

**§ 563b.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 OTS concurs.

## FILING REQUIREMENTS

**§ 563b.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 § 563b.200(b).
- (3) Proxy soliciting materials under § 563b.270, including:
  - (i) A preliminary proxy statement with signed financial statements;
  - (ii) A form of proxy meeting the requirements of § 563b.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 § 563b.300.
- (5) The documents and information required by Form AC. You may obtain Form AC from OTS Washington and Regional Offices (see § 516.40 of this chapter) and OTS's website ([www.ots.treas.gov](http://www.ots.treas.gov)).
- (6) Where indicated, written consents, signed and dated, of any accountant, 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 § 563b.160.
- (8) Any additional information OTS requests.
  - (b) OTS 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.

**§ 563b.155 How do I file my application for conversion?**

You must file seven copies of your application for conversion on Form AC. You must file the original and three conformed copies with the Applications Filing Room in Washington, and three conformed copies with the appropriate Regional Office at the addresses in § 516.40 of this chapter.

**§ 563b.160 May I keep portions of my application for conversion confidential?**

- (a) OTS 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 OTS to keep portions of your application confidential. To do so, you must separately bind and clearly designate as "confidential" any portion of your application for conversion that you deem confidential. You must provide a written statement specifying the grounds supporting your request for confidentiality. OTS will not treat as confidential the portion of your application describing how you plan to meet your Community Reinvestment Act (CRA) objectives. The CRA portion of your application may not incorporate by reference information contained in the confidential portion of your application.
- (c) OTS will determine whether confidential information must be made available to the public under 5 U.S.C. 552 and part 505 of this chapter. OTS will advise you before it makes information you designated as "confidential" available to the public.

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

To amend your application for conversion, you must:

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

## § 563b.180

### NOTICE OF FILING OF APPLICATION AND COMMENT PROCESS

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

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

(b) Promptly after publication, you must file four copies of any public notice and an affidavit of publication from each publisher. You must file the original and one copy with the Applications Filing Room in Washington, and two copies with the appropriate Regional Office at the addresses in § 516.40 of this chapter.

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

[69 FR 68250, Nov. 24, 2004]

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

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

[69 FR 68250, Nov. 24, 2004]

### OTS REVIEW OF THE APPLICATION FOR CONVERSION

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

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

(1) Your conversion complies with this part;

(2) You will meet your regulatory capital requirements under part 567 of this chapter after the conversion; and

(3) Your conversion will not result in a taxable reorganization under the Internal Revenue Code of 1986, as amended.

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

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

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

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

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

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

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

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

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

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

(1) Based on this review, OTS may approve your application, deny your