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 federal 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.

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Nicolas P. Retsinas
Director
Office of Thrift Supervision
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 Clardi, 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. The OTS has

1 Section 2(a) 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,
encapsulating (among other things)
the 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
designate, to provide for the
organization, examination, operation
and regulation of federal savings
associations. Section 5(a) of the HOLA
gives the OTS planer 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 safety and soundly.\(^9\)

In addition, recent amendments 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
customer 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

\(^{9}\) Federal Home Loan Bank Act of 1932,
12 U.S.C. 1461 et seq.
\(^{10}\) Thrift Institutions Preservation Act of 1982, 12
\(^{11}\) See 12 CFR 543.4(a).
\(^{12}\) See 12 CFR 543.3(c).
\(^{13}\) See 12 CFR 543.2(c).

\(^{3}\) 12 U.S.C. 1464(b).
\(^{4}\) 12 CFR 522.2-7.
\(^{5}\) 12 CFR 532.2-6.
\(^{6}\) 12 U.S.C. 1464(f).
\(^{7}\) 12 U.S.C. 1464(j) and (o).
\(^{8}\) 12 CFR 582.2-6.
\(^{9}\) The authority for federal mutual and stock
associations to engage in these types of transactions
is set forth at 12 CFR 546.2 and 652.13.
\(^{10}\) Pub. L. 104-208, section 2303(c)-(e), (g), 110 Stat. 3000 (codified in
parts of 12 U.S.C. 1464(b), (c), 1467a(m)).
\(^{11}\) 12 CFR 552.2-6.

\(^{12}\) 12 U.S.C. 1464(c).
\(^{13}\) 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, 2001 of app.

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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By the Office of Thrift Supervision.

Nicolas P. Rubinstein.
Director.