's cleared proxy solicitation material if:

(1) Your board of directors adopted a plan of conversion;

(2) A member requests in writing that you mail the proxy solicitation material;

(3) The appropriate Federal banking agency has cleared the member's proxy solicitation; and

(4) The member agrees to defray your reasonable expenses.

(b) As soon as practicable after you receive a request under paragraph (a) of this section, you must mail or otherwise furnish the following information to the member:

(1) The approximate number of members that you solicited or will solicit,

or the approximate number of members of any group of account holders that the member designates; and

(2) The estimated cost of mailing the proxy solicitation material for the member.

(c) You must mail cleared proxy solicitation material to the designated members promptly after the member furnishes the materials, envelopes (or other containers), and postage (or payment for postage) to you.

(d) You are not responsible for the content of a member's proxy solicitation material.

(e) A member may furnish other members its own proxy solicitation material, cleared by the appropriate Federal banking agency, subject to the rules in this section.

**§ 192.285 What solicitations are prohibited?**

(a) *False or misleading statements.* (1) No one may use proxy solicitation material for the members' meeting if the material contains any statement which, considering the time and the circumstances of the statement:

(i) Is false or misleading with respect to any material fact;

(ii) Omits any material fact that is necessary to make the statements not false or misleading; or

(iii) Omits any material fact that is necessary to correct a statement in an earlier communication that has become false or misleading.

(2) No one may represent or imply that the appropriate Federal banking agency determined that the proxy solicitation material is accurate, complete, not false or not misleading, or passed upon the merits of or approved any proposal.

(b) *Other prohibited solicitations.* No person may solicit:

(1) An undated or post-dated proxy;

(2) A proxy that states it will be dated after the date it is signed by a member;

(3) A proxy that is not revocable at will by the member; or

(4) A proxy that is part of another document or instrument.

**§ 192.290 What will the appropriate Federal banking agency do if a solicitation violates these prohibitions?**

(a) If a solicitation violates § 192.285, the appropriate Federal banking agency may require remedial measures, including:

(1) Correction of the violation by a retraction and a new solicitation;

(2) Rescheduling the members' meeting; or

(3) Any other actions necessary to ensure a fair vote.

(b) The appropriate Federal banking agency may also bring an enforcement action against the violator.

**§ 192.295 Will the appropriate Federal banking agency require me to re-solicit proxies?**

If you amend your application for conversion, the appropriate Federal banking agency may require you to re-solicit proxies for your members' meeting as a condition of approval of the amendment.

OFFERING CIRCULAR

**§ 192.300 What must happen before the appropriate Federal banking agency declares my offering circular effective?**

(a) You must prepare and file your offering circular with the Securities and Corporate Practices Division of the OCC if you are a Federal savings association and with the appropriate FDIC region if you are a state savings association, in compliance with this part and Form OC and, where applicable, part 197 of this chapter. File your offering circular in accordance with the procedures in section 192.155.

(b) You must condition your stock offering upon member approval of your plan of conversion.

(c) The appropriate Federal banking agency will review the Form OC and may comment on the included disclosures and financial statements.

(d) You must file any revised offering circular, final offering circular, and any post-effective amendment to the final offering circular in accordance with the procedures in section 192.155.

(e) The appropriate Federal banking agency will not approve the adequacy

## § 192.305

or accuracy of the offering circular or the disclosures.

(f) After you satisfactorily address the appropriate Federal banking agency's concerns, you must request the appropriate Federal banking agency to declare your Form OC effective for a time period. The time period may not exceed the maximum time period for the completion of the sale of all of your shares under § 192.400.

### § 192.305 When may I distribute the offering circular?

(a) You may distribute a preliminary offering circular at the same time as or after you mail the proxy statement to your members.

(b) You may not distribute an offering circular until the appropriate Federal banking agency declares it effective. You must distribute the offering circular in accordance with this part.

(c) You must distribute your offering circular to persons listed in your plan of conversion within 10 days after the appropriate Federal banking agency declares it effective.

### § 192.310 When must I file a post-effective amendment to the offering circular?

(a) You must file a post-effective amendment to the offering circular with the appropriate Federal banking agency when a material event or change of circumstance occurs.

(b) After the appropriate Federal banking agency declares the post-effective amendment effective, you must immediately deliver the amendment to each person who subscribed for or ordered shares in the offering.

(c) Your post-effective amendment must indicate that each person may increase, decrease, or rescind their subscription or order.

(d) The post-effective offering period must remain open no less than 10 days nor more than 20 days, unless the appropriate Federal banking agency approves a longer rescission period.

## OFFERS AND SALES OF STOCK

### § 192.320 Who has priority to purchase my conversion shares?

You must offer to sell your shares in the following order:

(a) Eligible account holders.

## 12 CFR Ch. I (1-1-17 Edition)

(b) Tax-qualified employee stock ownership plans.

(c) Supplemental eligible account holders.

(d) Other voting members who have subscription rights.

(e) Your community, your community and the general public, or the general public.

### § 192.325 When may I offer to sell my conversion shares?

(a) You may offer to sell your conversion shares after the appropriate Federal banking agency approves your conversion, clears your proxy statement, and declares your offering circular effective.

(b) The offer may commence at the same time you start the proxy solicitation of your members.

### § 192.330 How do I price my conversion shares?

(a) You must sell your conversion shares at a uniform price per share and at a total price that is equal to the estimated pro forma market value of your shares after you convert.

(b) The maximum price must be no more than 15 percent above the midpoint of the estimated price range in your offering circular.

(c) The minimum price must be no more than 15 percent below the midpoint of the estimated price range in your offering circular.

(d) If the appropriate Federal banking agency permits, you may increase the maximum price of conversion shares sold. The maximum price, as adjusted, must be no more than 15 percent above the maximum price computed under paragraph (b) of this section.

(e) The maximum price must be between \$5 and \$50 per share.

(f) You must include the estimated price in any preliminary offering circular.

### § 192.335 How do I sell my conversion shares?

(a) You must distribute order forms to all eligible account holders, supplemental eligible account holders, and other voting members to enable them to subscribe for the conversion shares they are permitted under the plan of

conversion. You may either send the order forms with your offering circular or after you distribute your offering circular.

(b) You may sell your conversion shares in a community offering, a public offering, or both. You may begin the community offering, the public offering, or both at any time during the subscription offering or upon conclusion of the subscription offering.

(c) You may pay underwriting commissions (including underwriting discounts). The appropriate Federal banking agency may object to the payment of unreasonable commissions. You may reimburse an underwriter for accountable expenses in a subscription offering if the public offering is limited. If no public offering occurs, you may pay an underwriter a consulting fee. The appropriate Federal banking agency may object to the payment of unreasonable consulting fees.

(d) If you conduct the community offering, the public offering, or both at the same time as the subscription offering, you must fill all subscription orders first.

(e) You must prepare your order form in compliance with this part and Form OF.

**§ 192.340 What sales practices are prohibited?**

(a) In connection with offers, sales, or purchases of conversion shares under this part, you and your directors, officers, agents, or employees may not:

(1) Employ any device, scheme, or artifice to defraud;

(2) Obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary to make the statements, in light of the circumstances under which they were made, not misleading; or

(3) Engage in any act, transaction, practice, or course of business that operates or would operate as a fraud or deceit upon a purchaser or seller.

(b) During your conversion, no person may:

(1) Transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of subscription rights for your conversion

shares or the underlying securities to the account of another;

(2) Make any offer, or any announcement of an offer, to purchase any of your conversion shares from anyone but you; or

(3) Knowingly acquire more than the maximum purchase allowable under your plan of conversion.

(c) The restrictions in paragraphs (b)(1) and (b)(2) of this section do not apply to offers for more than 10 percent of any class of conversion shares by:

(1) An underwriter or a selling group, acting on your behalf, that makes the offer with a view toward public resale; or

(2) One or more of your tax-qualified employee stock ownership plans so long as the plan or plans do not beneficially own more than 25 percent of any class of your equity securities in the aggregate.

(d) If any person is found to have violated the restrictions in paragraphs (b)(1) and (b)(2) of this section, they may face prosecution or other legal action.

**§ 192.345 How may a subscriber pay for my conversion shares?**

(a) A subscriber may purchase conversion shares with cash, by a withdrawal from a savings account, or a withdrawal from a certificate of deposit. If a subscriber purchases shares by a withdrawal from a certificate of deposit, you may not assess a penalty for the withdrawal.

(b) You may not extend credit to any person to purchase your conversion shares.

**§ 192.350 Must I pay interest on payments for conversion shares?**

(a) You must pay interest from the date you receive a payment for conversion shares until the date you complete or terminate the conversion. You must pay interest at no less than your pass-book rate for amounts paid in cash, check, or money order.

(b) If a subscriber withdraws money from a savings account to purchase conversion shares, you must pay interest on the payment until you complete or terminate the conversion as if the withdrawn amount remained in the account.

**§ 192.355**

(c) If a depositor fails to maintain the applicable minimum balance requirement because he or she withdraws money from a certificate of deposit to purchase conversion shares, you may cancel the certificate and pay interest at no less than your passbook rate on any remaining balance.

**§ 192.355 What subscription rights must I give to each eligible account holder and each supplemental eligible account holder?**

(a) You must give each eligible account holder subscription rights to purchase conversion shares in an amount equal to the greater of:

(1) The maximum purchase limitation established for the community offering or the public offering under § 192.395;

(2) One-tenth of one percent of the total stock offering; or

(3) Fifteen times the following number: The total number of conversion shares that you will issue, multiplied by the following fraction. The numerator is the total qualifying deposit of the eligible account holder. The denominator is the total qualifying deposits of all eligible account holders. You must round down the product of this multiplied fraction to the next whole number.

(b) You must give subscription rights to purchase shares to each supplemental eligible account holder in the same amount as described in paragraph (a) of this section, except that you must compute the fraction described in paragraph (a)(3) of this section as follows: The numerator is the total qualifying deposit of the supplemental eligible account holder. The denominator is the total qualifying deposits of all supplemental eligible account holders.

**§ 192.360 Are my officers, directors, and their associates eligible account holders?**

Your officers, directors, and their associates may be eligible account holders. However, if an officer, director, or his or her associate receives subscription rights based on increased deposits in the year before the eligibility record date, you must subordinate subscription rights for these deposits to subscription rights exercised by other eligible account holders.

**12 CFR Ch. I (1-1-17 Edition)**

**§ 192.365 May other voting members purchase conversion shares in the conversion?**

(a) You must give rights to purchase your conversion shares in the conversion to voting members who are neither eligible account holders nor supplemental eligible account holders. You must allocate rights to each voting member that are equal to the greater of:

(1) The maximum purchase limitation established for the community offering and the public offering under § 192.395; or

(2) One-tenth of one percent of the total stock offering.

(b) You must subordinate the voting members' rights to the rights of eligible account holders, tax-qualified employee stock ownership plans, and supplemental eligible account holders.

**§ 192.370 Does the appropriate Federal banking agency limit the aggregate purchases by officers, directors, and their associates?**

(a) When you convert, your officers, directors, and their associates may not purchase, in the aggregate, more than the following percentage of your total stock offering:

Institution size	Officer and director purchases (percent)
\$50,000,000 or less .....	35
\$50,000,001-100,000,000 .....	34
\$100,000,001-150,000,000 .....	33
\$150,000,001-200,000,000 .....	32
\$200,000,001-250,000,000 .....	31
\$250,000,001-300,000,000 .....	30
\$300,000,001-350,000,000 .....	29
\$350,000,001-400,000,000 .....	28
\$400,000,001-450,000,000 .....	27
\$450,000,001-500,000,000 .....	26
Over \$500,000,000 .....	25

(b) The purchase limitations in this section do not apply to shares held in tax-qualified employee stock benefit plans that are attributable to your officers, directors, and their associates.

**§ 192.375 How do I allocate my conversion shares if my shares are oversubscribed?**

(a) If your conversion shares are oversubscribed by your eligible account holders, you must allocate shares among the eligible account

holders so that each, to the extent possible, may purchase 100 shares.

(b) If your conversion shares are oversubscribed by your supplemental eligible account holders, you must allocate shares among the supplemental eligible account holders so that each, to the extent possible, may purchase 100 shares.

(c) If a person is an eligible account holder and a supplemental eligible account holder, you must include the eligible account holder's allocation in determining the number of conversion shares that you may allocate to the person as a supplemental eligible account holder.

(d) For conversion shares that you do not allocate under paragraphs (a) and (b) of this section, you must allocate the shares among the eligible or supplemental eligible account holders equitably, based on the amounts of qualifying deposits. You must describe this method of allocation in your plan of conversion.

(e) If shares remain after you have allocated shares as provided in paragraphs (a) and (b) of this section, and if your voting members oversubscribe, you must allocate your conversion shares among those members equitably. You must describe the method of allocation in your plan of conversion.

**§ 192.380 May my employee stock ownership plan purchase conversion shares?**

(a) Your tax-qualified employee stock ownership plan may purchase up to 10 percent of the total offering of your conversion shares.

(b) If the appropriate Federal banking agency approves a revised stock valuation range as described in § 192.330(e), and the final conversion stock valuation range exceeds the former maximum stock offering range, you may allocate conversion shares to your tax-qualified employee stock ownership plan, up to the 10 percent limit in paragraph (a) of this section.

(c) If your tax-qualified employee stock ownership plan is not able to or chooses not to purchase stock in the offering, it may, with prior appropriate Federal banking agency approval and appropriate disclosure in your offering circular, purchase stock in the open

market, or purchase authorized but unissued conversion shares.

(d) You may include stock contributed to a charitable organization in the conversion in the calculation of the total offering of conversion shares under paragraphs (a) and (b) of this section, unless the appropriate Federal banking agency objects on supervisory grounds.

**§ 192.385 May I impose any purchase limitations?**

(a) You may limit the number of shares that any person, group of associated persons, or persons otherwise acting in concert, may subscribe to up to five percent of the total stock sold.

(b) If you set a limit of five percent under paragraph (a) of this section, you may modify that limit with appropriate Federal banking agency approval to provide that any person, group of associated persons, or persons otherwise acting in concert subscribing for five percent, may purchase between five and ten percent as long as the aggregate amount that the subscribers purchase does not exceed 10 percent of the total stock offering.

(c) You may require persons exercising subscription rights to purchase a minimum number of conversion shares. The minimum number of shares must equal the lesser of the number of shares obtained by a \$500 subscription or 25 shares.

(d) In setting purchase limitations under this section, you may not aggregate conversion shares attributed to a person in your tax-qualified employee stock ownership plan with shares purchased directly by, or otherwise attributable to, that person.

**§ 192.390 Must I provide a purchase preference to persons in my local community?**

(a) In your subscription offering, you may give a purchase preference to eligible account holders, supplemental eligible account holders, and voting members residing in your local community.

(b) In your community offering, you must give a purchase preference to natural persons residing in your local community.

**§ 192.395 What other conditions apply when I offer conversion shares in a community offering, a public offering, or both?**

(a) You must offer and sell your stock to achieve a widespread distribution of the stock.

(b) If you offer shares in a community offering, a public offering, or both, you must first fill orders for your stock up to a maximum of two percent of the conversion stock on a basis that will promote a widespread distribution of stock. You must allocate any remaining shares on an equal number of shares per order basis until you fill all orders.

COMPLETION OF THE OFFERING

**§ 192.400 When must I complete the sale of my stock?**

You must complete all sales of your stock within 45 calendar days after the last day of the subscription period, unless the offering is extended under § 192.405.

**§ 192.405 How do I extend the offering period?**

(a) You must request, in writing, an extension of any offering period.

(b) The appropriate Federal banking agency may grant extensions of time to sell your shares. The appropriate Federal banking agency will not grant any single extension of more than 90 days.

(c) If the appropriate Federal banking agency grants your request for an extension of time, you must provide a post-effective amendment to the offering circular under § 192.310 to each person who subscribed for or ordered stock. Your amendment must indicate that the appropriate Federal banking agency extended the offering period and that each person who subscribed for or ordered stock may increase, decrease, or rescind their subscription or order within the time remaining in the extension period.

COMPLETION OF THE CONVERSION

**§ 192.420 When must I complete my conversion?**

(a) In your plan of conversion, you must set a date by which the conversion must be completed. This date

must not be more than 24 months from the date that your members approve the plan of conversion. The date, once set, may not be extended by you or by the appropriate Federal banking agency. You must terminate the conversion if it is not completed by that date.

(b) Your conversion is complete on the date that you accept the offers for your stock.

**§ 192.425 Who may terminate the conversion?**

(a) Your members may terminate the conversion by failing to approve the conversion at your members' meeting.

(b) You may terminate the conversion before your members' meeting.

(c) You may terminate the conversion after the members' meeting only if the appropriate Federal banking agency concurs.

**§ 192.430 What happens to my old charter?**

(a) If you are a Federally chartered mutual savings association or savings bank, and you convert to a Federally chartered stock savings association or savings bank, you must apply to the OCC to amend your charter and bylaws consistent with § 5.22 of this chapter, as part of your application for conversion. You may only include OCC pre-approved anti-takeover provisions in your amended charter and bylaws. See § 5.22(g)(7).

(b) If you are a Federally chartered mutual savings association or savings bank and you convert to a state-chartered stock savings association under this part, you must surrender your charter to the OCC for cancellation promptly after the state issues your charter. You must promptly file a copy of your new state stock charter with the FDIC.

(c) If you are a state-chartered mutual savings association or savings bank, and you convert to a Federally chartered stock savings association or savings bank, you must apply to the OCC for a new charter and bylaws consistent with § 5.22 of this chapter. You may only include OCC pre-approved anti-takeover provisions in your charter and bylaws. See § 5.22(g)(7).

(d) Your new or amended charter must require you to establish and

**Comptroller of the Currency, Treasury**

**§ 192.460**

maintain a liquidation account for eligible and supplemental eligible account holders under §192.450.

[76 FR 49156, Aug. 9, 2011, as amended at 80 FR 28481, May 18, 2015]

**§ 192.435 What happens to my corporate existence after conversion?**

Your corporate existence will continue following your conversion, unless you convert to a state-chartered stock savings association and state law prescribes otherwise.

**§ 192.440 What voting rights must I provide to stockholders after the conversion?**

You must provide your stockholders with exclusive voting rights, except as provided in §192.445(c).

**§ 192.445 What must I provide my savings account holders?**

(a) You must provide each savings account holder, without payment, a withdrawable savings account or accounts in the same amount and under the same terms and conditions as their accounts before your conversion.

(b) You must provide a liquidation account for each eligible and supplemental eligible account holder under §192.450.

(c) If you are a state-chartered savings association and state law requires you to provide voting rights to savings account holders or borrowers, your charter must:

(1) Limit these voting rights to the minimum required by state law; and

(2) Require you to solicit proxies from the savings account holders and borrowers in the same manner that you solicit proxies from your stockholders.

**LIQUIDATION ACCOUNT**

**§ 192.450 What is a liquidation account?**

(a) A liquidation account represents the potential interest of eligible account holders and supplemental eligible account holders in your net worth at the time of conversion. You must maintain a sub-account to reflect the interest of each account holder.

(b) Before you may provide a liquidation distribution to common stockholders, you must give a liquidation

distribution to those eligible account holders and supplemental eligible account holders who hold savings accounts from the time of conversion until liquidation.

(c) You may not record the liquidation account in your financial statements. You must disclose the liquidation account in the footnotes to your financial statements.

**§ 192.455 What is the initial balance of the liquidation account?**

The initial balance of the liquidation account is your net worth in the statement of financial condition included in the final offering circular.

**§ 192.460 How do I determine the initial balances of liquidation sub-accounts?**

(a)(1) You determine the initial sub-account balance for a savings account held by an eligible account holder by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account expressed in dollars on the eligibility record date. The denominator is total qualifying deposits of all eligible account holders on that date.

(2) You determine the initial sub-account balance for a savings account held by a supplemental eligible account holder by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account expressed in dollars on the supplemental eligibility record date. The denominator is total qualifying deposits of all supplemental eligible account holders on that date.

(3) If an account holder holds a savings account on the eligibility record date and a separate savings account on the supplemental eligibility record date, you must compute separate sub-accounts for the qualifying deposits in the savings account on each record date.

(b) You may not increase the initial sub-account balances. You must decrease the initial balance under §192.470 as depositors reduce or close their accounts.

## § 192.465

### § 192.465 Do account holders retain any voting rights based on their liquidation sub-accounts?

Eligible account holders or supplemental eligible account holders do not retain any voting rights based on their liquidation sub-accounts.

### § 192.470 Must I adjust liquidation sub-accounts?

(a)(1) You must reduce the balance of an eligible account holder's or supplemental eligible account holder's sub-account if the deposit balance in the account holder's savings account at the close of business on any annual closing date, which for purposes of this section is your fiscal year end, after the relevant eligibility record dates is less than:

(i) The deposit balance in the account holder's savings account at the close of business on any other annual closing date after the relevant eligibility record date; or

(ii) The qualifying deposits in the account holder's savings account on the relevant eligibility record date.

(2) The reduction must be proportionate to the reduction in the deposit balance.

(b) If you reduce the balance of a liquidation sub-account, you may not subsequently increase it if the deposit balance increases.

(c) You are not required to adjust the liquidation account and sub-account balances at each annual closing date if you maintain sufficient records to make the computations if a liquidation subsequently occurs.

(d) You must maintain the liquidation sub-account for each account holder as long as the account holder maintains an account with the same social security number.

(e) If there is a complete liquidation, you must provide each account holder with a liquidation distribution in the amount of the sub-account balance.

### § 192.475 What is a liquidation?

(a) A liquidation is a sale of your assets and settlement of your liabilities with the intent to cease operations and close. Upon liquidation, you must return your charter to the governmental agency that issued it. The government agency must cancel your charter.

## 12 CFR Ch. I (1-1-17 Edition)

(b) A merger, consolidation, or similar combination or transaction with another depository institution, is not a liquidation. If you are involved in such a transaction, the surviving institution must assume the liquidation account.

### § 192.480 Does the liquidation account affect my net worth?

The liquidation account does not affect your net worth.

### § 192.485 What provision must I include in my new Federal charter?

If you convert to Federal stock form, you must include the following provision in your new charter: "Liquidation Account. Under appropriate Federal banking agency regulations, the association must establish and maintain a liquidation account for the benefit of its savings account holders as of \_\_\_\_\_. If the association undergoes a complete liquidation, it must comply with appropriate Federal banking agency regulations with respect to the amount and priorities on liquidation of each of the savings account holder's interests in the liquidation account. A savings account holder's interest in the liquidation account does not entitle the savings account holder to any voting rights."

## POST-CONVERSION

### § 192.500 What management stock benefit plans may I implement?

(a) During the 12 months after your conversion, you may implement a stock option plan (Option Plan), an employee stock ownership plan or other tax-qualified employee stock benefit plan (collectively, ESOP), and a management recognition plan (MRP), provided you meet all of the following requirements.

(1) You disclose the plans in your proxy statement and offering circular and indicate in your offering circular that there will be a separate shareholder vote on the Option Plan and the MRP at least six months after the conversion. No shareholder vote is required to implement the ESOP. Your ESOP must be tax-qualified.

(2) Your Option Plan does not encompass more than ten percent of the number of shares that you issued in the conversion.

(3)(i) Your ESOP and MRP do not encompass, in the aggregate, more than ten percent of the number of shares that you issued in the conversion. If you have tangible capital of ten percent or more following the conversion, the appropriate Federal banking agency may permit your ESOP and MRP to encompass, in the aggregate, up to 12 percent of the number of shares issued in the conversion; and

(ii) Your MRP does not encompass more than three percent of the number of shares that you issued in the conversion. If you have tangible capital of ten percent or more after the conversion, the appropriate Federal banking agency may permit your MRP to encompass up to four percent of the number of shares that you issued in the conversion.

(4) No individual receives more than 25 percent of the shares under any plan.

(5) Your directors who are not your officers do not receive more than five percent of the shares of your MRP or Option Plan individually, or 30 percent of any such plan in the aggregate.

(6) Your shareholders approve each of the Option Plan and the MRP by a majority of the total votes eligible to be cast at a duly called meeting before you establish or implement the plan. You may not hold this meeting until six months after your conversion.

(7) When you distribute proxies or related material to shareholders in connection with the vote on a plan, you state that the plan complies with the appropriate Federal banking agency's regulations and that the appropriate Federal banking agency does not endorse or approve the plan in any way. You may not make any written or oral representations to the contrary.

(8) You do not grant stock options at less than the market price at the time of grant.

(9) You do not fund the Option Plan or the MRP at the time of the conversion.

(10) Your plan does not begin to vest earlier than one year after shareholders approve the plan, and does not

vest at a rate exceeding 20 percent per year.

(11) Your plan permits accelerated vesting only for disability or death, or if you undergo a change of control.

(12) Your plan provides that your executive officers or directors must exercise or forfeit their options in the event the institution becomes critically undercapitalized (as defined in 12 CFR 6.4 or 324.403, as applicable), is subject to appropriate Federal banking agency enforcement action, or receives a capital directive under 12 CFR part 6, subpart B or 12 CFR 308.201, as applicable.

(13) You file a copy of the proposed Option Plan or MRP with the appropriate Federal banking agency and certify to such agency that the plan approved by the shareholders is the same plan that you filed with, and disclosed in, the proxy materials distributed to shareholders in connection with the vote on the plan.

(14) You file the plan and the certification with the appropriate Federal banking agency within five calendar days after your shareholders approve the plan.

(b) You may provide dividend equivalent rights or dividend adjustment rights to allow for stock splits or other adjustments to your stock in your ESOP, MRP, and Option Plan.

(c) The restrictions in paragraph (a) of this section do not apply to plans implemented more than 12 months after the conversion, provided that materials pertaining to any shareholder vote regarding such plans are not distributed within the 12 months after the conversion. If a plan adopted in conformity with paragraph (a) of this section is amended more than 12 months following your conversion, your shareholders must ratify any material deviations to the requirements in paragraph (a).

[76 FR 49156, Aug. 9, 2011, as amended at 79 FR 11317, Feb. 28, 2014]

**§ 192.505 May my directors, officers, and their associates freely trade shares?**

(a) Directors and officers who purchase conversion shares may not sell the shares for one year after the date of purchase, except that in the event of

## § 192.510

## 12 CFR Ch. I (1–17 Edition)

the death of the officer or director, the successor in interest may sell the shares.

(b) You must include notice of the restriction described in paragraph (a) of this section on each certificate of stock that a director or officer purchases during the conversion or receives in connection with a stock dividend, stock split, or otherwise with respect to such restricted shares.

(c) You must instruct your stock transfer agent about the transfer restrictions in this section.

(d) For three years after you convert, your officers, directors, and their associates may purchase your stock only from a broker or dealer registered with the Securities and Exchange Commission. However, your officers, directors, and their associates may engage in a negotiated transaction involving more than one percent of your outstanding stock, and may purchase stock through any of your management or employee stock benefit plans.

### § 192.510 May I repurchase shares after conversion?

(a) You may not repurchase your shares in the first year after the conversion except:

(1) In extraordinary circumstances, you may make open market repurchases of up to five percent of your outstanding stock in the first year after the conversion if you file a notice under § 192.515(a) and the appropriate Federal banking agency does not disapprove your repurchase. The appropriate Federal banking agency will not approve such repurchases unless the repurchase meets the standards in § 192.515(c), and the repurchase is consistent with paragraph (c) of this section.

(2) You may repurchase qualifying shares of a director or conduct an appropriate Federal banking agency-approved repurchase pursuant to an offer made to all shareholders of your association.

(3) Repurchases to fund management recognition plans that have been ratified by shareholders do not count toward the repurchase limitations in this section. Repurchases in the first year to fund such plans require prior writ-

ten notification to the appropriate Federal banking agency.

(4) Purchases to fund tax qualified employee stock benefit plans do not count toward the repurchase limitations in this section.

(b) After the first year, you may repurchase your shares, subject to all other applicable regulatory and supervisory restrictions and paragraph (c) of this section.

(c) All stock repurchases are subject to the following restrictions.

(1) You may not repurchase your shares if the repurchase will reduce your regulatory capital below the amount required for your liquidation account under § 192.450. You must comply with the capital distribution requirements at § 5.55 of this chapter.

(2) The restrictions on share repurchases apply to a charitable organization under § 192.550. You must aggregate purchases of shares by the charitable organization with your repurchases.

[76 FR 49156, Aug. 9, 2011, as amended at 80 FR 28481, May 18, 2015]

### § 192.515 What information must I provide to the appropriate Federal banking agency before I repurchase my shares?

(a) To repurchase stock in the first year following conversion, other than repurchases under § 192.510(a)(3) or (a)(4), you must file a written notice with the appropriate OCC licensing office if you are a Federal savings association and with the appropriate FDIC region if you are a state savings association. You must provide the following information:

(1) Your proposed repurchase program;

(2) The effect of the repurchases on your regulatory capital; and

(3) The purpose of the repurchases and, if applicable, an explanation of the extraordinary circumstances necessitating the repurchases.

(b) You must file your notice with the appropriate OCC licensing office if you are a Federal savings association and with the appropriate regional director of the FDIC if you are a state savings association at least ten days before you begin your repurchase program.

(c) You may not repurchase your shares if the appropriate Federal banking agency objects to your repurchase program. The appropriate Federal banking agency will not object to your repurchase program if:

(1) Your repurchase program will not adversely affect your financial condition;

(2) You submit sufficient information to evaluate your proposed repurchases;

(3) You demonstrate extraordinary circumstances and a compelling and valid business purpose for the share repurchases; and

(4) Your repurchase program would not be contrary to other applicable regulations.

**§ 192.520 May I declare or pay dividends after I convert?**

You may declare or pay a dividend on your shares after you convert if:

(a) The dividend will not reduce your regulatory capital below the amount required for your liquidation account under § 192.450;

(b) You comply with all capital requirements under 12 CFR part 3 or part 167, as applicable after you declare or pay dividends;

(c) You comply with the capital distribution requirements under § 5.55 of this chapter; and

(d) You do not return any capital, other than ordinary dividends, to purchasers during the term of the business plan submitted with the conversion.

[76 FR 49156, Aug. 9, 2011, as amended at 79 FR 11317, Feb. 28, 2014; 80 FR 28481, May 18, 2015]

**§ 192.525 Who may acquire my shares after I convert?**

(a) For three years after you convert, no person may, directly or indirectly, acquire or offer to acquire the beneficial ownership of more than ten percent of any class of your equity securities without the appropriate Federal banking agency's prior written approval. If a person violates this prohibition, you may not permit the person to vote shares in excess of ten percent, and may not count the shares in excess of ten percent in any shareholder vote.

(b) A person acquires beneficial ownership of more than ten percent of a class of shares when he or she holds

any combination of your stock or revocable or irrevocable proxies under circumstances that give rise to a conclusive control determination or rebuttable control determination under § 5.50 of this chapter. The appropriate Federal banking agency will presume that a person has acquired shares if the acquiror entered into a binding written agreement for the transfer of shares. For purposes of this section, an offer is made when it is communicated. An offer does not include non-binding expressions of understanding or letters of intent regarding the terms of a potential acquisition.

(c) Notwithstanding the restrictions in this section:

(1) Paragraphs (a) and (b) of this section do not apply to any offer with a view toward public resale made exclusively to you, to the underwriters, or to a selling group acting on your behalf.

(2) Unless the appropriate Federal banking agency objects in writing, any person may offer or announce an offer to acquire up to one percent of any class of shares. In computing the one percent limit, the person must include all of his or her acquisitions of the same class of shares during the prior 12 months.

(3) A corporation whose ownership is, or will be, substantially the same as your ownership may acquire or offer to acquire more than ten percent of your common stock, if it makes the offer or acquisition more than one year after you convert.

(4) One or more of your tax-qualified employee stock benefit plans may acquire your shares, if the plan or plans do not beneficially own more than 25 percent of any class of your shares in the aggregate.

(5) An acquiror does not have to file a separate application to obtain the appropriate Federal banking agency's approval under paragraph (a) of this section, if the acquiror files an application under § 5.50 of this chapter that specifically addresses the criteria listed under paragraph (d) of this section and you do not oppose the proposed acquisition.

(d) The appropriate Federal banking agency may deny an application under

**§ 192.530**

**12 CFR Ch. I (1–1–17 Edition)**

paragraph (a) of this section if the proposed acquisition:

- (1) Is contrary to the purposes of this part;
- (2) Is manipulative or deceptive;
- (3) Subverts the fairness of the conversion;
- (4) Is likely to injure you;
- (5) Is inconsistent with your plan to meet the credit and lending needs of your proposed market area;
- (6) Otherwise violates laws or regulations; or
- (7) Does not prudently deploy your conversion proceeds.

[76 FR 49156, Aug. 9, 2011, as amended at 80 FR 28481, May 18, 2015]

**§ 192.530 What other requirements apply after I convert?**

After you convert, you must:

(a) Promptly register your shares under the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj, as amended). You may not deregister the shares for three years.

(b) Encourage and assist a market maker to establish and to maintain a market for your shares. A market maker for a security is a dealer who:

(1) Regularly publishes bona fide competitive bid and offer quotations for the security in a recognized inter-dealer quotation system;

(2) Furnishes bona fide competitive bid and offer quotations for the security on request; or

(3) May effect transactions for the security in reasonable quantities at quoted prices with other brokers or dealers.

(c) Use your best efforts to list your shares on a national or regional securities exchange or on the National Association of Securities Dealers Automated Quotation system.

(d) File all post-conversion reports that the appropriate Federal banking agency requires.

**CONTRIBUTIONS TO CHARITABLE ORGANIZATIONS**

**§ 192.550 May I donate conversion shares or conversion proceeds to a charitable organization?**

You may contribute some of your conversion shares or proceeds to a charitable organization if:

(a) Your plan of conversion provides for the proposed contribution;

(b) Your members approve the proposed contribution; and

(c) The IRS either has approved, or approves within two years after formation, the charitable organization as a tax-exempt charitable organization under the Internal Revenue Code.

**§ 192.555 How do my members approve a charitable contribution?**

At the meeting to consider your conversion, your members must separately approve by at least a majority of the total eligible votes, a contribution of conversion shares or proceeds. If you are in mutual holding company form and adding a charitable contribution as part of a second step stock conversion, you must also have your minority shareholders separately approve the charitable contribution by a majority of their total eligible votes.

**§ 192.560 How much may I contribute to a charitable organization?**

You may contribute a reasonable amount of conversion shares or proceeds to a charitable organization, if your contribution will not exceed limits for charitable deductions under the Internal Revenue Code and the appropriate Federal banking agency does not object on supervisory grounds. If you are a well-capitalized savings association, the appropriate Federal banking agency generally will not object if you contribute an aggregate amount of eight percent or less of the conversion shares or proceeds.

**§ 192.565 What must the charitable organization include in its organizational documents?**

The charitable organization's charter (or trust agreement) and gift instrument must provide that:

(a) The charitable organization's primary purpose is to serve and make grants in your local community;

(b) As long as the charitable organization controls shares, it must vote those shares in the same ratio as all other shares voted on each proposal considered by your shareholders;

(c) For at least five years after its organization, one seat on the charitable organization's board of directors (or

board of trustees) is reserved for an independent director (or trustee) from your local community. This director may not be your officer, director, or employee, or your affiliate's officer, director, or employee, and should have experience with local community charitable organizations and grant making; and

(d) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for a director from your board of directors or the board of directors of an acquirer or resulting institution in the event of a merger or acquisition of your organization.

**§ 192.570 How do I address conflicts of interest involving my directors?**

(a) A person who is your director, officer, or employee, or a person who has the power to direct your management or policies, or otherwise owes a fiduciary duty to you (for example, holding company directors) and who will serve as an officer, director, or employee of the charitable organization, is subject to § 163.200 of this chapter. *See* Form AC (Exhibit 9) for further information on operating plans and conflict of interest plans.

(b) Before your board of directors may adopt a plan of conversion that includes a charitable organization, you must identify your directors that will serve on the charitable organization's board. These directors may not participate in your board's discussions concerning contributions to the charitable organization, and may not vote on the matter.

**§ 192.575 What other requirements apply to charitable organizations?**

(a) The charitable organization's charter (or trust agreement) and the gift instrument for the contribution must provide that:

(1) The appropriate Federal banking agency may examine the charitable organization at the charitable organization's expense;

(2) The charitable organization must comply with all supervisory directives that the appropriate Federal banking agency imposes;

(3) The charitable organization must annually provide the appropriate Federal banking agency with a copy of the annual report that the charitable organization submitted to the IRS;

(4) The charitable organization must operate according to written policies adopted by its board of directors (or board of trustees), including a conflict of interest policy; and

(5) The charitable organization may not engage in self-dealing, and must comply with all laws necessary to maintain its tax-exempt status under the Internal Revenue Code.

(b) You must include the following legend in the stock certificates of shares that you contribute to the charitable organization or that the charitable organization otherwise acquires: "The board of directors must consider the shares that this stock certificate represents as voted in the same ratio as all other shares voted on each proposal considered by the shareholders, as long as the shares are controlled by the charitable organization."

(c) As long as the charitable organization controls shares, you must consider those shares as voted in the same ratio as all of the shares voted on each proposal considered by your shareholders.

(d) After you complete your stock offering, you must submit copies of the following documents to the appropriate OCC licensing office in accordance with part 192.155, or if you are a state savings association, with the appropriate FDIC region: the charitable organization's charter and bylaws (or trust agreement), operating plan (within six months after your stock offering), conflict of interest policy, and the gift instrument for your contributions of either stock or cash to the charitable organization.

**Subpart B—Voluntary Supervisory Conversions**

**§ 192.600 What does this subpart do?**

(a) You must comply with this subpart to engage in a voluntary supervisory conversion. This subpart applies to all voluntary supervisory conversions under sections 5(i)(1), (i)(2), and (p) of the Home Owners' Loan Act

**§ 192.605**

**12 CFR Ch. I (1-1-17 Edition)**

(HOLA), 12 U.S.C. 1464(i)(1), (i)(2), and (p).

(b) Subpart A of this part also applies to a voluntary supervisory conversion, unless a requirement is clearly inapplicable.

**§ 192.605 How may I conduct a voluntary supervisory conversion?**

(a) You may sell your shares or the shares of a holding company to the public under the requirements of subpart A of this part.

(b) You may convert to stock form by merging into an interim Federal-or state-chartered stock association.

(c) You may sell your shares directly to an acquiror, who may be a person, company, depository institution, or depository institution holding company.

(d) You may merge or consolidate with an existing or newly created depository institution. The merger or consolidation must be authorized by, and is subject to, other applicable laws and regulations.

**§ 192.610 Do my members have rights in a voluntary supervisory conversion?**

Your members do not have the right to approve or participate in a voluntary supervisory conversion, and will not have any legal or beneficial ownership interests in the converted association, unless the appropriate Federal banking agency provides otherwise. Your members may have interests in a liquidation account, if one is established.

**ELIGIBILITY**

**§ 192.625 When is a savings association eligible for a voluntary supervisory conversion?**

(a) If you are an insured savings association, you may be eligible to convert under this subpart if:

(1) You are significantly undercapitalized (or you are undercapitalized and a standard conversion that would make you adequately capitalized is not feasible) and you will be a viable entity following the conversion;

(2) Severe financial conditions threaten your stability and a conversion is likely to improve your financial condition;

(3) FDIC will assist you under section 13 of the Federal Deposit Insurance Act, 12 U.S.C. 1823; or

(4) You are in receivership and a conversion will assist you.

(b) You will be a viable entity following the conversion if you satisfy all of the following:

(1) You will be adequately capitalized as a result of the conversion;

(2) You, your proposed conversion, and your acquiror(s) comply with applicable supervisory policies;

(3) The transaction is in your best interest, and the best interest of the Deposit Insurance Fund and the public; and

(4) The transaction will not injure or be detrimental to you, the Deposit Insurance Fund, or the public interest.

**§ 192.630 When is a state-chartered savings bank eligible for a voluntary supervisory conversion.**

If you are a state-chartered savings bank you may be eligible to convert to a Federal stock savings bank under this subpart if:

(a) FDIC certifies under section 5(o)(2)(C) of the HOLA that severe financial conditions threaten your stability and that the voluntary supervisory conversion is likely to improve your financial condition; or

(b) You meet the following conditions:

(1) Your liabilities exceed your assets, as calculated under generally accepted accounting principles, assuming you are a going concern; and

(2) You will issue a sufficient amount of permanent capital stock to meet your applicable FDIC capital requirement immediately upon completion of the conversion, or FDIC determines that you will achieve an acceptable capital level within an acceptable time period.

**PLAN OF SUPERVISORY CONVERSION**

**§ 192.650 What must I include in my plan of voluntary supervisory conversion?**

A majority of your board of directors must adopt a plan of voluntary supervisory conversion. You must include all of the following information in your plan of voluntary supervisory conversion.

- (a) Your name and address.
- (b) The name, address, date and place of birth, and social security number of each proposed purchaser of conversion shares and a description of that purchaser's relationship to you.
- (c) The title, per-unit par value, number, and per-unit and aggregate offering price of shares that you will issue.
- (d) The number and percentage of shares that each investor will purchase.
- (e) The aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase.
- (f) A description of any liquidation account.
- (g) Certified copies of all resolutions of your board of directors relating to the conversion.

VOLUNTARY SUPERVISORY CONVERSION  
APPLICATION

**§ 192.660 What must I include in my voluntary supervisory conversion application?**

You must include all of the following information and documents in a voluntary supervisory conversion application to the appropriate OCC licensing office if you are a Federal savings association and to the appropriate FDIC region if you are a state savings association under this subpart:

- (a) *Eligibility.* (1) Evidence establishing that you meet the eligibility requirements under § 192.625 or § 192.630.
- (2) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences of the conversion, or an IRS ruling indicating that the transaction qualifies as a tax-free reorganization.
- (3) An opinion of independent counsel indicating that applicable state law authorizes the voluntary supervisory conversion, if you are a state-chartered savings association converting to state stock form.
- (b) *Plan of conversion.* A plan of voluntary supervisory conversion that complies with § 192.650.
- (c) *Business plan.* A business plan that complies with § 192.105, when required by the appropriate Federal banking agency.

(d) *Financial data.* (1) Your most recent audited financial statements and Consolidated Reports of Condition and Income or Thrift Financial Report, as appropriate. You must explain how your current capital levels make you eligible to engage in a voluntary supervisory conversion under § 192.625 or § 192.630.

(2) A description of your estimated conversion expenses.

(3) Evidence supporting the value of any non-cash asset contributions. Appraisals must be acceptable to the appropriate Federal banking agency and the non-cash asset must meet all other appropriate Federal banking agency policy guidelines.

(4) Pro forma financial statements that reflect the effects of the transaction. You must identify your tangible, core, and risk-based capital levels and show the adjustments necessary to compute the capital levels. You must prepare your pro forma statements in conformance with the appropriate Federal banking agency regulations and policy.

(e) *Proposed documents.* (1) Your proposed charter and bylaws.

(2) Your proposed stock certificate form.

(f) *Agreements.* (1) A copy of any agreements between you and proposed purchasers.

(2) A copy and description of all existing and proposed employment contracts. You must describe the term, salary, and severance provisions of the contract, the identity and background of the officer or employee to be employed, and the amount of any conversion shares to be purchased by the officer or employee or his or her affiliates or associates.

(g) *Related applications.* (1) All filings required under the securities offering rules of parts 192 and 197 of this chapter.

(2) Any required Control Act notice, rebuttal submission under § 5.50 of this chapter, or copies of any Holding Company Act Applications, including prior-conduct certifications under Regulatory Bulletin 20.

(3) A subordinated debt application, if applicable.

**§ 192.670**

**12 CFR Ch. I (1–1–17 Edition)**

(4) Applications for permission to organize a stock association and for approval of a merger, if applicable, and a copy of any application for Federal Home Loan Bank membership or FDIC insurance of accounts, if applicable.

(5) A statement describing any other applications required under Federal or state banking laws for all transactions related to your conversion, copies of all dispositive documents issued by regulatory authorities relating to the applications, and, if requested by the appropriate Federal banking agency, copies of the applications and related documents.

(h) *Waiver request.* A description of any of the features of your application that do not conform to the requirements of this subpart, including any request for waiver of these requirements.

[76 FR 49156, Aug. 9, 2011, as amended at 80 FR 28481, May 18, 2015]

**APPROPRIATE FEDERAL BANKING AGENCY REVIEW OF THE VOLUNTARY SUPERVISORY CONVERSION APPLICATION**

**§ 192.670 Will the appropriate Federal banking agency approve my voluntary supervisory conversion application?**

The appropriate Federal banking agency will generally approve your application to engage in a voluntary supervisory conversion unless it determines:

(a) You do not meet the eligibility requirements for a voluntary supervisory conversion under § 192.625 or § 192.630 or because the proceeds from the sale of your conversion stock, less the expenses of the conversion, would be insufficient to satisfy any applicable viability requirement;

(b) The transaction is detrimental to or would cause potential injury to you or the Deposit Insurance Fund or is contrary to the public interest;

(c) You or your acquiror, or the controlling parties or directors and officers of you or your acquiror, have engaged in unsafe or unsound practices in connection with the voluntary supervisory conversion; or

(d) You fail to justify an employment contract incidental to the conversion, or the employment contract will be an

unsafe or unsound practice or represent a sale of control. In a voluntary supervisory conversion, the appropriate Federal banking agency generally will not approve employment contracts of more than one year for your existing management.

**§ 192.675 What conditions will the appropriate Federal banking agency impose on an approval?**

(a) The appropriate Federal banking agency will condition approval of a voluntary supervisory conversion application on all of the following:

(1) You must complete the conversion stock sale within three months after the appropriate Federal banking agency approves your application. The appropriate Federal banking agency may grant an extension for good cause.

(2) You must comply with all filing requirements of parts 192 and 197 of this chapter.

(3) You must submit an opinion of independent legal counsel indicating that the sale of your shares complies with all applicable state securities law requirements.

(4) You must comply with all applicable laws, rules, and regulations.

(5) You must satisfy any other requirements or conditions the appropriate Federal banking agency may impose.

(b) The appropriate Federal banking agency may condition approval of a voluntary supervisory conversion application on either of the following:

(1) You must satisfy any conditions and restrictions the appropriate Federal banking agency imposes to prevent unsafe or unsound practices, to protect the Deposit Insurance Fund and the public interest, and to prevent potential injury or detriment to you before and after the conversion. The appropriate Federal banking agency may impose these conditions and restrictions on you (before and after the conversion) or, as appropriate, your acquiror, controlling parties, or your directors and officers; or

(2) You must infuse a larger amount of capital, if necessary, for safety and soundness reasons.

## Comptroller of the Currency, Treasury

## § 193.2

### OFFERS AND SALES OF STOCK

#### § 192.680 How do I sell my shares?

If you convert under this subpart, you must offer and sell your shares under part 197 of this chapter.

### POST-CONVERSION

#### § 192.690 Who may not acquire additional shares after the voluntary supervisory conversion?

For three years after the completion of a voluntary supervisory conversion, neither you nor your controlling shareholder(s) may acquire shares from minority shareholders without the appropriate Federal banking agency's prior approval.

## PART 193—ACCOUNTING REQUIREMENTS

### Subpart A—Form and Content of Financial Statements

#### Sec.

193.1 Form and content of financial statements.

193.2 Definitions.

193.3 Qualification of public accountant.

193.4 Condensed financial information [Parent only].

### Subpart B [Reserved]

### Subpart C—Financial Statement Presentation

193.101 Application of this subpart.

193.102 Financial statement presentation.

#### APPENDIX A TO PART 193—FINANCIAL STATEMENT LINE ITEMS

AUTHORITY: 12 U.S.C. 1462a, 1463, 1464, 5412(b)(2)(B); 15 U.S.C. 78c(b), 78m, 78n, 78w.

SOURCE: 76 FR 49172, Aug. 9, 2011, unless otherwise noted.

### Subpart A—Form and Content of Financial Statements

#### § 193.1 Form and content of financial statements.

(a) This subpart A states the requirements as to form and content of financial statements included by a Federal savings association in the following documents. However, the OCC's regulations governing the applicable documents specify the actual financial

statements that are to be included in that document.

(1) Any proxy statement or offering circular required to be used in connection with a conversion under part 192 of this chapter.

(2) Any offering circular or nonpublic offering materials required to be used in connection with an offer or sale of securities under part 197 of this chapter.

(3) Any filing under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, made pursuant to the requirements of part 194 of this chapter.

(b) Except as otherwise provided by the OCC by rule, regulation or order made specifically applicable to financial statements governed by this section, financial statements shall:

(1) Be prepared and presented in accordance with generally accepted accounting principles;

(2) Comply with subpart C of this part;

(3) Consistent with the provisions of this subpart, comply with articles 1, 2, 3, 4, 10, and 11 of Regulation S-X adopted by the Securities and Exchange Commission (17 CFR 210.1–210.4, 210.10, and 210.11).

(4) Be audited, when required, by an independent auditor in accordance with the standards imposed by the American Institute of Certified Public Accountants.

(c) The term “financial statements” includes all notes to the statements and related schedules.

#### § 193.2 Definitions.

(a) *Registrant*. The term “registrant” means an applicant, a savings association, or any other person required to prepare financial statements in accordance with this subpart.

(b) *Significant subsidiary*. The term “significant subsidiary” means a subsidiary, including its subsidiaries, which meets any of the following conditions:

(1) The association's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the association and its subsidiaries consolidated