**Office of Thrift Supervision** **April 14, 1998**
Department of the Treasury

# *Transmittal*
# *TR–195*

Federal Register, Vol.63, No.71, pp. 18149-18150 **Number: TR–195**

The members of a federal mutual savings association would be given greater flexibility in setting their voting rights under the attached regulatory amendment proposed by the Office of Thrift Supervision (OTS).

In the past year, on a case-by-case basis, OTS granted the requests of two credit unions to retain their one member, one vote status when they converted to a federal, OTS-regulated thrift. The rule change would automatically give the option to all mutual institutions, including existing federal mutual thrifts, and credit unions and state-chartered mutual savings banks that convert to a charter granted by OTS.

The rules for OTS-chartered thrifts and other mutual institutions now differ as to how many votes each member may cast. Many credit union members, for example, may cast only one vote. But a depositor in an OTS thrift may be permitted to cast up to 1,000 votes: one vote for every $100 in deposits, with a cap on total votes set by the institution anywhere within a range of 50 to 1,000.

The proposed rule change would simply revise the range of maximum votes to one to 1,000. By adopting a cap of one vote, converting institutions could keep their current one member, one vote formula, rather than one that permits more votes for larger amounts on deposit.

The new range of maximum votes is proposed to be adopted as a pre-approved charter option, so that existing federally chartered OTS thrifts, as well as those converting to an OTS-issued charter, could adopt any vote cap in the range without the prior approval of OTS.

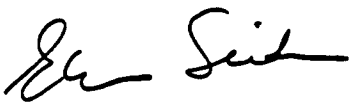
The notice of proposed rulemaking was published in the April 13, 1998, edition of the Federal Register, Vol. 63, No. 71, pp. 18149-18150. Written comments must be received on or before June 12, 1998, and should be addressed to: Manager, Dissemination Branch, Records Management and Information Policy Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552. Comments may be mailed or hand-delivered, faxed to 202/906-7755 or e-mailed to: public.info@ots.treas.gov. All commenters should include their name and telephone number.

For further information contact:

Diana L. Garmus 202/906-5683
Director, Corporate Activities Division

David A. Permut 202/906-7505
Counsel, Banking and Finance

Attachments



*— Ellen Seidman*
*Director*
*Office of Thrift Supervision*

# Proposed Rules

Federal Register
Vol. 63, No. 71
Tuesday, April 14, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### 12 CFR Part 544

[No. 98–34]

RIN 1550–AB17

### Charter and Bylaws; One Member, One Vote

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of Thrift Supervision (OTS) proposes to amend its regulations on federal mutual savings association charters. The proposed amendment would expand the range of the number of votes a federal mutual savings association may allow a member to cast on issues requiring action by the members of the association from the current 50 to 1000 votes to one to 1000 votes per member. This proposal would add flexibility to the federal mutual charter, and would in particular allow a federal mutual savings association to adopt a charter providing for "one member, one vote."

**DATES:** Comments must be received on or before June 15, 1998.

**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. 98–34. 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:** Diana L. Garmus, Director, Corporate Activities Division (202/906–5683); 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 depository institutions that have expressed interest in converting to a federal mutual savings association charter [1] have asked to retain existing voting procedures following the conversion. The OTS has received, for example, inquiries from credit unions with membership voting rights of one vote per member, who have asked to retain their current voting requirements upon conversion. The OTS regulations currently allow a state-chartered savings bank to retain certain member rights upon conversion to a federal mutual holding company under the OTS Mutual Holding Company regulations.[2] Today's proposal would provide similar flexibility for financial institutions, including federal credit unions, that wish to convert to the federal mutual charter.

Under the Home Owners' Loan Act (HOLA),[3] the OTS may charter federal thrifts to provide for the deposit of funds and the extension of credit for homes and other goods and services.[4] 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. Federal savings associations may operate under a stock charter or mutual charter. Within each charter, the OTS permits variations.

Federal mutual savings associations have varying voting provisions, often based upon when they obtained their charters. The federal charter first introduced in 1933 specified that each member received one vote for every $100 on deposit, subject to a maximum of 50 votes per member. This 50 vote limit corresponded to the maximum allowable deposit insurance for one account, $5,000. When deposit insurance limits were raised to $40,000 per account, the Federal Home Loan Bank Board ("FHLBB"), predecessor to the OTS, began to issue charters with a maximum of 400 votes per member, again to correspond to the insurance limits. When the statutory deposit insurance limits were increased to $100,000 per account in 1980,[5] the FHLBB again amended the federal mutual charter to allow for 1,000 votes per member.[6]

## II. Proposal

The purpose of today's proposed regulation is to allow greater flexibility in determining the number of votes per member. The amendment will permit mutual depository institutions that are converting to federal savings associations to retain the one vote per member provision in their current charters, and will permit converting institutions as well as existing federal mutual savings associations to adopt a one vote per member provision.

Currently, Section 6 of the OTS model federal mutual charter [7] states that no member may cast more than 1,000 votes. Section 544.2, however, permits a federal mutual savings association to amend its charter and prescribe the maximum number of votes per member to a specific number between 50 and 1000.

The OTS is proposing to amend 12 CFR 544.2(b)(4) to permit federally chartered mutual savings associations to set the number of votes per member within the range of 1 to 1,000, rather than the current range of 50 to 1,000. New federal mutual savings associations may include this provision in their initial federal thrift charter. Existing federal mutual associations may amend their charters under the prescribed regulatory procedures. [8] Specifically, an institution would: (i) Obtain a board of directors' resolution adopting the

[1] Section 2(5) of the Home Owners' Loan Act defines "federal savings associations" to include federal savings associations and federal savings banks. Accordingly, references herein to federal savings associations include federal savings banks.

[2] *See* 12 CFR 575.5(a) (1997), which describes existing and future depositor and borrower membership rights as the same rights that were conferred upon depositors and borrowers by the reorganizing association.

[3] 12 U.S.C. 1461 *et seq.*

[4] 12 U.S.C. 1464(a).

[5] Pub. L. 96–221, 94 Stat. 147, March 31, 1980 (Codified at 12 U.S.C. 1728).

[6] See FHLBB Res. No. 83–528, 48 FR 44174 (Sept. 28, 1983).

[7] 12 CFR 544.1 (1997).

[8] 12 CFR 544.2(b) (1997).

amendment, (ii) obtain a favorable vote by the members, and (iii) notify the OTS of the adoption at least 30 days prior to the effective date of the proposed amendment. Unless the OTS notifies the institution of its objection to the proposed amendment within that 30 days, the amendment is automatically approved.

### III. Solicitation of Comments

The OTS is asking for comment on the proposal. Specifically, the OTS seeks comment on:

- Whether federal mutual savings associations would expect to encounter any corporate governance problems if they chose to reduce the maximum number of votes per member. For example, would the savings association encounter any difficulty in obtaining the necessary votes of members to take corporate actions?
- Whether existing federal mutual associations would find the added flexibility of an expanded voting requirement useful.
- Whether, and under what circumstances, a one vote per member limitation would either entrench or destabilize management.
- Whether by imposing such a limitation, federal associations with a higher minimum vote requirement that adopt a lower minimum vote requirement could risk legal actions by account holders.
- Whether the proposed revision should be continued as a preapproved charter amendment, or whether savings associations that seek to adjust the number of votes per member should be required to submit an application to the OTS.

### IV. 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.

### V. Regulatory Flexibility Act Analysis

Pursuant to Section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Small entities utilizing the regulation may be able to retain their existing membership rights, which will simplify the process of converting to a federal charter and reduce regulatory burden.

### VI. 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 544

Bylaws, Charters, 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 544—CHARTER AND BYLAWS

1. The authority citation for part 544 continues to read as follows:

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

2. Section 544.2 is amended by revising the last sentence of paragraph (b)(4) to read as follows:

**§ 544.2 Charter amendments.**

* * * * *

(b) * * *

(4) * * * [Fill in a number from 1 to 1000.]

* * * * *

Dated: March 31, 1998.

By the Office of Thrift Supervision.

**Ellen Seidman,**

*Director.*

[FR Doc. 98–9765 Filed 4–13–98; 8:45 am]

BILLING CODE 6720–01–P