

**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**12 CFR Part 544**

**[No. 98-89]**

**RIN 1550-AB17**

**Charter and Bylaws;**

**One Member, One Vote**

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

**ACTION:** Final rule.

**SUMMARY:** The Office of Thrift Supervision (OTS) is amending its regulations on federal mutual savings association charters. The amendment expands the range 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 amendment adds flexibility to the federal mutual charter, and allows a federal mutual savings association to adopt a charter providing for "one member, one vote."

**EFFECTIVE DATE:** [insert date of publication in the Federal Register].

**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 have expressed interest in converting to a federal mutual savings association charter,<sup>1</sup> but requested the right to retain existing voting procedures following the conversion. Several credit unions with membership voting rights of one vote per member, for example, have asked to retain their current voting provisions upon their conversions to federal charter. On April 14, 1998, the OTS issued a Notice of Proposed Rulemaking ("NPR") that would provide such flexibility for mutual financial institutions, including credit unions, that wish to convert to the federal mutual charter.<sup>2</sup>

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. For example, Federal mutual savings associations have varying voting provisions (e.g., 50 votes per member, 400 votes per member or 1000 votes per member), often based upon the rules in effect when they obtained their charters. The NPR proposed to permit federal mutual associations to expand the permissible range of votes allowed per member from one to 1000, rather than the current range of 50 to 1000.

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<sup>1</sup> Section 2(5) of the Home Owners' Loan Act defines "federal savings associations" to include federal savings associations and federal savings banks. Accordingly, references to federal savings associations include federal savings banks.

<sup>2</sup> 63 FR 18149 (April 14, 1998).

## II. Summary of Comments and Description of Final Rule

The public comment period on the NPR closed on June 15, 1998. Three commenters, all trade associations, responded to the proposal. Two were in favor of the proposal and one opposed it. The favorable comments agreed that the proposal would add flexibility to the federal mutual charter and would put credit unions on an equal footing with state chartered mutuals that convert to a federal charter. One commenter pointed out that adoption of the amendment would remove one of the perceived barriers to the conversion of a credit union to a federal mutual association.

The trade association opposing the amendment argued that the one member, one vote provisions are unique characteristics of credit unions, which should be maintained. In addition, the commenter noted that the proposed rule would jeopardize the one member, one vote principle because a converted institution could easily amend its charter, without OTS approval following the conversion. This trade association questioned the timing of the proposal and argued that the rule should be delayed until Congress had an opportunity to respond to the February 25, 1998 Supreme Court ruling overturning the National Credit Union Administration's ("NCUA") actions permitting multiple common bonds for credit unions.<sup>3</sup> The trade association also asserted the board of directors and management of credit unions may seek to convert to federal association charter solely for their own personal enrichment. As a result, the trade association urged the OTS to require a converting credit union to wait a minimum of seven years after conversion to federal mutual form before it may convert to federal stock form.

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<sup>3</sup> National Credit Union Administration v. First National Bank & Trust Co., 118 S.Ct. 927

The OTS is aware of no reason why credit unions should be the only type of depository institution to permit a one vote per member arrangement. In response to the comment that the one member, one vote principle is jeopardized by the ease of later amending the federal charter, the OTS believes that members of a federal mutual association should continue to have the right to change the number of votes per member if they wish.

Further, the OTS is aware of no reason to delay its regulation. Legislation has been enacted in response to the Supreme Court ruling.<sup>4</sup> In addition, the OTS has seen no mass influx of credit unions seeking to become federal thrifts. Only seven credit unions have applied to convert to a federal mutual charter in the last eighteen months. (During the same period of time, ten commercial banks applied to convert to federal savings associations.)

Finally, the OTS believes that restricting converting credit unions from converting to stock for a number of years is beyond the scope of the proposal and would be more appropriately raised in response to planned revisions to the Part 563b mutual to stock conversion regulations.

The OTS is adopting the amendment as proposed. 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 other converting institutions, as well as existing federal mutual savings associations, to adopt a one vote per member provision.

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(1998).

<sup>4</sup> On August 7, 1998 the President signed Public Law 105-219 which mitigated the impact of the Supreme Court decision by allowing occupation-based credit unions to accept members from unrelated companies with fewer than 3000 employees.

The Final Rule will 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.<sup>5</sup> Specifically, an institution must: (i) obtain a board of directors' resolution adopting the 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. 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.

### **IV. Regulatory Flexibility Act Analysis**

Under 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.

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<sup>5</sup> 12 CFR 544.2(b) (1998).

## **V. 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.

## **VI. Effective Date**

The OTS has determined that there is good cause to dispense with a 30-day delayed effective date under 5 U.S.C. 553(d)(3). The amendment permits federal mutual savings associations and depository institutions converting their charters to federal mutual savings association charter to add flexibility to existing voting arrangements or retain current voting rights. The OTS believes the change does not have an adverse impact on savings associations because it reduces regulatory burden. Moreover, the substantive change to the regulations has already been made available to requesting converting depository institutions on a case-by-case basis. OTS-regulated institutions will not require additional time to adjust their policies or practices to comply with the rule.

The OTS has also determined, for the reasons stated in the preceding paragraph, that good cause exists to adopt an effective date that is before date that would otherwise be required by section 302 of CDRIA (i.e., the first day of the calendar quarter after the date of publication).

**List of Subjects in 12 CFR Part 544**

Bylaws, Charters, Bylaws, 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:** August 25, 1998

By the Office of Thrift Supervision.

  
Ellen Seidman  
Director