

# RESCINDED

OCC Bulletin 2020-1 | January 8, 2020

Replaced - See OCC 2020-60

## Employment Contracts, Mutual-to-Stock Conversions, and Technical Amendments: Notice of Proposed Rulemaking

### Summary

On January 8, 2020, the Office of the Comptroller of the Currency (OCC) issued a proposed rule to address recommendations from the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) report issued in March 2017. Specifically, the proposal would repeal the regulatory requirements for employment contracts of federal savings associations (FSA) in their entirety. The proposal also requests comment on potential amendments to the rules regarding fiduciary record-keeping requirements for national banks and FSAs and acceptable collateral for self-deposited trust funds. In addition, the proposed rule would make amendments to rules that were not addressed by the EGRPRA report. The proposed rule would increase flexibility and reduce burden for FSAs that are converting from mutual to stock form. The proposal also would amend the securities disclosure exemptions in the OCC's securities offering disclosure rules to remove the requirement that national banks and FSAs provide the OCC with audited financial statements in connection with small securities issues; make technical and conforming amendments to the lending limits and enforcement rules; and make technical amendments to other rules, including updating cross-references to repealed and integrated rules.

### To

Chief Executive Officers of All National Banks, Federal Savings Associations, and Federal Branches and Agencies; Department and Division Heads; All Examining Personnel; and Other Interested Parties

### Note for Community Banks

This proposed rule would apply to all OCC-regulated institutions, including community institutions.

### Highlights

- 12 CFR 163.39 currently requires that all employment contracts with FSA employees be in writing and approved by the FSA's board of directors. The regulation also sets forth detailed provisions that must be included in each employment contract. As suggested by an EGRPRA commenter, the proposal would repeal these requirements, which would reduce burden for FSAs.
- In response to an EGRPRA commenter, the proposed rule invites comment on whether the OCC should amend its fiduciary rules to
  - require national banks and FSAs to retain records for fiduciary accounts for "the minimum period required by applicable fiduciary state law," in addition to the current periods of three years from the later of the termination of the account or the termination of any litigation relating to the account; and

- expand the list of acceptable collateral for self-deposited trust funds to include additional types of instruments.
- The proposed rule would amend 12 CFR 192 (conversions from mutual to stock form) to
  - clarify which forms and accounting standards are to be used in connection with a mutual-to-stock conversion;
  - allow increased flexibility by encouraging electronic filing, electronic meetings, and notice by email;
  - reduce burden by reducing the number of copies of proxy materials that must be filed with the OCC; and
  - update cross-references to the repealed 12 CFR 197 with the appropriate references to 12 CFR 16 (securities offering disclosure rules).
- The proposed rule would amend the securities disclosure exemptions in 12 CFR 16 to
  - provide that a bank in organization that is issuing securities pursuant to the small issues exemption is not required to include audited financial statements as part of its offering documents; and
  - clarify that all registration statements, offering documents, amendments, notices, or other documents relating to a mutual-to-stock conversion must be filed with the appropriate OCC licensing office at <http://www.banknet.gov/>.
- The proposed rule also would
  - clarify that the regulations pertaining to the removal, suspension, or debarment of independent public accountants, 12 CFR 19, subpart P, apply to insured FSAs and insured federal branches of foreign banks; and
  - amend the definitions of "small business loans" and "small farm loans" in the lending limits rule, 12 CFR 32, to align with the language of the call report.

## Background

Section 2222 of EGRPRA requires that, at least once every 10 years, the Federal Financial Institutions Examination Council (FFIEC) and each appropriate federal banking agency represented on the FFIEC (the OCC, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System—collectively, the agencies) conduct a review of their regulations.<sup>1</sup> The agencies also must publish a summary of the comments received in connection with the EGRPRA review in the *Federal Register*, and the FFIEC must submit a report to Congress that summarizes any significant issues raised by the comments and the relative merits of the issues. The agencies completed their second EGRPRA review in March 2017, with the publication of the *FFIEC Joint Report to Congress*.<sup>2</sup>

In May 2015, the OCC published a final rule revising national bank and FSA licensing rules that included a number of amendments directly responsive to comments the OCC received through the EGRPRA process.<sup>3</sup> In January 2017, the OCC published a second final rule implementing further changes requested by EGRPRA commenters.<sup>4</sup> This proposed rule is the third OCC rulemaking that addresses, among other items, recommendations from the 2017 EGRPRA review, including the repeal of 12 CFR 163.39 (employment contracts) and

possible amendments to 12 CFR 9.8 and 150.420 (fiduciary record keeping) and 12 CFR 9.10 and 150.320 (acceptable collateral for fiduciary funds awaiting investment or distribution).<sup>5</sup>

## Further Information

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## Related Link

- ["Employment Contracts, Mutual to Stock Conversions, Technical Amendments"](#) (PDF)

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<sup>1</sup> Section 2222 of EGRPRA is codified at 12 USC 3311(b).

<sup>2</sup> 82 Fed. Reg. 15900 (March 30, 2017).

<sup>3</sup> 80 Fed. Reg. 28346 (May 18, 2015).

<sup>4</sup> 82 Fed. Reg. 8082 (January 23, 2017).

<sup>5</sup> See [FFIEC Joint Report to Congress](#) (March 2017).