

Department of the Treasury
Office of Thrift Supervision

RESCINDED

Transmittal



April 17, 1997

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In the attached notice of proposed rulemaking, the Office of Thrift Supervision (OTS) proposes new procedures governing public comments on thrift industry applications to open a branch, organize a new institution or engage in various other transactions. The agency proposes to replace mandatory oral arguments with informal conferences arranged by OTS as appropriate.

OTS would have similar flexibility as the banking regulators in deciding whether conferences — either in-person or via a telephone conference call — would be useful in helping it reach a decision on disputed applications.

Changing the application processing rules would not limit anyone's right to file written comments on thrift institutions' applications. The standard comment period would be increased from the current 10 days to 25 days. To assist those filing comments, the proposed rule would spell out what types of information must be included in the comment for it to be considered.

The new rule would eliminate the designation of "substantial protest," a term that has often been misconstrued to mean a protest has merit when, in fact, the designation by OTS only means the protest has been correctly filed.

The notice of proposed rulemaking was published in the April 9, 1997, edition of the *Federal Register*, Vol. 62, No. 68, pp. 17110-17115. 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 also may be made by e-mail, addressed to: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number.

For further information contact:
Catherine Shepard (202) 906-7275
Diana Garmus (202) 906-5683

Nicolas P. Retsinas
Director
Office of Thrift Supervision

Attachment

management and governance functions. As part of that process, the Finance Board has established clear regulatory standards within which the Banks must operate in making management decisions. The Finance Board believes this approach may be appropriate for regulation of the Banks' achievement of their mission. Comments are requested on whether the Finance Board should define and measure mission fulfillment for the Banks through a regulation. Could the goals of the Finance Board in promoting more focused mission activities by the Banks be fully achieved through some means other than a regulation, such as a policy statement including a non-exclusive list of activities that the Banks may undertake in order to achieve their statutory mission?

Should the Banks establish annual plans setting out their goals for identifying and implementing mission-focused activities, including the identification of unmet credit needs in the Bank's district? Should such plans serve as the benchmark for determining whether or not a Bank is fulfilling its mission? Are there other possible options for the identification and achievement of mission by a particular Bank and the Bank System, as a whole?

The Banks currently fulfill their mission, in part, through many of the advances the Banks make and through their activities under the AHP and the CIP. As further discussed below, the Finance Board believes that the Banks have an obligation to use their statutory powers to assist member and nonmember borrowers in meeting housing finance and community investment needs through means other than advances, the AHP, and the CIP. Several of the Banks have made efforts to fulfill this obligation through the establishment of pilot programs under the Banks' investment and incidental authorities, with the approval of the Finance Board, designed to assist members in meeting unmet credit needs in specific segments of the housing finance and community investment market. These initiatives are important first steps towards fulfillment of the Banks' broader mission, and the Finance Board continues to encourage the Banks to bring innovative programs to the agency. In addition, the Finance Board wishes to facilitate all of the Banks' establishing additional programs to support affordable housing and community investment finance by member and nonmember borrowers through community investment cash advance programs, through the Bank's investment and credit activities, and by providing technical assistance. The

Bank's efforts should focus on assisting member and nonmember borrowers in meeting the housing and community investment needs in their communities, including the credit needs of low- or moderate-income families and small businesses.

The Finance Board recognizes that housing and community investment credit needs may be different in each Bank's district, and the Banks are in the best position to identify those needs. Furthermore, each Bank may have proven and innovative strategies to help member and nonmember borrowers meet those needs. Consequently, the Finance Board does not intend to substitute its judgment for the Banks on these matters. Among the purposes of this notice is to solicit comments, generally, on: (1) How the Banks could identify and meet unmet credit needs, and (2) how the Finance Board shall ensure that the Banks identify and meet those unmet credit needs.

B. Defining Mission-Focused Activities

There are five broad categories of activities through which the Banks carry out their mission. The Finance Board requests comments on the following questions related to these five categories of activities.

1. Regular Advances

Many of the Banks' regular advances support our nation's housing finance system in ways not otherwise provided by the mortgage markets. These regular advances further the Banks' mission. While the Finance Board wishes to find ways beyond regular advances for the Banks to focus their housing and community investment mission, there are special programs or products that may be offered through the traditional advances mechanism, such as discounts or rebates for members meeting certain affordable housing or community investment goals or advance-related donations to affordable housing providers. What kinds of special programs structured using regular advances, including letters of credit, should qualify as mission-focused activities?

2. AHP

Because the income limits (80 percent of area median income, or AMI) and the annual subsidy amount of the AHP are fixed by statute and full participation is required by all of the Banks, the Banks' AHP activities are by definition mission-focused activities. See 12 U.S.C. 1430(j). It is the Finance Board's belief that the Banks' statutory mission responsibilities cannot be satisfied solely by participating in the AHP.

3. CIP

The general parameters of the CIP, including income-targeting (115 percent of AMI) and pricing benefits, are also set by statute and are by definition a minimum standard of mission achievement, which the Finance Board seeks to expand beyond. See *id.* section 1430(i). The Bank Act does not prescribe the volume of CIP credit that the Banks must extend on an annual basis. The Finance Board specifically requests comment on whether and how the CIP could be used more aggressively in mission fulfillment.

4. Investments

The Banks may have the greatest flexibility for increased and more focused financial support of housing and community investment activities through their investment authority. The Finance Board has revised the Financial Management Policy for the Bank System to permit double-A investments, such as state housing finance agency bonds, that further the Banks' mission. In addition, the Finance Board recently approved three pilot programs that allow several Banks to purchase participations in targeted mixed-use and multifamily project loans and to purchase whole single-family loans from member institutions. The Finance Board specifically requests comment on what other types of investments the Banks could make that would be mission-focused and what types of housing and community credit needs are not being met that could be assisted through investment, rather than advance, products.

5. Other Activities

The Finance Board wishes to promote opportunities for the Banks to achieve their mission in non-financial or non-balance-sheet activities, for example, by offering technical assistance, educational programs and business development for affordable housing, or by offering grants or awards out of earnings to housing organizations. The Finance Board specifically requests comments on whether—and if so, what kinds of—non-financial, charitable or other non-balance sheet funding could be considered as mission-focused and included in determining a Bank's mission fulfillment.

II. Issues For Consideration

A. Specific Characteristics of Mission-Focused Activities

There are a variety of activities that the Banks might engage in as a means of carrying out their mission. The following is only a partial list of

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:

Catherine Shepard, Senior Attorney, Regulations and Legislation Division, (202) 906-7275, Kevin Corcoran, Assistant Chief Counsel, Business Transactions Division, (202) 906-6962, Office of Chief Counsel; or Diana L. Garmus, Director, Corporate Activities Division, (202) 906-5683, Office of Thrift Supervision, 1700 G Street NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

OTS regulations governing applications for permission to organize a federal stock or mutual savings association, to establish or relocate a branch office of a federal savings association, and to engage in a transaction that is subject to the Bank Merger Act require applicants to follow the public comment and review procedures at 12 CFR 543.2 (e) and (f).

Currently, § 543.2 provides an opportunity for the public to submit communications in favor or in protest of applications, and permits the applicant to respond to any protest. Where a protest is timely submitted, meets specified criteria, and includes a request for oral argument, or if an applicant requests an oral argument, the regulation requires the OTS to conduct an oral argument on the merits of the application. The OTS may also hold an oral argument in the absence of any specific request, if it determines that additional proceedings are desirable.

Today, the OTS is proposing to revise these procedures. The proposed revisions, discussed more fully below, would consolidate the public comment procedures for the cited applications.

The proposal would also expand existing public comment periods, prescribe the information that a comment must contain to be considered in the evaluation of applications, and delete existing provisions requiring the OTS to conduct an oral argument on applications under certain circumstances and replace these provisions with discretionary conference procedures. The OTS believes that these changes will make the application processing procedures easier to understand and apply. Additionally, the proposed discretionary conference procedures will conform OTS regulations more closely to those of the other federal banking agencies, in accordance with

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

**12 CFR Parts 516, 543, 545, 552, 556,
563**

[No. 97-30]

RIN 1550-AA83

Application Processing

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: As a part of its ongoing effort to review and streamline its regulations, the Office of Thrift Supervision (OTS) is proposing to revise its regulations governing the comment procedures for certain specified applications and notices (collectively "applications"). In addition to reorganizing the regulations, the OTS proposes to amend the existing procedures to expand the comment period on these applications, prescribe the information that comments must contain in order to be considered by the OTS in its evaluation of applications, and remove existing provisions that require the OTS to conduct an oral argument on applications under certain circumstances and replace these provisions with discretionary conference procedures.

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. 97-30. 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.

section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

II. Description of the Proposed Rule

The OTS proposes to relocate and revise the public comment and related procedures for the applications described above. Currently, these procedures may be found in 12 CFR 543.2, which governs applications to organize federal mutual associations. The proposed rule would relocate these provisions to 12 CFR Part 516, which prescribes application processing guidelines and procedures. This relocation should make it easier for applicants and others to find relevant regulations and to determine what procedures must be followed. The provisions of the revised section are discussed more fully below.

Comment Procedure—Proposed § 516.5(a)(1)

Under this proposed paragraph, where a regulation incorporates the procedures set forth in § 516.5, public comments may be submitted only as provided by § 516.5(a), or as otherwise requested by the OTS. The proposed rule would further provide that the term "comment" includes any written submission that favors or opposes the application.

Comment Period—Proposed § 516.5(a)(2)

Under current § 543.2(e), anyone may submit a communication in favor or protest of an application to the OTS within 10 days of publication of a public notice of the filing of an application. This time period may be extended to 17 days after publication, if a request for extension is filed within the 10-day period. Applicants are permitted to file an answer to any protest until 10 days after the date for filing of such public comments.

The OTS believes that a longer comment period, without an automatic extension, would be less confusing and more workable. Accordingly, the proposed rule would extend the comment period to 25 days and would delete the automatic 7-day extension period. The OTS may still grant extensions on a case-by-case basis, where a comment addresses a significant regulatory concern and the commenter shows good cause why it was unable to submit the comment within the 25-day comment period. The length of any extension will also be determined on a case-by-case basis.

The proposed rule eliminates provisions permitting the applicant to file an answer to public comments

within ten days of the close of the public comment period. The OTS will generally provide an appropriate opportunity for an applicant to respond to relevant comments by forwarding these comments to the applicant and requesting a response.

Comment Content Requirements—Proposed § 516.5(a)(3)

Under the existing rules, a protest is considered substantial if it is submitted in writing within the comment period, and states a reason for the protest that is consistent with one of the regulatory bases for denying an application. Additionally, a substantial protest must include: (i) A summary of the reasons for the protest; (ii) the specific matters in the application to which the protestant objects and the reasons for each objection; (iii) facts supporting the protest, including relevant economic or financial data; and (iv) any adverse effects on the protestant that may result from approval of the application. 12 CFR 543.2(e) (2) and (4).

Under the current rules, the term "substantial" serves a ministerial purpose. It simply serves as a means of separating comments that contain the required information (and, thus, may serve as the basis for a request for an oral argument) from those that do not. Unfortunately, some have misconstrued OTS findings that a comment is substantial as an indication that the OTS has evaluated the substance of the comment and has concluded that the comment is meritorious.

The proposed rule would remove the concept of a substantial protest. Instead, the rule merely describes what a comment must include to be considered by the OTS in the review of an application. Under the proposed rule, a comment must recite all relevant facts, including any economic or financial data, supporting the commenter's position. Comments in opposition must address at least one of the regulatory bases for denial, as set forth in the applicable regulations, recite relevant facts and supporting data addressing these bases, and address any adverse effects on the commenter or the community that may result from the approval of the application. This approach should make the drafting and review of comments more straightforward and less burdensome.

Conferences—Proposed § 516.5(b)(1)

Under existing rules, the OTS must conduct an oral argument if the applicant or anyone filing a substantial protest makes a timely request for the argument. At the oral argument, the parties may participate in person or

through a designated representative. A transcript of the argument is made and included in the application file. See 12 CFR 543.2(f).

Oral arguments may assist in the disposition of issues raised by an application. These additional proceedings, however, are not necessary in every case, and can delay the application process without substantially enhancing the quality of the information available to evaluate the application.

Under the current rules, where a substantial protest is filed with a request for an oral argument, the OTS must, by regulation, hold an oral argument. Comparable regulations of the other federal banking agencies provide these regulators with greater flexibility. Instead of mandating additional proceedings at the request of the parties, these rules provide the agencies with discretion to conduct additional proceedings if the agency concludes that the proceedings would assist the decisionmaking process.¹

Consistent with the rules of the other federal banking agencies, OTS's proposed rule would provide for additional proceedings only where the OTS determines that such proceedings would assist in the disposition of the application or would assist in the resolution of any issues raised by the application.

Instead of mandating specific procedures in the form of an oral argument, the proposed rule permits the OTS to arrange a conference between the applicant, commenters, and others. The rule does not prescribe procedures for the conference. Rather, it permits the OTS to select the procedure appropriate to the application on a case-by-case basis. For example, the OTS may determine, based on the facts or issues raised with regard to a particular application, that it should conduct a transcribed conference consisting of oral argument. For other applications, the OTS may decide to use very informal procedures, such as a conference telephone call. The proposed rule requires the OTS to provide an applicant and commenters with at least 10 days advance notice of the time,

¹Currently, the OCC will generally grant a hearing request "only if the OCC determines that written submissions would be inadequate or that a hearing would otherwise benefit the decisionmaking process." * * * [or] concludes that the hearing would be in the public interest." 61 FR 60342, 60385 (Nov. 27, 1996) (to be codified at 12 CFR 5.11). The FDIC arranges informal and formal hearings at its own discretion. 12 CFR 303.6(h) (1996). The FRB may hold a private or public meeting when "appropriate." 12 CFR 262.25 (c) and (d) (1996).

location and procedures to be followed at any conference.

The OTS believes that these changes will improve the public comment process and will align its regulation more closely with the regulations of the other federal banking agencies.

In the past, participants in the application comment process have suggested that OTS should be required to distribute a document addressing the issues raised in the comments or at the oral argument. The OTS does not distribute such documents. The only document that the OTS routinely issues that may refer to the comments is the order or decision letter on the application.

Application Time Frames—Proposed § 516.5(b)(2)

The proposed rule would provide that applicable time periods for automatic approval of the application will be suspended if the OTS has notified the applicant that it intends to hold a conference.² Applicants are encouraged to arrange meetings with commenters at any time, independent of OTS involvement. Such meetings will not, however, suspend the time period for automatic approval.

Conforming Revisions

The proposed rule would include conforming revisions to various other regulations. These changes are summarized below.

Section 543.2 would be revised to reflect the relocation of the public comment procedures to Part 516. In addition, the public notice procedures at paragraph (d)(1) would be revised to require an applicant to publish the notice of the filing of an application for permission to organize no earlier than three days before and no later than the date of filing of the application. Paragraphs (c) and (d)(4) would be revised to reflect the fact that applications will no longer be filed before the publication of the public notice. Paragraph (d)(3) would be revised to delete the requirement that OTS must provide a notice of the filing of an application to persons who have filed a request for such notice. This section is duplicative of the requirement set forth at § 563e.6. Currently, 543.2(d)(3) also requires OTS to notify the state official who supervises savings associations in the state where the new association will be located. This

notification requirement would be retained.

Paragraph (b)(1) would be revised to clarify that public notice and comment procedures, conference procedures, and approval conditions otherwise applicable to applications to organize federal associations would not apply to applications to organize interim federal associations. Applications that accompany the organization of the federal interim association, for example, merger applications or holding company applications, would continue to be subject to the requirements set forth under the applicable merger or holding company regulations. A similar revision would be made to section 552.2-2(a), which governs applications to organize interim federal stock savings associations.

Section 545.92 governs the establishment of branch offices by federal associations. This section currently incorporates the comment and oral argument procedures at § 543.2 (e) and (f). It also cross-references additional procedures from § 543.2 (c) and (d) that address the amendment of applications, the publication of public notices, and public inspection procedures. Rather than require the reader to refer to two different regulations to determine the procedures that apply to branch office applications, proposed § 545.92 would refer to the new comment procedures at § 516.5, and would restate in full appropriate additional procedures contained in existing § 543.2 (c) and (d).

The current procedures for branch applications that are subject to standard treatment under § 545.92 require the publication of a public notice within 10 days after OTS notifies the association that the application is complete. These procedures also state that such applications may, under certain circumstances, be deemed to be approved within 30 days of this OTS notification. Because these procedures would not accommodate the proposed 25-day public comment period, the OTS proposes to require the savings association to publish the public notice of all branch applications or notices no earlier than three days before and no later than the date of the filing of the application.

Section 545.95 addresses changes of permanent locations and redesignations of home and branch offices of federal associations. The current rule requires an applicant to post a notice of the application for 17 days from the date of publication of the newspaper notice—a period that is equal to the extended comment period under current 12 CFR 543.2(e)(1). The proposed rule would

expand the time period for posting to 25 days to more closely track the revised comment period. The proposed rule would also update existing cross-references to § 545.92 procedures.

Section 552.2-1 governs procedures for the organization of federal stock associations. Currently, this regulation incorporates § 543.2(a) through (f) by reference. Rather than refer the reader to two regulations to determine the proper procedures for these applications, proposed § 552.2-1 would refer to the new comment procedures at § 516.5, and would restate in full any appropriate additional procedures contained at existing § 543.2(a) through (d). As in § 543.2, the public notice procedures contained in this section would be revised to require an applicant to publish notice of the filing of the application to organize no earlier than three days before, and no later than the date of filing of the application.

Sections 556.5 (policy statement on branching by federal savings associations) and 563.22 (merger consolidation, purchase or sale of assets, or assumption of liabilities) would be revised to include appropriate citations to the new comment procedures at § 516.5, rather than the existing procedures at § 543.2.

The OTS invites comment on all aspects of the proposal.

III. 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.

IV. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposed rule will not have a significant impact on a substantial number of small entities. The proposed rule should enable the OTS to process applications received from all applicants, including small savings associations, and other small businesses, more expeditiously. It also allows all entities, including small entities, a longer period in which to submit comments on applications filed by savings associations.

V. Paperwork Reduction Act of 1995

The information collection requirements contained in this rule are found at 12 CFR 516.5, 543.2, 545.92, 545.95, 552.2-1, and 563.22. All of the collections of information, except those found in § 516.5, have been previously approved by the Office of Management and Budget and the burden under them remains unchanged under this rule.

² This requirement is currently found at 12 CFR 516.2(c)(6). Since the proposed rule would include this provision at § 516.5(b)(2), § 516.2(c)(6) would be deleted. We note that the OTS also may extend the time for review under 12 CFR 516.2 (e) and (f).

(OMB Control Nos. 1550-0005, 1550-0006, and 1550-0016). The requirements in new § 516.5 were previously found in several of the sections mentioned above. New § 516.5 does not add any additional burden and will be added to the approved packages under OMB Control Nos. 1550-0005, 1550-0006, 1550-0015 and 1550-0032 by inventory correction worksheet at the final rule stage.

Comments on all aspects of the information collections should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, D.C. 20503 with copies to the OTS, 1700 G Street, NW, Washington, D.C. 20552.

The OTS invites comments on:

(1) Whether the collections of information are necessary for the proper performance of the agency's functions, including whether the information has practical utility;

(2) The accuracy of the agency's estimate of the burden of the information collections;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the information collection including the use of automated collection techniques or other forms of information technology.

Respondents/recordkeepers are not required to respond to the collections of information unless they display a currently valid OMB control number.

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 expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$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. As discussed in the preamble, this proposed rule simplifies existing procedures and should reduce regulatory burden. 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

12 CFR Part 516

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 543

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 556

Savings associations.

12 CFR Part 583

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

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

PART 516—APPLICATIONS PROCESSING GUIDELINES AND PROCEDURES

1. The authority citation for part 516 is revised to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464, 2901 et seq.

§ 516.2 [Amended]

2. Section 516.2(c)(6) is removed and reserved.

3. Section 516.5 is added to read as follows:

§ 516.5 Comment procedures.

(a) *Comments—(1) General.* If a regulation incorporates the procedures set forth in this section, public comments in connection with an application or notice (collectively referred to as applications) shall be submitted only as provided in this paragraph (a), or as otherwise requested by the OTS. A comment includes any written submission in favor of, or in opposition to, the application.

(2) *Submission.* Any person may file a written comment with the OTS within 25 days after an application is published for public comment. The OTS will not consider any comment received after the 25-day comment period, unless the commenter demonstrates good cause

why it was unable to submit a timely comment, and the OTS concludes that the comment addresses a significant regulatory concern and will assist the agency in the disposition of the application.

(3) *Content.* To be considered by the OTS, a comment must recite all relevant facts, including any economic or financial data, supporting the commenter's position. Comments in opposition must address at least one of the regulatory bases for denial, as set forth in the applicable regulations, recite relevant facts and supporting data addressing these relevant bases, and address any adverse effects on the commenter or the community that may result from the approval of the application.

(b) *Conference.* (1) The OTS may arrange a conference between the applicant commenter(s), and other persons, if the OTS concludes that a conference will assist in the disposition of the application or in the resolution of any issues raised by the application. The OTS must provide the applicant and commenter(s) with at least 10 days notice of the time, location, and procedures to be followed at the conference.

(2) *Application time frames.* If the OTS has timely notified the applicant that it intends to hold a conference under paragraph (b) of this section, the time period for automatic approval of the application under § 516.2 shall be temporarily suspended until a record is developed sufficient to support a determination on the issues raised in the comments.

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

4. The authority citation for part 543 continues to read as follows:

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

5. In § 543.2, paragraph (c) is removed and reserved and paragraphs (d)(1), (d)(3), (d)(4), (e), (f) and (h)(1) are revised to read as follows:

§ 543.2 Application for permission to organize.

(d) * * * (1) The applicant shall publish a public notice of the application to organize no earlier than three days before and no later than the date of filing of the application. The applicant shall publish the notice in a newspaper printed in the English language and having a general circulation in the community in which

the home office of the new association is to be located. If the OTS determines that the primary language of a significant number of adult residents of the community is a language other than English, the OTS may require that notice also be given simultaneously in the appropriate language(s).

(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) The application and all related communications may be inspected by any person at the Regional Office during regular business hours, unless such information is exempt from public disclosure.

(e) *Submission of comments.* Comments on the application shall be submitted in accordance with the procedures specified in § 516.5(a) of this chapter.

(f) *Conference procedures.* The OTS may arrange a conference in accordance with § 516.5(b) of this chapter.

(h) * * * (1) Applications for permission to organize an interim Federal savings association are not subject to public notice and comment procedures, and conference procedures, and are not subject to paragraph (g)(3) of this section.

PART 545—OPERATIONS

6. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

7. In § 545.92, paragraphs (d), (e) heading, (e)(2), and (f) are revised, and paragraphs (i) and (j) are removed to read as follows:

§ 545.92 Branch offices.

(d) *Processing of applications/notice.* Processing of applications and notices shall be subject to the following procedures:

(1) *Publication.* (i) A Federal savings association shall publish a public notice of the branch application or notice no earlier than three days before and no later than the date of the filing of the application or notice. The applicant shall publish the notice in a newspaper printed in the English language and having a general circulation in the community in which the home office of the association is located and in the community to be served by the branch office. If the OTS determines that the

primary language of a significant number of adult residents of either community is a language other than English, the OTS may require that notice also be given simultaneously in the appropriate language.

(ii) The public notice shall be in substantially the following form:

NOTICE OF ESTABLISHMENT OF A BRANCH OFFICE OR CHANGE OF LOCATION OF AN OFFICE

This is to inform you that [Association Corporate Title, City, Town, State and Zip Code] is filing [an] [application/notice] with the Office of Thrift Supervision ("OTS") for permission to establish a branch office to be located [address of branch office]. This [application/notice] is filed under OTS regulations at 12 CFR 545.92 or 12 CFR 545.95.

Anyone may comment in favor of, or in opposition to, the [application/notice] within 25 days of the publication of this notice. To be considered by the OTS, your comments must be filed in writing within this time period. Your comment must recite all relevant facts, including any economic or financial data, supporting your position. If you submit a comment in opposition, you must address at least one of the regulatory bases for denial, as set forth in the applicable regulations, recite relevant facts and supporting data addressing these bases, and address any adverse effects on you or the community that may result from the approval of the [application/notice].

You must send three copies of your comment to the Regional Director, [insert name and address of the OTS Regional Office where the application/notice is filed]. You may view the [application/notice] and all comments filed at the OTS Regional Office, except to the extent that these materials may be exempt by law from disclosure. If you have any questions concerning these procedures, contact the OTS Regional Office.

(iii) Promptly after publication of the public notice, the savings association shall transmit copies of the public notice and publisher's affidavit of publication to the OTS.

(iv) The application or notice and all related communications may be inspected by any person at the Regional Office during regular business hours, unless such information is exempt from public disclosure.

(2) *Submission of application or notice.* A Federal savings association must comply with § 556.5 of this chapter and shall file the application required under § 516.3(b)(2) of this chapter or the notice required under § 516.3(a) of this chapter within three days of the publication of the public notice under paragraph (d)(1) of this section.

(3) *Submission of comments.* Comments on the application or notice shall be submitted in accordance with the procedures specified in § 516.5(a) of this chapter.

(4) *Conference procedures.* The OTS may arrange a conference in accordance with § 516.5(b) of this chapter.

(e) Approval of branch application.

(2) An application shall be deemed to be approved 30 days after notification that the application is complete, unless the OTS notifies the savings association that it intends to hold a conference under the procedures described in § 516.5(b) of this chapter, or that the OTS objects to the application on the grounds set forth under paragraph (e)(1) of this section.

(f) *Approval of branch notice.* A notice filed by a Federal savings association that qualifies for expedited treatment shall be deemed to be approved 30 days after its filing with the OTS, unless the OTS notifies the savings association that it intends to hold a conference under the procedures described in § 516.5(b) of this chapter; the OTS objects to the application on the grounds set forth in paragraph (e)(1) of this section; or the OTS determines to process the filing as an application under § 516.3(a)(3) of this chapter. If the OTS notifies the savings association that it intends to hold a conference, the savings association may not open a branch until the OTS provides a notification of its approval.

8. In § 545.95, paragraphs (a) and (b)(1)(ii) are revised to read as follows:

§ 545.95 Change of office location and redesignation of offices.

(a) *Eligibility.* A Federal savings association may change the permanent location of its home office or any approved branch office, or redesignate a home or branch office subject to the appropriate expedited or standard treatment procedures for establishing a branch office set forth in § 545.92 of this part.

(b) * * *

(1) * * *

(ii) The applicant shall post notice of the application for 25 days from the date of first publication in a prominent location in the office to be closed or redesignated.

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

9. The authority citation for part 552 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

10. Section 552.2-1 is amended by revising paragraph (a) to read as follows:

§ 552.2-1 Procedure for organization of Federal stock association.

(a) *Application for permission to organize.* Applicants may file an application for permission to organize a Federal stock association in accordance with this section. Recommendations by employees of the OTS regarding applications for permission to organize are privileged, confidential, and subject to § 510.5 (b) and (c) of this chapter. The processing of an application under this section shall be subject to the following procedures:

(1) *Publication.* (i) The applicant shall publish a public notice of the application no earlier than three days before and no later than the date of filing of the application. The applicant shall publish the notice in a newspaper printed in the English language and having a general circulation in the community in which the home office of the new association is to be located. If the OTS determines that the primary language of a significant number of adult residents of either community is a language other than English, the OTS may require that notice also be given simultaneously in the appropriate language(s).

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

(iii) The application and all related communications may be inspected by any person at the Regional Office during regular business hours, unless such information is exempt from public disclosure.

(2) *Notification to interested parties.* 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.

(3) *Submission of comments.* Comments on the application shall be submitted in accordance with the procedures specified in § 516.5(a) of this chapter.

(4) *Conference procedures.* The OTS may arrange a conference in accordance with § 516.5(b) of this chapter.

11. Section 552.2-2 is amended by revising paragraph (a) to read as follows:

§ 552.2-2 Procedures for organization of interim Federal stock association.

(a) Applications for permission to organize an interim Federal savings association are not subject to public notice and comment procedures, and

conference procedures, and are not subject to § 552.2-1(b)(3) of this part.

PART 556—STATEMENTS OF POLICY

12. The authority citation for part 556 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j-3; 15 U.S.C. 1693-1693r.

13. Section 556.5 is amended by revising paragraph (c)(4) to read as follows:

§ 556.5 Branching by Federal savings associations.

(c) * * *

(4) *Comment procedures.* Comments on applications for branches must be submitted in writing and factually documented. Comment procedures are set forth in § 516.5 of this chapter, part 563e of this chapter, the OTS Application Processing Handbook, and other supervisory guidance issued by the OTS.

PART 563—OPERATIONS

14. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 3806; 42 U.S.C. 4106.

15. Section 563.22 is amended by revising paragraphs (e)(4) and (f)(3) to read as follows:

§ 563.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

(e) * * *

(4) Applications submitted under paragraph (a) of this section shall be subject to the comment procedures specified in § 516.5(a) of this chapter, except that comments may be submitted at any time during the period described in paragraph (e)(2) of this section. The OTS may arrange a conference in accordance with § 516.5(b) of this chapter.

(f) * * *

(3) The OTS has notified the savings association that it intends to hold a conference as described in § 516.5(b) of this chapter;

Dated: March 31, 1997.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

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