

RESCINDED



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The attached final rule adopted by the Office of Thrift Supervision (OTS) allows a mutual depository institution, such as a credit union, to convert to a federal mutual thrift charter in one step rather than the two steps formerly required.

The rule, effective immediately, completes simplification of the process by which depository institutions can switch either to or from a thrift charter.

A converting mutual institution no longer will have to take the interim step of chartering a new federal mutual association and then combining the existing institution with the new federal entity. Institutions still must meet all applicable statutory and regulatory requirements, but the new process

will reduce the burden on converting entities.

OTS previously has granted federal savings associations explicit authority to convert directly to a bank charter and has adopted regulations enabling stock depository institutions to convert directly to a federal stock savings association charter.

The final rule was published in the August 27, 1997, edition of the Federal Register, Vol. 62, No. 166, pp. 45307-45309.

For further information contact:

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A handwritten signature in black ink that reads 'Nicolas P. Retsinas'.

Nicolas P. Retsinas
Director
Office of Thrift Supervision

Attachment

DEPARTMENT OF THE TREASURY**Office of Thrift Supervision****12 CFR Part 543****[No. 97-83]****RIN 1550-AB06****Incorporation, Organization, and Conversion of Federal Mutual Associations****AGENCY:** Office of Thrift Supervision, Treasury.**ACTION:** Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing a final rule amending its regulations governing conversions to federal mutual savings associations. The final rule permits the direct conversion of all types of mutual depository institutions into federal mutual savings associations. This final rule simplifies the conversion process.

EFFECTIVE DATE: August 27, 1997.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

The OTS is issuing a final regulation that permits all types of mutual depository institutions to convert directly to a federal mutual savings association charter.¹ The regulation is consistent with OTS's long-standing position that depository institutions should be free to operate under whatever charter best suits their business needs, consistent with safety and soundness. The OTS previously has granted federal savings associations explicit authority to convert directly to a bank charter,² and has promulgated regulations enabling stock depository institutions to convert directly to a federal stock savings association charter.³

The OTS published a notice of proposed rulemaking regarding direct

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 12 CFR 552.2-7.

³ 12 CFR 552.2-6.

conversions of mutual depository institutions to federal mutual charters in the *Federal Register* on April 2, 1997.⁴ The public comment period closed on June 9, 1997. The OTS received two comments regarding the proposal, both from trade associations. Both commenters supported the proposal generally, without commenting on specific aspects of the proposed regulation. In light of the commenters' support and the OTS's continuing belief that this approach will promote efficiency and reduce regulatory burden, today's final regulation adopts the proposed regulation without changes.

II. Description of the Final Rule

Pursuant to its authority under section 5(a) of the Home Owners' Loan Act ("HOLA"), the OTS is amending §§ 543.8 and 543.9 as proposed, to permit any type of mutual depository institution to convert directly to a federal mutual savings association.⁵ Previously, mutual depository institutions could convert to a federal mutual charter indirectly, by chartering a federal mutual association, and combining the other depository institution with the new federal association in a merger or purchase and assumption transaction. The final regulation eliminates unnecessary regulatory burdens associated with indirect conversions. The rule applies all existing regulatory requirements currently applicable to direct conversions by state mutual associations and savings banks to this expanded class of applicants and revises §§ 543.8 and 543.9 as described below.

Section 543.8 permits conversions of mutual depository institutions to federal mutual associations, subject to three requirements. First, the institution must, upon consummation of the conversion, have its 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 must obtain all necessary regulatory and member approvals. This provision requires, among other things, that the converting depository institution have the authority to convert to a federal association under

the statutes and regulations applicable to the converting institution and that the conversion be approved by a vote of its members pursuant to the laws applicable to the converting institution.

Third, a depository institution converting to a federal mutual association charter must conform with the investment limitations of Section 5(c) of the HOLA⁶ 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 rule also revises Section 543.9(a) to set forth the filing requirements. Section 543.9(c) is 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) now explicitly provides 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). The revised regulation explicitly states 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.⁷

The OTS notes that applicants utilizing the provisions of the new direct conversion regulation should file their applications on OTS Form number 1582.

IV. Executive Order 12866

The Director of the OTS has determined that this final 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 rule, which will reduce regulatory burdens, will not have a significant economic impact on a substantial number of small entities.

The final regulation merely reduces regulatory burden for all institutions, including small entities that convert from a mutual charter to a federal mutual charter. Accordingly, a Regulatory Flexibility Analysis is not required.

VI. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 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 final 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.

VII. Effective Date

The OTS finds good cause for dispensing with the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (5 U.S.C. 553(d)). This rule confers a benefit on any institution wishing to convert to a federal mutual charter by reducing the number of steps required for conversion.

In addition, section 302 of the Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4802(b)(1)) (CDRIA) delays the effective date of regulations promulgated by the Federal banking agencies that impose additional reporting, disclosure, or new requirements, to the first day of the first calendar quarter following publication of the final rule. OTS believes that CDRIA does not apply to this final rule because it imposes no new burden.

List of Subjects in 12 CFR Part 543

Conversions, Reporting and recordkeeping requirements, Savings associations.

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

⁴62 FR 17115 (April 9, 1997).

⁵As discussed in the proposal, 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.

⁶12 U.S.C. 1464(c).

⁷See 12 CFR 543.3, added by 62 FR 27177, May 19, 1997.

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 its 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 regulatory and 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.

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(c) *Action on application.* The OTS will consider such application and any information submitted with the application, 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: August 19, 1997.

By the Office of Thrift Supervision.

Nicolas P. Retzinas,

Director.

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