



Mutual Alert

OCC Releases Process for Voluntary Liquidation of Mutual FSAs

In a [September 24 Bulletin](#), the OCC released guidance on the procedural and regulatory framework for voluntary liquidation of mutual federal savings associations. In the Bulletin, the OCC notes that mutual FSAs proposing liquidation are not eligible to participate in the expedited liquidation process, and must use the process outlined in the bulletin, and 12 CFR 5.48. Prior to liquidation, a mutual FSA must submit a liquidation plan to the OCC for non-objection, which discusses the reasons for liquidation, other options pursued to avoid liquidation, and whether or not the liquidation will be in the best interests of the rights of the members i.e., depositors, certain borrowers, and any other stakeholders.

The Bulletin highlighted the following items:

- The determination to pursue a voluntary liquidation is a business decision by a mutual FSA's board of directors, subject to non-objection by the OCC and the member approval requirement.
- A mutual FSA considering a voluntary liquidation must submit a preliminary notice of voluntary liquidation to the OCC.
- Following the determination by the board of directors to voluntarily liquidate, the mutual FSA must submit a plan of liquidation to the OCC that addresses, among other things, the rights of the members, i.e., depositors, certain borrowers, and any other stakeholders.
- The OCC reviews the plan of liquidation and the relevant factors, including the purpose of the liquidation and its impact on the safety and soundness of the mutual FSA and on its depositors, creditors, and customers.

- The OCC must provide its non-objection before the mutual FSA may hold the meeting of its members to vote on the plan of liquidation.
- The members of the mutual FSA vote on the plan of liquidation at a legal meeting in accordance with its charter and bylaws.
- Following the member approval of the plan of liquidation, the mutual FSA must file a notice with the OCC and provide notice to depositors and known creditors or claimants upon commencing voluntary liquidation.

AMB is pleased that the OCC has clarified the importance of increased regulatory scrutiny to voluntary liquidation of mutuals. We believe there are significant distinctions between liquidations of mutuals and stock institutions. The principal ones are the lack of private ownership, community as a stakeholder and the fair disposition of accumulated equity, among others. The Bulletin does not impose any special disclosure obligations to members concerning the reasons and disposition of equity on liquidation. We believe that a liquidation is as significant as a stock conversion or much holding company formation and should have at least the same member/community protections such as a special proxy solicitation providing adequate disclosure of the reasons of termination of a publicly granted charter to serve a specific community.

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