

Office of Thrift Supervision, Treasury

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(d) Combinations of such real estate and business property involving only minor business use (i.e., where no more than 20 percent of the total appraised value of the real estate is attributable to the business use);

(e) Farm residences and combinations of farm residences and commercial farm real estate;

(f) Property to be improved by the construction of such structures; or

(g) Leasehold interests in the above real estate.

[64 FR 46564, Aug. 26, 1999]

§ 541.25 Single-family dwelling.

A structure designed for residential use by one family, or a unit so designed, whose owner owns, directly or through a non-profit cooperative housing organization, an undivided interest in the underling real estate, including property owned in common with others which contributes to the use and enjoyment of the structure or unit.

§ 541.26 Surplus.

The term surplus means undistributed earnings held as unallocated reserves for general corporate use.

§ 541.27 Unimproved real estate.

The term unimproved real estate means real estate that will be improved, as defined in § 541.15 or § 541.16 of this part.

§ 541.28 Withdrawal value of a savings account.

The term withdrawal value of a savings account means the amount invested in a savings account plus earnings credited thereto, less lawful deductions therefrom.

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

Sec.

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

SOURCE: 54 FR 49482, Nov. 30, 1989, unless otherwise noted.

§ 543.1 Corporate title.

(a) General. A Federal savings association shall not adopt a title that misrepresents the nature of the institution or the services it offers.

(b) Title change. Prior to changing its corporate title, an association must file with the OTS a written notice indicating the intended change. The OTS, shall provide to the association a timely written acknowledgment stating when the notice was received. If, within 30 days of receipt of notice, the OTS does not notify the association of its objection on the grounds set forth in paragraph (a) of this section, the association may change its title by amending its charter in accordance with § 544.2(b) or § 552.4 and the amendment provisions of its charter, except that an association chartered as a Federal Savings and Loan Association may change its title to indicate that it is a Federal Savings Bank, and an association chartered as a Federal Savings Bank may change its title to indicate that it is a Federal Savings and Loan Association.

[54 FR 49482, Nov. 30, 1989, as amended at 57 FR 14338, Apr. 20, 1992; 58 FR 4312, Jan. 14, 1993; 61 FR 64015, Dec. 3, 1996]

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ORGANIZATION

§ 543.2 Application for permission to organize.

(a) *General.* Recommendations by employees of the OTS regarding applications for permission to organize a Federal savings association are privileged, confidential, and subject to § 510.5 (b) and (c) of this chapter.

(b)–(c) [Reserved]

(d) *Public notice and inspection.* (1) The applicant must publish a public notice of the application to organize in accordance with the procedures specified in subpart B of part 516 of this chapter.

(2) Promptly after publication, the applicant(s) shall transmit copies of each notice and publisher's affidavit of publication in the same manner as the original filing.

(3) The OTS shall give notice of the application to the State official who supervises savings associations in the State in which the new association is to be located.

(4) Any person may inspect the application and all related communications at the Regional Office during regular business hours, unless such information is exempt from public disclosure.

(e) *Submission of comments.* Commenters may submit comments on the application in accordance with the procedures specified in subpart C of part 516 of this chapter.

(f) *Meetings.* The OTS may arrange informal or formal meetings in accordance with the procedures specified in subpart D of part 516 of this chapter.

(g) *Approval.* (1) Factors that will be considered are:

(i) Whether the applicants are persons of good character and responsibility;

(ii) Whether a necessity exists for such association in the community to be served;

(iii) Whether there is a reasonable probability of the association's usefulness and success;

(iv) Whether the association can be established without undue injury to properly conducted existing local thrift and home financing institutions;

(v) Whether the association will perform a role of providing credit for housing consistent with safe and sound

operation of a Federal savings association; and

(vi) Whether the factors set forth in § 543.3 are met, in the case of an application that would result in the formation of a *de novo* association, as defined in § 543.3(a).

(2) Approvals of applications will be conditioned on the following:

(i) Receipt by the Office of written confirmation from the Federal Deposit Insurance Corporation that the accounts of the Federal savings association will be insured by the Federal Deposit Insurance Corporation;

(ii) A minimum amount of capital to be paid into the association's accounts prior to commencing business;

(iii) The submission of a statement that—

(A) The applicants have complied in all respects with the Act and these rules and regulations regarding organization of a Federal savings association;

(B) The applicants have incurred no expense in forming the association which is chargeable to it, and no such expense will be incurred;

(C) No funds have been collected on account of the association before the Office's approval;

(D) An organization committee has been created (naming the committee and its officers);

(E) The committee will organize the association and serve as temporary officers of the association until officers are elected by the association's board of directors under § 543.6 of this part; and

(F) No funds will be accepted for deposit by the association until organization has been completed; and

(iv) The satisfaction of any other requirement the Director, or his or her designee, may impose.

(h) *Alternative procedures for interim Federal savings associations.* (1) Applications for permission to organize an interim Federal savings association are not subject to paragraphs (d), (e), (f) or (g)(2) of this section.

(2) Approval of an application for permission to organize an interim Federal savings association shall be conditioned on approval by the Office of an

application to merge the interim Federal savings association and an existing insured stock association or on approval by the Office of such other transaction which the interim was chartered to facilitate. In evaluating the application, the Director or his or her designee will consider the purpose for which the association will be organized, the form of any proposed transactions involving the organizing association, the effect of the transactions on existing associations involved in the transactions, and the factors specified in section § 543.2(g)(1) to the extent relevant.

[54 FR 49482, Nov. 30, 1989, as amended at 55 FR 13510, Apr. 11, 1990; 57 FR 14338, Apr. 20, 1992; 62 FR 27180, May 19, 1997; 62 FR 64145, Dec. 4, 1997]

§ 543.3 “De novo” applications for a Federal savings association charter.

(a) *Definitions.* For purposes of this section, the term “*de novo* association” means any Federal savings association chartered by the Office, the business of which has not been conducted previously under any charter or conducted in the previous three years in substantially the same form as is proposed by the *de novo* association. A “*de novo* applicant” means any person or persons who apply to establish a *de novo* association.

(b) *Minimum initial capitalization.* (1) A *de novo* association must have at least two million dollars in initial capital stock (stock institutions) or initial pledged savings or cash (mutual institutions), except as provided in paragraph (b)(2) of this section. The minimum initial capitalization is the amount of proceeds net of all incurred and anticipated securities issuance expenses, organization expenses, pre-opening expenses, or any expenses paid (or funds advanced) by organizers that are to be reimbursed from the proceeds of a securities offering. In securities offerings for a *de novo* association, all securities of a particular class in the initial offering shall be sold at the same price.

(2) On a case by case basis, the Director may, for good cause, approve a *de novo* association that has less than two million dollars in initial capital or may require a *de novo* association to

have more than two million dollars in initial capital.

(c) *Business and investment plans of de novo associations.* (1) To assist the Office in making the determinations required under section 5(e) of the Home Owners’ Loan Act, a *de novo* applicant shall submit a business plan describing, for the first three years of operation of the *de novo* association, the major areas of operation, including:

(i) Lending, leasing and investment activity, including plans for meeting Qualified Thrift Lender requirements;

(ii) Deposit, savings and borrowing activity;

(iii) Interest-rate risk management;

(iv) Internal controls and procedures;

(v) Plans for meeting the credit needs of the proposed *de novo* association’s community (including low- and moderate-income neighborhoods);

(vi) Projected statements of condition;

(vii) Projected statements of operations; and

(viii) Any other information requested by the Office.

(2) The business plan shall:

(i) Provide for the continuation or succession of competent management subject to the approval of the Regional Director;

(ii) Provide that any material change in, or deviation from, the business plan must receive the prior approval of the Regional Director;

(iii) Demonstrate the *de novo* association’s ability to maintain required minimum regulatory capital under 12 CFR parts 565 and 567 for the duration of the plan.

(d) *Composition of the board of directors.* (1) A majority of a *de novo* association’s board of directors must be representative of the state in which the savings association is located. The Office generally will consider a director to be representative of the state if the director resides, works or maintains a place of business in the state in which the savings association is located. If the association is located in a Metropolitan Statistical Area (MSA), Primary Metropolitan Statistical Area (PMSA) or Consolidated Metropolitan Statistical Area (CMSA) that incorporates portions of more than one

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state, a director will be considered representative of the association's state if he or she resides, works or maintains a place of business in the MSA, PMSA or CMSA in which the association is located.

(2) The *de novo* association's board of directors must be diversified and composed of individuals with varied business and professional experience. In addition, except in the case of a *de novo* association that is wholly-owned by a holding company, no more than one-third of a board of directors may be in closely related businesses. The background of each director must reflect a history of responsibility and personal integrity, and must show a level of competence and experience sufficient to demonstrate that such individual has the ability to direct the policies of the association in a safe and sound manner. Where a *de novo* association is owned by a holding company that does not have substantial independent economic substance, the foregoing standards will be applied to the board of directors of the holding company.

(e) *Management Officials.* Proposed stockholders of ten percent or more of the stock of a *de novo* association will be considered management officials of the association for the purpose of the Office's evaluation of the character and qualifications of the management of the association. In connection with the Office's consideration of an application for permission to organize and subsequent to issuance of a Federal savings association charter to the association by the Office, any individual or group of individuals acting in concert under 12 CFR part 574, who owns or proposes to acquire, directly or indirectly, ten percent or more of the stock of an association subject to this section, shall submit a Biographical and Financial Report, on forms prescribed by the Office, to the Regional Director.

(f) *Supervisory transactions.* This section does not apply to any application for a Federal savings association charter submitted in connection with a transfer or an acquisition of the business or accounts of a savings association if the Office determines that such transfer or acquisition is instituted for supervisory purposes, or in connection with applications for Federal charters

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for interim *de novo* associations chartered for the purpose of facilitating mergers, holding company reorganizations, or similar transactions.

[62 FR 27180, May 19, 1997; 62 FR 28983, May 29, 1997]

§ 543.5 Issuance of charter.

Approval by the Office of the organization of a Federal savings association or the conversion of an insured association to Federal savings association form shall constitute issuance of a charter and shall be final, provided that the association complies with the procedures set out at § 544.2(a) of this chapter. The charter shall conform with the requirements of § 544.1 of this chapter, the permissible provisions of § 544.2, or other provisions specifically approved by the Office.

§ 543.6 Completion of organization.

(a)(1) *Temporary officers.* When the Office approves an application for permission to organize a Federal savings association, the applicants shall constitute the organization committee and elect a chairperson, vice-chairperson, and a secretary, who shall act as the temporary officers of the association until their successors are duly elected and qualified. The temporary officers may effect compliance with any conditions prescribed by the Office.

(2) *Organization meeting.* Promptly upon receipt of a charter, the temporary officers shall call a meeting of the association's capital subscribers; notice of such meeting shall be mailed to each subscriber at least 5 days before the meeting day. Subscribers who have subscribed for a majority of the association's capital, present in person or by proxy, shall constitute a quorum. At such meeting, directors of the association shall be elected according to the association's charter and bylaws, and any other action permitted by such charter and bylaws may be taken; any such action shall be considered an acceptance by the association of such charter and of such bylaws, which shall be in the form provided in parts 544 and 552 of this chapter.

(b) *First meeting of directors.* Upon election, the association's board of directors shall hold a meeting to elect officers of the association as provided by

its charter and bylaws and to take any other action necessary to permit operation of the association in accordance with law, the association's charter and bylaws, and these rules and regulations. When such officers have been bonded under § 563.190 of this chapter, they shall immediately collect the sums due on subscriptions to the association's capital.

(c) *Membership in Federal Home Loan Bank and insurance of accounts.* When a Federal savings association's charter is issued it must promptly qualify as a member of a Federal Home Loan Bank and meet all requirements necessary to obtain insurance of its accounts by the Federal Deposit Insurance Corporation.

(d) *Failure to complete.* Organization of a Federal savings association is completed when the organization meeting and the first meeting of its directors have been held, permanent officers have been bonded, the association holds the cash required to be paid on subscriptions to its capital, if required, Federal Home Loan Bank membership has been obtained and Federal Deposit Insurance Corporation insurance of accounts has been confirmed and any conditions imposed by the Office in connection with approval of the application have been met. If organization is not so completed within six months after issuance of a charter, or within such additional period as the Director or his or her designee may for good cause grant, and in the case of an interim Federal savings association, if a merger, or other transaction facilitated by the existence of an interim association, has not been approved, the charter shall become void and all cash collected on subscriptions shall thereupon be returned.

§ 543.7 Limitations on transaction of business.

No person may organize a Federal savings association, collect money from others for such purpose, or represent himself or herself as authorized to do so, and no Federal savings association shall transact any business prior to completion of its organization, except as provided in this part.

§ 543.7-1 Federal savings association created in connection with an association in default or in danger of default.

The preceding sections of this part do not apply to a Federal savings association which is proposed by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation under section 11(c) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)) or section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441A), or is otherwise chartered by the Office in connection with an association in default or in danger of default. Incorporation and organization of such associations are complete when the Director or his or her designee so determines.

CONVERSION

§ 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.

(b) Recommendations regarding applications for issuance of Federal charters are privileged, confidential and subject to § 510.5 (b) and (c) of this chapter.

[54 FR 49482, Nov. 30, 1989, as amended at 57 FR 14339, Apr. 20, 1992; 60 FR 66717, Dec. 26, 1995; 62 FR 45309, Aug. 27, 1997]

§ 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

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§ 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.

(b) *Plan of conversion.* The applicant shall submit with its application a plan of conversion specifying the location of the home office and any branch offices to be maintained by the Federal savings association, and providing for:

(1) Appropriate reserves and surplus for the Federal savings association;

(2) Satisfaction in full or assumption by the Federal savings association of all creditor obligations of the applicant;

(3) Issuance by the Federal savings association of savings accounts to current holders of withdrawable accounts in an amount equalling the value of such accounts; and

(4) If applicable, issuance of additional savings accounts to current holders of nonwithdrawable capital stock of the applicant in an amount equalling the value of their nonwithdrawable capital stock, including the present value of any preference to which such holders are entitled.

(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:

(1) Compliance by the applicant with all conditions prescribed in the approval;

(2) Receipt by the applicant of approval of the plan of conversion by such vote as may be required by the laws of the applicant's jurisdiction to consider such action;

(3) In the case of a converting association the accounts of which are not insured by the Federal Deposit Insurance Corporation, receipt by the OTS of written confirmation from the Fed-

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eral Deposit Insurance Corporation that the accounts of the converting association will be insured by the Federal Deposit Insurance Corporation; and

(4) Receipt by the OTS of written confirmation from the appropriate Federal Home Loan Bank of approval of the converting institution's application for Federal Home Loan Bank membership, if the institution is not a member.

[54 FR 49482, Nov. 30, 1989, as amended at 55 FR 13510, Apr. 11, 1990; 57 FR 14339, Apr. 20, 1992; 62 FR 45309, Aug. 27, 1997]

§ 543.10 Organization after conversion.

Except as provided in § 543.11, after a Federal charter is issued under § 543.9 the association's members shall, after due notice, or upon a valid adjournment of a previous legal meeting, hold a meeting to elect directors and take all other action necessary fully to effect the conversion and operate the association in accordance with law and these rules and regulations. Immediately thereafter the board of directors shall meet, elect officers, and transact any other appropriate business.

§ 543.11 Organization plan for governance during first years after issuance of Federal mutual savings bank charter.

(a) *Organizational meeting.* Except as provided in paragraph (c)(1) of this section, promptly upon receipt of a charter, the officers of a Federal mutual savings bank which, immediately prior to conversion, was a state chartered mutual savings bank, shall call a meeting of the members. Notice for, and conduct of, such meeting shall be in accordance with the bank's Federal charter and bylaws. Business to be conducted at the organizational meeting shall include the election of trustees (who may also be known as a board of directors) and any other matters permitted by the charter and bylaws. Any action taken at such meeting shall be deemed an acceptance of the charter and bylaws approved by the Office pursuant to § 544.1 of this chapter.

(b) *First meeting of trustees.* Upon election or appointment, the board of trustees shall hold a meeting to elect the officers of the bank in accordance

with its Federal charter and bylaws, and to take other action necessary to permit the operation of the bank in accordance with the Home Owners' Loan Act of 1933, as amended, the bank's charter and bylaws, these rules and regulations, and orders of the Office.

(c) *Plan for governance of association during first six years after issuance of Federal charter.* (1)(i) An applicant for a Federal mutual savings bank charter may submit a plan which provides that each member of its governing board, *i.e.*, board of trustees, managers, or directors, may continue to serve, provided that within two years of the issuance of a Federal charter at least one-fifth of the members of such board shall have been elected by vote, either in person or by proxy, of the bank's membership as provided in its Federal charter, that within three years of the issuance of its Federal charter at least two-fifths of the members of such board shall have been elected by such a membership vote, that within four years of the issuance of its Federal charter at least three-fifths of the members of such board shall have been elected by such a membership vote, that within five years of the issuance of its Federal charter at least four-fifths of the members of such board shall have been elected by such a membership vote, and that within six years of the issuance of its Federal charter all of the members of such board shall have been elected by such a membership vote.

(ii) The plan:

(A) Shall set forth the names of those persons who are being proposed for service on the applicant's governing board after conversion to a Federal charter,

(B) Shall show how trustees not elected by the converted bank's membership will be appointed or otherwise selected, and

(C) Shall provide that no trustees may be appointed or elected to terms of more than three years.

(iii) The plan may provide that

(A) After receipt of its Federal charter the bank will be organized by its existing governing board,

(B) Within the first two years following receipt of its Federal charter, the bank's charter may be amended

without a membership vote, provided any such amendment is first approved by a two-thirds vote of its board of trustees and is thereafter approved by the Office, and

(C) The bank's first annual membership meeting need not take place until two years after receipt of its Federal charter.

(2) Except to the extent that the Office approves a plan under this paragraph (c) which is inconsistent with other provisions of this section, a Federal mutual savings bank shall in all respects comply with those other provisions.

[54 FR 49482, Nov. 30, 1989, as amended at 60 FR 66717, Dec. 26, 1995]

§ 543.11-1 Grandfathered authority.

(a) A Federal savings bank formerly chartered or designated as a mutual savings bank under state law may exercise any authority it was authorized to exercise as a mutual savings bank under state law at the time of its conversion from a state mutual savings bank to a Federal or other state charter. Except to the extent such authority may be exercised by Federal savings associations not enjoying grandfathered rights hereunder, such authority may be exercised only to the degree authorized under state law at the time of such conversion. Unless otherwise determined by the Director, an association, in the exercise of grandfathered authority, may continue to follow applicable state laws and regulations in effect at the time of such conversion.

(b) A Federal savings association that acquires, or has acquired, a Federal savings bank by merger or consolidation may itself exercise any grandfathered rights enjoyed by the disappearing institution, whether such rights were obtained directly through conversion or through merger or consolidation. The extent of the grandfathered rights of a Federal savings association that disappeared prior to the effective date of this section shall be determined exclusively pursuant to this section.

(c) This section shall not be construed to prevent the exercise by a Federal savings association enjoying

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grandfathered rights hereunder of authority that is available under the applicable state law only upon the occurrence of specific preconditions, such as the attainment of a particular future date or specified level of regulatory capital, which have not occurred at the time of conversion from a state mutual savings bank, provided they occur thereafter.

(d) This section shall not be construed to permit the exercise of any particular authority on a more liberal basis than is allowable under the most liberal construction of either state or Federal law or regulation.

§543.14 Continuity of existence.

The corporate existence of an association converting under this part shall continue in its successor. Each savings or demand account holder shall receive a savings account or accounts in the converted association equal in amount to the value of accounts held in the former association.

[54 FR 49482, Nov. 30, 1989, as amended at 61 FR 64015, Dec. 3, 1996]

PART 544—CHARTER AND BYLAWS

CHARTER

Sec.

- 544.1 Federal mutual charter.
- 544.2 Charter amendments.
- 544.4 Issuance of charter.

BYLAWS

- 544.5 Federal mutual savings association bylaws.
- 544.6 Effect of subsequent charter or bylaw change.

AVAILABILITY

- 544.7 In association offices.
- 544.8 Communication between members of a Federal mutual savings association.

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

SOURCE: 54 FR 49486, Nov. 30, 1989, unless otherwise noted.

CHARTER

§544.1 Federal mutual charter.

A Federal mutual savings association shall have a charter in the following form, which may include any of the additional provisions set forth in §544.2 of

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this Part, if such provisions are specifically requested. A charter for a Federal mutual savings bank shall substitute the term "savings bank" for "association." The term "trustee" may be substituted for the term "director." Associations adopting this charter with existing borrower members must grandfather those borrower members who were members as of the date of issuance of the new charter by the Office. Such borrowers shall have one vote for the period of time such borrowings are in existence.

FEDERAL MUTUAL CHARTER

Section 1. Corporate title. The full corporate title of the Federal savings association is _____.

Section 2. Office. The home office shall be located in _____ [city, state].

Section 3. Duration. The duration of the association is perpetual.

Section 4. Purpose and powers. The purpose of the association is to pursue any or all of the lawful objectives of a Federal mutual savings association chartered under section 5 of the Home Owners' Loan Act and to exercise all the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Office of Thrift Supervision ("Office").

Section 5. Capital. The association may raise capital by accepting payments on savings and demand accounts and by any other means authorized by the Office.

Section 6. Members. All holders of the association's savings, demand, or other authorized accounts are members of the association. In the consideration of all questions requiring action by the members of the association, each holder of an account shall be permitted to cast one vote for each \$100, or fraction thereof, of the withdrawal value of the member's account. No member, however, shall cast more than 1000 votes. All accounts shall be nonassessable.

Section 7. Directors. The association shall be under the direction of a board of directors. The authorized number of directors shall not be fewer than five nor more than fifteen persons, as fixed in the association's bylaws, except that the number of directors may be decreased to a number less than five or increased to a number greater than fifteen with the prior approval of the Director of the Office or his or her delegate.

Section 8. Capital, surplus, and distribution of earnings. The association shall maintain for the purpose of meeting losses the amount