



OCC Bulletin 2019-31: Covered Savings Associations Implementation

By: Douglas P. Faucette and Daniel P. Weitzel

This QuickStudy is intended to supplement our [previous QuickStudy](#), published on June 17, 2019, regarding the election to be treated as a “covered savings association.” On July 1st, the OCC issued Bulletin 2019-31 (the “Bulletin”) describing certain aspects of the final regulation which was effective on July 1st. Any election under the final regulation involves a myriad of considerations and demands a careful review of current and anticipated lines of business and operations. Below we highlight just a few of these important considerations. The final regulation can be found at 12 CFR 101 and the Bulletin, together with a comparison of the powers of national banks and federal savings associations, can be found on the OCC website.

Management of federal savings associations considering making the election to covered savings association status are encouraged to consult with the OCC supervisory office before submitting the required notice. Significantly, when filed, the notice must identify and describe each nonconforming subsidiary, asset, or activity at the time of the notice’s filing. This will require a detailed comparison and contrasting of the powers of national banks and federal savings associations. The OCC may require management to provide a specific plan for divestiture, conformance, or discontinuance of nonconforming subsidiaries, assets, or activities. Further, management should discuss with the OCC any modifications or updates to the association’s business plan that may be necessary as a result of an election. The OCC may request changes to the association’s business plan and may modify the scope of its examination as a result of the election.

These discussions will not delay or extend the election’s 60 day notice period. By operation of law, the election will become effective 60 days after the OCC receives the notice unless the OCC notifies the federal savings association sooner. However, management should be mindful that while the election will be effective no later than 60 days after filing the notice, the discussions relating to the referenced specific plan and modifications to the association’s business plan may still be ongoing. This could prove problematic in general and particularly for associations rated CAMEL 3 or below or otherwise subject to prior business plan approval.

No public notice or stockholder or member vote is required to make the election to become a covered savings association.

Because national banks are not authorized to hold service corporations, a covered savings association may not continue to hold an investment in, or otherwise invest in, a service corporation. This applies even if the service corporation engages exclusively in activities permitted to national banks. To address this nonconformance, the association could divest the service corporation or, alternatively, conform the investment by re-designating the service corporation as an operating subsidiary, which is expressly authorized to be held by a national bank. This re-designation is predicated on the assumption that the service corporation/operating subsidiary is only engaged in activities permissible for a national bank to engage in directly. Re-designation does not require the liquidation or merger of the service corporation. Further, the powers provided to holding companies may also offer a solution to certain nonconforming service corporation activities.

If a covered savings association determines to request an extension of the two year transition period for addressing nonconforming subsidiaries, assets, and activities, such a request must be received by the OCC not less than 30 days prior to the expiration of the initial or subsequent transition period.



Any public welfare or community development investments existing at a federal savings association at the time of election that would not comply with the authorizations, terms, and conditions (namely, limits on the total amount of such investments) applicable to a national bank's investments, will be considered as nonconforming and be subject to divestiture, conformance, or discontinuation. While the calculation of the limitation on the permissible amount of such investments is different for federal savings associations and national banks, after a detailed review, management may find that this is not a significant issue.

A covered savings association may continue to operate any branch or agency that the federal savings association operated immediately prior to becoming a covered savings association. Notwithstanding the foregoing, if a federal savings association is engaged in activities in an agency office and a national bank is not permitted to engage in such activities at a non-branch location, the covered savings association will be required to discontinue or conform such activities.

A covered savings association is to be treated as a federal savings association for purposes of a merger, among other things. However, the retention of branches or establishment of interstate branching in the context of a merger will be considered under the branching requirements (as applied to national banks) rather than under the merger requirements. Further, a covered savings association's acquisition, establishment or closure of branches will be governed by the regulations applicable to national banks.

It is important that federal savings associations which are subsidiaries of holding companies, whether a stock or mutual holding company, contact the staff of the appropriate Federal Reserve Bank regarding the treatment of the holding company as part of the election process.

A careful legal analysis of the OCC rules and opinions on powers of national banks should be performed before moving forward with a notice of election. A comprehensive analysis comparing and contrasting the association's business lines and operations with those permitted to a national bank, together with a consultation with the OCC staff, prior to deciding to move forward with an election, is imperative. Once the 60 day notice period runs and the election is effective, management's ability to terminate the election is in the discretion of the OCC. This could be particularly problematic if there are supervisory objections raised with regard to a specific divestiture plan or modifications to the association's business plan.

The foregoing is intended to raise certain considerations and, as we said before, each institution has unique issues and possibilities. We would be pleased to discuss how the final regulation might be used to your advantage and what the pros and cons are as they relate to your situation and objectives.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors.

Douglas P. Faucette | 202-220-6961 | dfaucette@lockelord.com

Daniel P. Weitzel | 202-220-6963 | dweitzel@lockelord.com



Practical Wisdom, Trusted Advice.

www.lockelord.com

Atlanta | Austin | Boston | Chicago | Cincinnati | Dallas | Hartford | Hong Kong | Houston | London | Los Angeles
Miami | New Orleans | New York | Princeton | Providence | San Francisco | Stamford | Washington DC | West Palm Beach