

(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.

**§ 563b.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.

**§ 563b.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 OTS does not object on supervisory grounds. If you are a well-capitalized savings association, OTS generally will not object if you contribute an aggregate amount of eight percent or less of the conversion shares or proceeds.

**§ 563b.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 acquiror or resulting institution in the event of a merger or acquisition of your organization.

**§ 563b.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 § 563.200 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.

**§ 563b.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) OTS may examine the charitable organization at the charitable organization's expense;

(2) The charitable organization must comply with all supervisory directives that OTS imposes;

(3) The charitable organization must annually provide OTS 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

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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 four executed copies of the following documents to the OTS Applications Filing Room in Washington, and three executed copies to the OTS Regional Office: 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**

**§ 563b.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 secs. 5(i)(1), (i)(2), and (p) of the Home Owners’ Loan Act (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.

**§ 563b.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.

**§ 563b.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 OTS provides otherwise. Your members may have interests in a liquidation account, if one is established.

**ELIGIBILITY**

**§ 563b.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;