



DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Revision of an Approved Information Collection; Comment Request; Conversions from Mutual to Stock Form

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning a revision to a currently approved information collection.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN **FEDERAL REGISTER**].

ADDRESSES: Commenters are encouraged to submit comments by e-mail, if possible.

You may submit comments by any of the following methods:

- *E-mail:* prainfo@occ.treas.gov.
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557-0347, 400 7th Street, SW., suite 3E-218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street, SW., suite 3E-218, Washington, DC 20219.
- *Fax:* (571) 465-4326.

Instructions: You must include “OCC” as the agency name and “1557-0347” in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet. Following the close of this notice’s 60-day comment period, the OCC will publish a second notice with a 30-day comment period.

- Viewing Comments Electronically: Go to *www.reginfo.gov*. Hover over the “Information Collection Review” tab and click on “Information Collection Review” dropdown. Underneath the “Currently under Review” section heading, from the drop-down menu select “Department of Treasury” and then click “submit.” This information collection can be located by searching by OMB control number “1557-0347” or “Conversions from Mutual to Stock Form.” Upon finding the appropriate information collection, click on the related “ICR Reference Number.” On the next screen, select “View Supporting Statement and Other Documents” and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov*, please contact the Regulatory Information Service Center at (202) 482-7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649-5490, Chief Counsel’s Office, Office of the Comptroller of the

Currency, 400 7 St., SW., Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

The OCC is requesting comment on the following revision to an approved information collection:

Title: Conversions from Mutual to Stock Form

OMB Control No.: 1557-0347

Abstract: Part 192 governs the process through which a savings association may convert from the mutual to the stock form of ownership and sets forth the procedures and submissions required in connection with that process.

Twelve CFR 192.5(c) provides that the appropriate Federal banking agency may waive any requirement of part 192 or any provision of a prescribed form. To obtain such a waiver, a savings association must file a written request with the agency that (1) specifies the requirement(s) or provision(s) for which the waiver is sought; (2) demonstrates that the waiver is equitable; is not detrimental to the savings association, its account holders, or other savings associations; and is not contrary to the public interest; and (3) includes a legal opinion demonstrating that the waiver sought does not conflict with applicable law.

Twelve CFR 192.105(a) sets forth the minimum requirements for the business plan a savings association must adopt prior to filing an application for conversion. The plan must include projections and activities for three years following the conversion; the plan for deploying conversion proceeds to meet credit and lending needs in proposed market areas; the risks associated with the plan for deployment of conversion proceeds, and the effect of the plan on management resources, staffing, and facilities; and the expertise of the savings association's management and board of directors, or plans for

adequate staffing and controls to prudently manage the growth, expansion, new investment, and other operations and activities proposed in the business plan.

Twelve CFR 192.110(b) provides that upon review and approval of the savings association's business plan, the chief executive officer and at least two-thirds of the board must certify that the plan accurately reflects the intended plans for deployment of conversion proceeds, and that any new initiatives reflected in the business plan are reasonably achievable. The savings association must submit these certifications with its business plan as part of its application for conversion under § 192.150.

Twelve CFR 192.130 provides that a savings association must include information included in §§ 192.320 (order of priority to purchase conversion shares), 192.485 (liquidation account provision), and 192.505 (restrictions on trading of shares) in its conversion plan.

Twelve CFR 192.135(a) provides that a savings association must notify its members that its board of directors has adopted a plan of conversion. This notification may be accomplished by mail or email, the posting of notices in local newspapers, or the posting of a notice on its website. Twelve CFR 192.135(b) sets forth the minimum requirements for the required notice, including information about the rights of account holders in connection with the conversion and the processes available to exercise those rights.

Twelve CFR 192.150 sets forth the information to be required in a savings association's application for conversion. The application must include: (1) the plan for conversion; (2) pricing materials meeting the requirements of § 192.200(b); (3) proxy materials under § 192.270; (4) an offering circular described in § 192.300; (5) documents and information required by Form AC; (6) any necessary written consents; (7) the savings association's business plan, submitted as a separately bound, confidential exhibit; and (8) any other information requested by the appropriate Federal banking agency.

Twelve CFR 192.180(a) requires a savings association to publish a public notice of its application for conversion by simultaneously posting the notice prominently in its home and branch offices. Twelve CFR 192.180(b) provides that a savings association must publish and post a new notice and allow an additional 30 days for comment if the savings association must refile.

Twelve CFR 192.225(a) requires that after the appropriate Federal banking agency approves the plan of conversion, the savings association must submit the plan to its members for approval and obtain approval at a special or annual meeting of its members. Twelve CFR 192.225(d) provides that a savings association may notify eligible account holders or supplemental eligible account holders who are not voting members of its proposed conversion and include only the information in § 192.135 in its notice.

Twelve CFR 192.235(a) provides that a savings association must notify its members of the meeting to consider its conversion by sending the members a proxy statement cleared by the appropriate Federal banking agency. Twelve CFR 192.235(c) requires the savings association to also notify each beneficial holder of an account held in a fiduciary capacity if the savings association is a Federal savings association and the name of the beneficial holder is disclosed on the savings association's records or if the savings association is a State-chartered savings association and the beneficial holder possesses voting rights under State law.

Twelve CFR 192.240(a) requires that, after the members meeting, the savings association file with the appropriate OCC licensing office (Federally-chartered) or FDIC region (State-chartered) the following information: (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; and (6) an opinion

of counsel that the meeting was conducted in compliance with all applicable State or Federal laws and regulations. Twelve CFR 192.240(b) requires that, upon completion of the conversion, the savings association submit an opinion of counsel that it complied with all applicable laws.

Twelve CFR 192.250(b)(2) requires that if, in complying with proxy solicitation provisions, the savings association solicits proxies through newspaper advertisements, the advertisements may include only (i) the name of the savings association; (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 the savings association's members to vote at the meeting.

Twelve CFR 192.255 sets forth the form of proxy requirements. The form of proxy must include 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; (d) the phrase "Revocable Proxy" in bold face type (at least 18 point); (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; and (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.

Twelve CFR 192.270(a) requires that a savings association prepare its proxy statement in compliance with part 192 and Form PS.

Twelve CFR 192.275(a) provides that a savings association must file revised proxy solicitation materials as an amendment to its application for conversion. The proxy solicitation materials must be in the form in which it furnished the materials to its members. Twelve CFR 192.275(b) provides that to revise its proxy a savings association must file (1) revised proxy materials as required by Form PS; (2) a revised form of proxy, if applicable; (3) any additional proxy solicitation material subject to § 192.270; and (4) a copy of the revised proxy solicitation materials marked to clearly indicate changes from the prior filing.

Twelve CFR 192.280 sets out the rules for mailing proxy solicitation materials. Twelve CFR 192.280(a) provides that a savings association must mail the member's cleared proxy solicitation material if upon written request by a member if the savings association's board of directors has adopted a plan of conversion, the appropriate Federal banking agency has cleared the member's proxy solicitation and the member agrees to defray the savings association's reasonable expenses. Twelve CFR 192.280(b) provides that upon receipt of such a request, the savings association must promptly furnish to the member the approximate number of members that the savings association solicited or will solicit (or the approximate number of members of any group of account holders that the member designates) and the estimated cost of mailing the proxy solicitation material.

Twelve CFR 192.295 provides that if a savings association amends its application for conversion, the appropriate Federal banking agency may require the savings association to re-solicit proxies for its members' meeting as a condition of approval of the amendment.

Twelve CFR 192.300 sets forth the requirements governing offering circulars. Twelve CFR 192.300(a) provides that a Federal savings association must file its offering circular with the appropriate OCC licensing office and a State savings association must file its offering circular with the appropriate FDIC region. Twelve CFR 192.300(b)

provides that a savings association must condition its stock offering upon member approval of its plan of conversion.

Twelve CFR 192.305 sets forth rules governing the distribution of the offering circular. Twelve CFR 192.305(a) provides that a savings association may distribute a preliminary offering circular at the same time as or after it mails the proxy statement to its members. Twelve CFR 192.305(c) provides that a savings association must distribute a final offering circular for stock issued in the transaction to persons listed in its plan of conversion within 10 calendar days after the appropriate Federal banking agency declares the offering circular effective or the Securities and Exchange Commission declares the registration statement for the offering circular effective.

Twelve CFR 192.310 sets forth the rules governing post-effective amendments to an offering circular. Twelve CFR 192.310(b) provides that after the appropriate Federal banking agency or the Securities and Exchange Commission declares the post-effective amendment effective, the savings association must immediately have the amendment to the offering circular delivered to each person who subscribed for or ordered shares in the offering. Twelve CFR 192.310(c) provides that the post-effective amendment must indicate that each person may increase, decrease, or rescind their subscription or order.

Twelve CFR 192.320 provides that a savings association must offer to sell its shares in the following order: (a) eligible account holders; (b) tax-qualified employee stock ownership plans; (c) supplemental eligible account holders; (d) other voting members who have subscription rights; and (e) the savings association's community or the general public.

Twelve CFR 192.335 sets forth the procedures for the sale of conversion shares. Twelve CFR 192.335(a) provides that savings association 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. The savings association may either send the order forms with its offering circular or after the savings association distributes its offering circular.

Twelve CFR 192.405 sets forth the rules governing extensions of the offering period. Twelve CFR 192.405(b) provides that if the appropriate Federal banking agency grants a savings association's request for an extension of the offering period, the savings association must provide a post-effective amendment to the offering circular to each person who subscribed for or ordered stock. The 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.

Twelve CFR 192.430 sets forth the rules governing charter amendments. Twelve CFR 192.430(a) provides that if the savings association is a Federally-chartered mutual savings association or savings bank and it converts to a Federally-chartered stock savings association or savings bank, it must apply to the OCC to amend its charter and bylaws consistent with 12 CFR 5.22 as part of the savings association's application for conversion.

Twelve CFR 192.450(a) provides that a liquidation account represents the potential interest of eligible account holders and supplemental eligible account holders in the savings association's net worth at the time of conversion. A savings association must maintain a sub-account to reflect the interest of each account holder.

Twelve CFR 192.470 sets forth the rules governing adjustments to liquidation sub-accounts. Twelve CFR 192.470(a) provides that a savings association must reduce the balance of an eligible account holder's or supplemental eligible account holder's liquidation sub-account if the deposit balance in the account holder's savings account at the close of business on any annual closing date, falls below the lesser of: (i) the deposit balance in the account holder's savings account as of the relevant eligibility record date;

or (ii) the deposit balance in the account holder's savings account as of its lowest balance as of any subsequent annual closing date. The reduction in the liquidation sub-account from its balance at the time of conversion must be proportionate to the reduction in the account holder's savings account from its balance at the time of conversion. Twelve CFR 192.470(c) provides that a savings association is not required to adjust the liquidation account and sub-account balances at each annual closing date if the savings association maintains sufficient records to make the computations if a liquidation subsequently occurs. Twelve CFR 192.470(d) provides that a savings association 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.

Twelve CFR 192.485 provides that if a savings association converts to Federal stock form, it must include a specific provision regarding the maintenance of a liquidation account in its new charter.

Twelve CFR 192.500(a) provides that during the 12 months after its conversion, a savings association 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 that the savings association meets a set of requirements, including disclosure requirements and percentage limitations, and vesting restrictions.

Twelve CFR 192.505 sets forth the rules governing restrictions on trading. Twelve CFR 192.505(b) provides that the savings association must include a notice of an applicable restriction 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.

Twelve CFR 192.515 details the information that must be filed with the Federal banking agency prior to the repurchase of shares. Twelve CFR 192.515(a) provides that

in order to repurchase stock in the first year following conversion, a savings association generally must file a written notice with the appropriate OCC licensing office if Federally-chartered and with the appropriate FDIC region if State-chartered. The savings association must provide the following information: (1) the proposed repurchase program; (2) the effect of the repurchases on regulatory capital; and (3) the purpose of the repurchases and, if applicable, an explanation of the extraordinary circumstances necessitating the repurchases. Twelve CFR 192.515(b) provides that a Federal savings association must file its notice with the appropriate OCC licensing office, and a State savings association must file its notice with the appropriate regional director of the FDIC, at least 10 calendar days before the savings association begins its repurchase program. Twelve CFR 192.515(c) provides that a savings association may not repurchase its shares if the appropriate Federal banking agency objects to the repurchase program.

Twelve CFR 192.525 sets forth the restrictions on the acquisition of shares after conversion. Twelve CFR 192.525(c)(5) provides that an acquiror does not have to file a separate application to obtain the appropriate Federal banking agency's approval under 12 CFR 192.525(a) if the acquiror files an application under 12 CFR 5.50 that specifically addresses the criteria listed under 12 CFR 192.525(d) and the savings association does not oppose the proposed acquisition. Twelve CFR 192.525(d) provides conditions under which the appropriate Federal banking agency may deny an application to acquire shares.

Twelve CFR 192.530 sets forth other post conversion requirements. Twelve CFR 192.530(a) provides that after a savings association converts, it must promptly register its shares under the Securities Exchange Act of 1934 (15 U.S.C. 78a-78jj, as amended). The savings association may not deregister the shares for three years. Twelve CFR 192.530(c) provides that a savings association must also use its best efforts to list its shares on a national or regional securities exchange or on the National Association of Securities Dealers Automated Quotation system. Finally, 12 CFR 192.530(d) requires

the savings association to file all post-conversion reports required by the appropriate Federal banking agency.

Twelve CFR 192.550(a) provides that a savings association may contribute some of its conversion shares or proceeds to a charitable organization if its plan of conversion provides for the proposed contribution.

Twelve CFR 192.565 provides that the charter of a charitable organization's charter (or trust agreement) and the gift instrument itself must provide that: (a) the charitable organization's primary purpose is to serve and make grants in the savings association's 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 the savings association's 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 the savings association's local community who is not affiliated with the savings association and experienced 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 the savings association's board of directors.

Twelve CFR 192.575(a) provides that 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 organization must comply with all supervisory directives that the appropriate Federal banking agency imposes; (3) the organization must operate according to written policies adopted by its board of directors (or board of trustees), including a conflict of interest policy; (4) the organization must not engage in self-dealing; and (5) the organization must comply with all laws necessary to maintain its

tax-exempt status under the Internal Revenue Code. Twelve CFR 192.575(b) provides that the savings association must include a specific legend in the stock certificates of shares that the savings association contributes to the charitable organization or that the charitable organization otherwise acquires.

Twelve CFR 192.650 provides that a majority of the board of directors of the savings association must adopt a plan of voluntary supervisory conversion. The savings association must include in its plan of voluntary supervisory conversion: (a) the savings association's name and address; (b) a description of the proposed voluntary supervisory conversion transaction that also describes plans for any liquidation account; and (c) certified copies of all resolutions relating to the conversion adopted by the board of directors of the savings association.

Twelve CFR 192.660 provides that a savings association must include all of the following information and documents in a voluntary supervisory conversion application to the appropriate OCC licensing office if it is a Federal savings association and to the appropriate FDIC region if it is a State savings association under this subpart: (a) information establishing eligibility; (b) a plan of conversion that complies with § 192.650; (c) a business plan that complies with § 192.105, when required by the appropriate Federal banking agency; (d) financial data, including financial statements and call reports, to support the transaction; (e) proposed documents for the conversion (charter, bylaws, stock certificate, securities disclosure materials); (f) any agreements between the savings association and proposed purchasers and all existing and proposed employment contracts; (g) all related filings and applications including, filings required under the securities offering rules of 12 CFR parts 16 and 192, Change in Bank Control Act submissions, subordinated debt applications, applications for permission to organize a stock association and for approval of a merger, applications for FDIC insurance of

accounts); and (h) other information, including a statement describing post-conversion roles for officers, directors, and affiliates and waiver requests.

Type of Review: Revision

Affected Public: Businesses or other for-profit

Estimated Number of Respondents: 1

Estimated Total Annual Burden: 512 hours

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;
- The accuracy of the OCC's estimate of the burden of the collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of the collection on respondents, including the use of automated collection techniques or other forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel,

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