

Transmittal



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Number: 171

A rule change to make it easier for more mutual depository institutions to convert to a federal mutual savings association is proposed by the Office of Thrift Supervision (OTS) in the attached document.

Currently OTS permits stock depository institutions to convert directly to a federal stock thrift charter. OTS also permits state-chartered mutual savings banks and savings and loans to convert directly to a federally chartered mutual savings association in one step.

However, other mutual institutions, such as credit unions, must go through several steps to convert to a federal mutual charter. They must first obtain a new federal mutual savings association charter and then merge the existing institution into the new federal association. This involves several different regulatory approvals, which is more burdensome. OTS is proposing that all mutual institutions be permitted the option of a one-step conversion.

Converting mutual institutions would come under all existing regulations currently applicable to fed-

eral thrifts. For example, the proposal would require all converting institutions to obtain deposit insurance from the Federal Deposit Insurance Corporation (FDIC), and they would have to meet investment limitations of federal thrifts within a specified time. The proposed rule would also make minor revisions to the existing conversion provisions.

The proposed rule was published in the April 9, 1997, edition of the *Federal Register*, Vol. 62, No. 68, pp. 17115-17117. Written comments must be received on or before June 9, 1997, and should be addressed to: Manager, Dissemination Branch, Records Management and Information Policy Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552. Comments may be e-mailed to: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number.

For further information contact:
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David A Permut (202) 906-7505

Nicolas P. Retsinas
Director
Office of Thrift Supervision

Attachment

DEPARTMENT OF THE TREASURY**Office of Thrift Supervision****12 CFR Part 543****[No. 97-31]****RIN 1550-AB06****Incorporation, Organization, and Conversion of Federal Mutual Associations****AGENCY:** Office of Thrift Supervision, Treasury.**ACTION:** Proposed rule with request for comments.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to amend its regulations governing conversions to federal mutual savings associations to permit the direct conversion of all types of mutual depository institutions into federal mutual savings associations. This proposal would simplify the conversion process.

DATES: Comments must be received on or before June 9, 1997.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552, Attention Docket No. 97-31. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7755; or they may be sent by e-mail:

public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Scott Ciardi, Senior Analyst, Corporate Activities Division (202/906-6960); David A. Permut, Counsel (Banking and Finance) (202/906-7505) or Kevin A. Corcoran, Assistant Chief Counsel for Business Transactions (202/906-6962), Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:**I. Background**

Various types of depository institutions have expressed interest in converting to a federal savings association charter.¹ The OTS has

¹ Section 2(5) of the Home Owners' Loan Act defines "federal savings associations" to include

received, for example, inquiries from credit unions and commercial banks on the process of converting to a federal thrift charter. Depository institutions may determine that because their businesses focus on housing or consumer credit needs, these operations may be conducted most efficiently through a federal thrift charter. The Home Owners' Loan Act (HOLA)² sets forth the purposes of a federal thrift charter as providing for the deposit of funds and for the extension of credit for homes and other goods and services.³

The OTS has long taken the position that depository institutions should be free to operate under whatever charter best suits their business needs, consistent with safety and soundness. To that end, the OTS has granted federal savings associations explicit authority to convert directly to a bank charter,⁴ and has promulgated regulations enabling stock depository institutions to convert directly to a federal stock savings association charter.⁵ The purpose of today's proposed regulation is to permit mutual depository institutions to convert directly to a savings association charter.

II. Current Law

Sections 5(i) and 5(o) of the HOLA provide for direct conversions of, respectively, state savings associations and state-chartered savings banks that are Bank Insurance Fund members to a federal charter.⁶ Separately, pursuant to Section 5(a) of the HOLA, the OTS has promulgated a regulation permitting the direct conversion to a federal stock savings association charter of any stock depository institution that is, or is eligible to become, a member of a Federal Home Loan Bank.⁷

Depository institutions in mutual or stock form also may convert to a federal association charter indirectly, by obtaining a new federal savings association charter, and causing the existing institution to combine with the new federal association in a merger or purchase and assumption transaction.⁸ This method, however, is more burdensome to the applicant because it

involves several different regulatory approvals.

Section 5(a) is a broad grant of authority to the Director of the OTS, encompassing (among other things) approval of direct conversions of mutual depository institutions to a federal mutual charter. Section 5(a) authorizes the Director of the OTS, under such regulations as the Director may prescribe, to provide for the organization, examination, operation and regulation of federal savings associations. Section 5(a) of the HOLA gives the OTS plenary authority to provide for the organization and regulation of federal savings associations, consistent with the "best practices" of thrift institutions in the United States and for the purpose of encouraging such institutions to provide credit for housing safely and soundly.⁹

In addition, recent revisions to HOLA provisions governing permissible investments (Section 5(c)), and to its definition of "qualified thrift investment" (Section 10(m)) reflect a congressional intent for federal savings associations and savings banks to have a significant role in many kinds of consumer finance, as well as in home mortgage lending.¹⁰ The OTS believes that non-thrift depository institutions that conclude that their operations in providing credit for housing and other consumer-related purposes make the federal savings association charter the optimal charter should be able to convert to that charter without encountering unnecessary regulatory burdens.

The OTS already has amended its regulations to facilitate the direct conversion of stock depository institutions to federal stock savings associations.¹¹ The OTS has now determined, pursuant to its Section 5(a) authority, to amend its regulations to facilitate direct conversions of mutual depository institutions to a federal mutual thrift charter.

III. Proposed Amendments

The proposed rule would revise 12 CFR 543.8 and 543.9 to permit any type of mutual depository institution to convert to a federal mutual savings association. The proposed rule would apply all existing regulatory requirements currently applicable to direct conversions by state mutual associations and savings banks to this expanded class of applicants and would

revise Sections 543.8 and 543.9 as described below. Proposed Section 543.8 would permit conversion subject to three requirements.

First, the institution must, upon consummation of the conversion, have deposits insured by the Federal Deposit Insurance Corporation ("FDIC"). See also § 543.9(c)(3).

Second, the depository institution, in accomplishing the conversion, must comply with all applicable state and federal statutes and regulations, and OTS policies, and obtain all necessary regulatory and member approvals. This provision requires, among other things, that the converting depository institution have authority to convert to a federal association under the statutes and regulations applicable to the converting institution, and the conversion be approved by a vote of its members pursuant to the laws applicable to the converting institution.

Third, depository institutions converting to a federal mutual association charter must conform with the investment limitations of Section 5(c) of the HOLA¹² within a time frame prescribed by the OTS. Section 552.2-6 of the OTS regulations already contains this requirement for federal stock associations.

The proposal also would revise Section 543.9(a) to set forth the filing requirements. Section 543.9(c) would be revised to eliminate the statement that the OTS will not consider the application of a converting institution not insured by the FDIC until the FDIC completes an eligibility examination. The OTS does not believe it is necessary to delay consideration of an application until the eligibility examination has been completed. Moreover, the OTS has the ability to deem a conversion application incomplete, if processing of the application hinges on the final results of the eligibility examination, under the application processing procedures at Section 516.2.

In addition, Section 543.9(c) would be revised to provide explicitly that the OTS will consider applications to convert to a federal mutual charter under the standards set forth at section 5(e) of the HOLA, as well as Section 543.2(g). Moreover the revised regulation would explicitly state that converting institutions that have been in existence as depository institutions for less than three years will be subject to all approval criteria and other requirements applicable to *de novo* federal associations.¹³

federal savings associations and federal savings banks. Accordingly, references herein to federal savings associations include federal savings banks.

² 12 U.S.C. 1461 *et seq.*

³ 12 U.S.C. 1464.

⁴ 12 CFR 552.2-7.

⁵ 12 CFR 552.2-6.

⁶ 12 U.S.C. 1464 (i) and (o).

⁷ 12 CFR 552.2-6.

⁸ The authority for federal mutual and stock associations to engage in these types of transactions is set forth at 12 CFR 546.2 and 552.13, respectively.

⁹ 12 U.S.C. 1464(a).

¹⁰ See Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. 104-208, sections 2303(a)-(e), (g), 110 Stat. 3009 (codified in portions of 12 U.S.C. 1464(b), (c), 1467(a)(m)).

¹¹ 12 CFR 552.2-6.

¹² 12 U.S.C. 1464(c).

¹³ See 12 CFR 571.6.

IV. Solicitation of Comments

The OTS invites public comment on all aspects of the proposal.

V. Executive Order 12866

The Director of the OTS has determined that this proposed rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

VI. Regulatory Flexibility Act Analysis

Pursuant to Section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposal, which will reduce regulatory burdens, will not have a significant economic impact on a substantial number of small entities, because small entities utilizing the regulation may be able to reduce the number of applications they must file in order to convert to a federal charter. Accordingly, an initial Regulatory Flexibility Analysis is not required.

VII. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, or \$100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of \$100 million or more. Accordingly, this rulemaking is not subject to Section 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 543

Conversions, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision proposes to amend chapter V, title 12, Code of Federal Regulations, as set forth below.

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

1. The authority citation for part 543 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

2. Section 543.8 is amended by revising the heading and paragraph (a) to read as follows:

§ 543.8 Conversion of depository institutions to Federal mutual charter.

(a) With the approval of the OTS, any depository institution, as defined in § 552.13 of this chapter, that is in mutual form may convert into a Federal mutual savings association, provided that:

(1) The depository institution, upon conversion, will have deposits insured by the Federal Deposit Insurance Corporation;

(2) The depository institution, in accomplishing the conversion, complies with all applicable state and federal statutes and regulations, and OTS policies, and obtains all necessary member approvals; and

(3) The resulting Federal mutual association conforms within the time prescribed by the OTS to the requirements of section 5(c) of the Home Owners' Loan Act.

* * * * *

3. Section 543.9 is amended by revising paragraph (a) and the introductory text of paragraph (c) to read as follows:

§ 543.9 Application for conversion to Federal mutual charter.

(a) *Filing.* Any depository institution that proposes to convert to a Federal mutual association as provided in § 543.8 shall, after approval by its board of directors, file in accordance with § 516.1 of this chapter an application on forms obtained from the OTS. The applicant shall submit any financial statements or other information the OTS may require.

* * * * *

(c) *Action on application.* The OTS will consider such application and any information submitted therewith, and may approve the application in accordance with section 5(e) of the Home Owners' Loan Act and § 543.2(g)(1). Converting depository institutions that have been in existence less than three years will be subject to all approval criteria and other requirements applicable to *de novo* Federal associations. Approval of an application and issuance by the OTS of a charter will be subject to:

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Dated: April 2, 1997.

By the Office of Thrift Supervision.

Nicolas P. Rotsinas,
Director.

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