

NEW JERSEY BANKERS ASSOCIATION  
118<sup>TH</sup> ANNUAL CONFERENCE 2024

MODERN MUTUALITY:  
RECENT DEVELOPMENTS AFFECTING  
MUTUAL HOLDING COMPANIES AND  
MUTUALLY CHARTERED  
FDIC INSURED BANKS

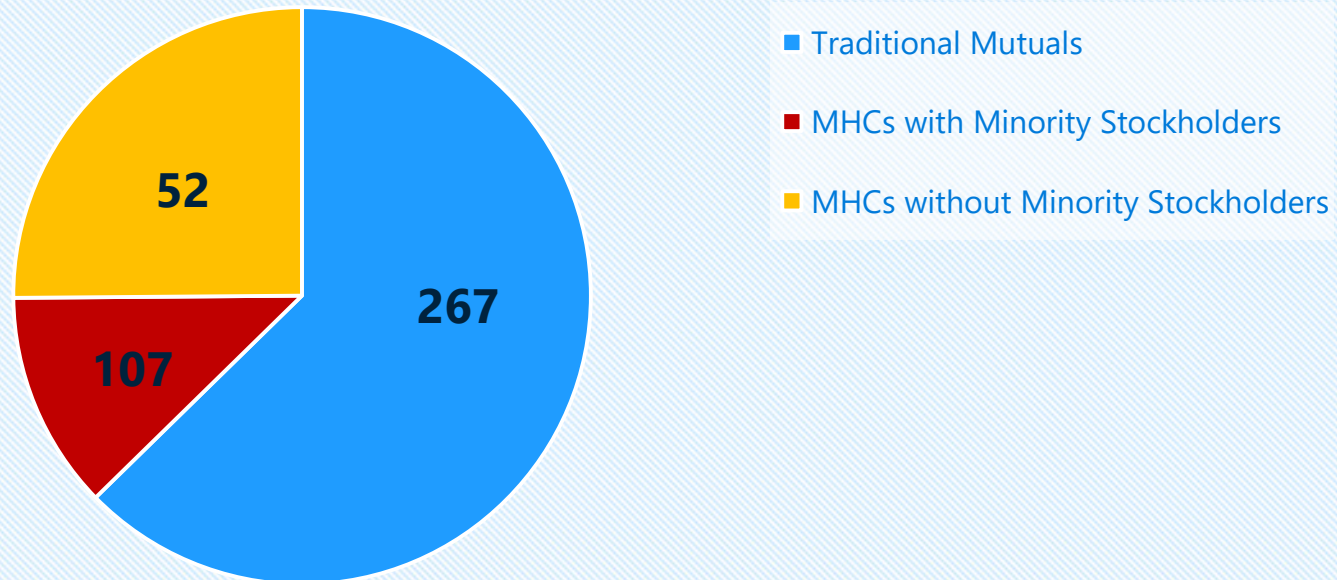
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## THE STRUCTURE OF MUTUAL THRIFT INDUSTRY

- Historically, Mutual Savings Associations and Savings Banks numbered in the tens of thousands at the beginning of the 20<sup>th</sup> century.
- The dominant model was the building and loan model which varied from state to state. It's structure more closely resembled a mutual fund than today's S&LS.
- With the Great Depression, the Federal Government authorized the Federal Charter based on the building and loan structure rather than the savings bank structure.
- Over time, Federal Mutuals became the dominant mutual form of bank.
- Until 1974, all Federals were Mutual in form by law, as was the case for most State Chartered SLs and Savings Banks.

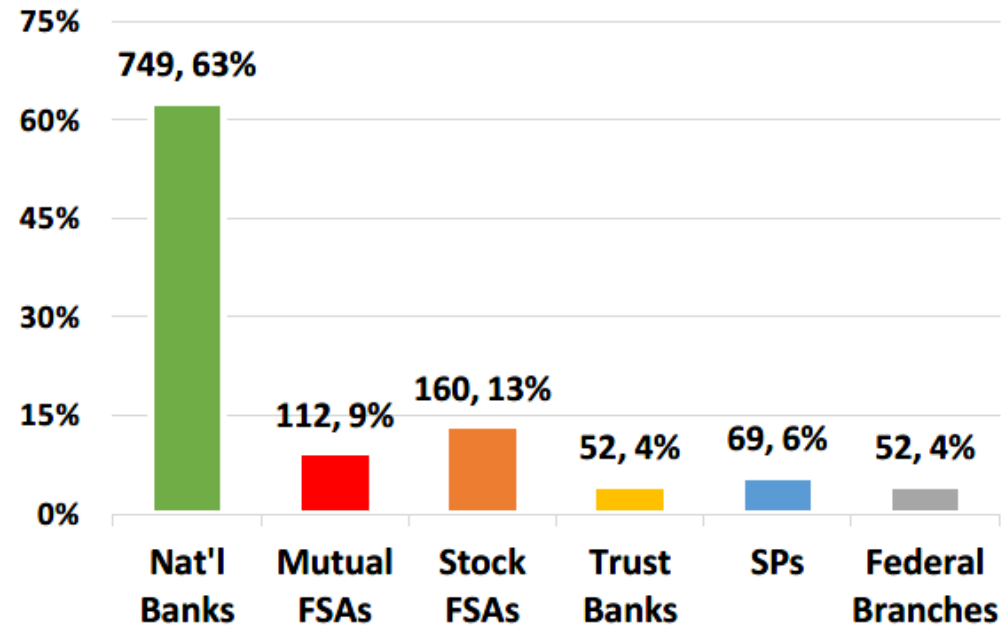
## Mutuals/MHCs



- The largest is Ohio's TFS Financial Corp MHC with \$16.9 Billion in assets.
- The smallest is Indiana's Kentland Federal with \$3.2 million in assets.

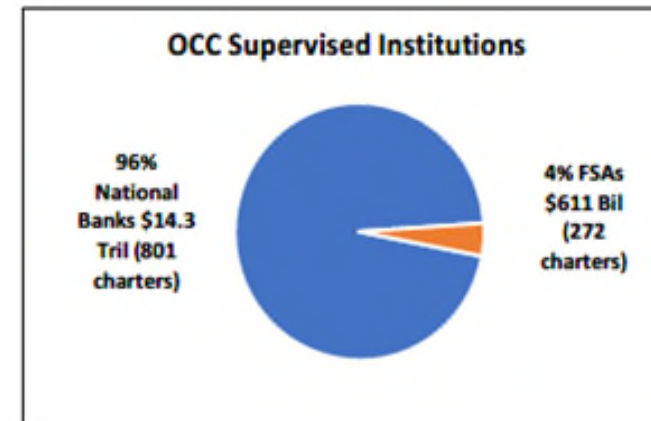
## OCC Charters by Institution Type

OCC supervised 1,194 institutions as of June 30, 2021. Federal Savings Associations (FSAs) represent 22 percent of OCC charters.

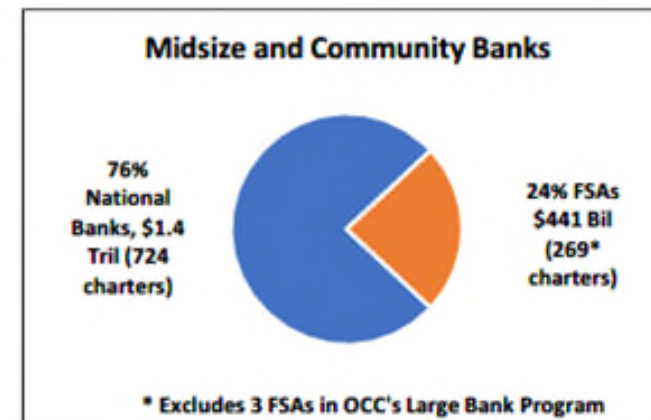


## OCC Supervised Assets

- FSAs represent \$611 billion or 4 percent of OCC supervised assets as of June 30, 2021.

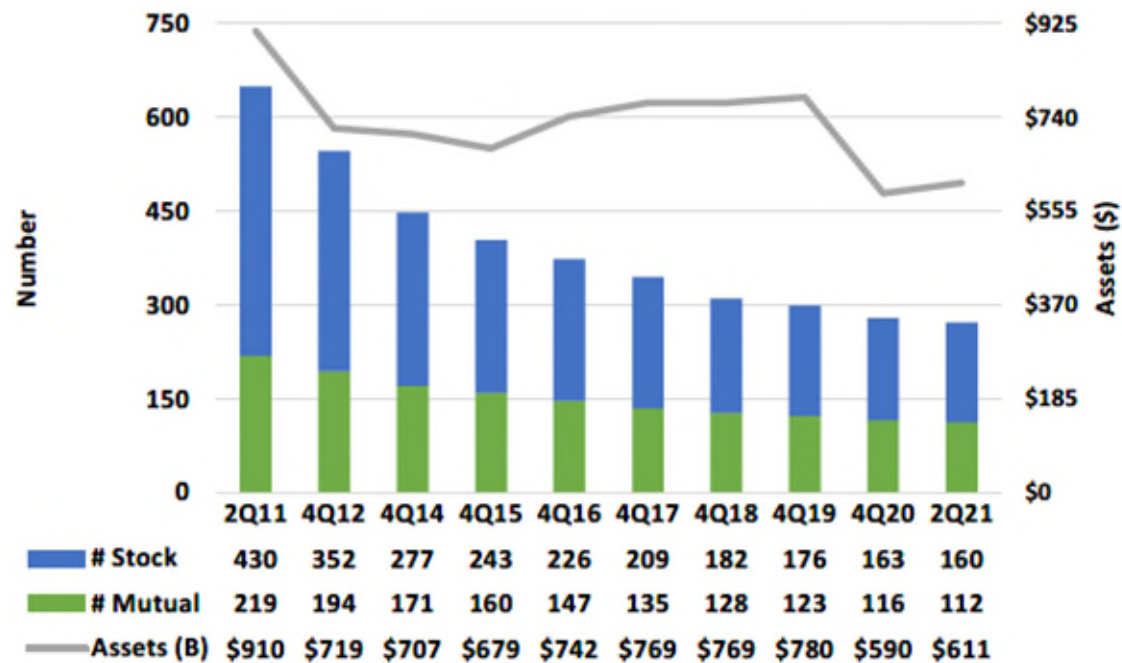


- FSAs represent \$441 billion or 24 percent of midsize and community bank assets as of June 30, 2021. Only three FSAs are supervised by OCC's Large Bank Program, but all mutual FSAs are supervised by OCC's Midsize and Community Bank Supervision Unit.



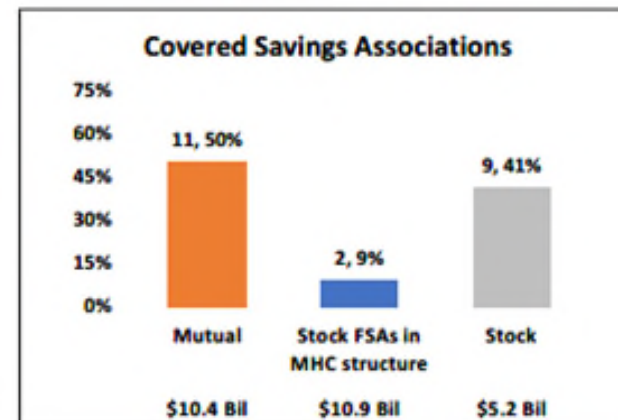
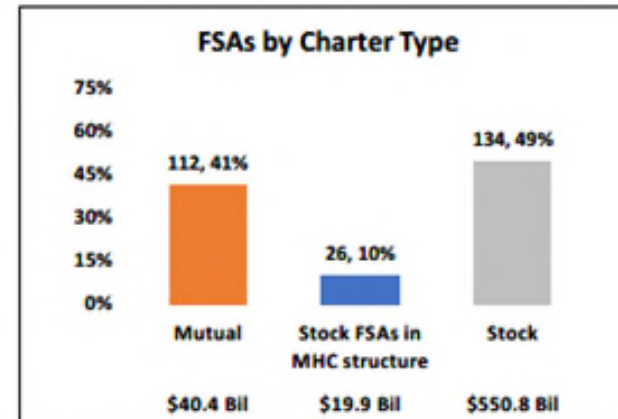
## FSA Charter Trends

The number of mutual FSAs continues to decline but not as rapidly as stock FSAs.



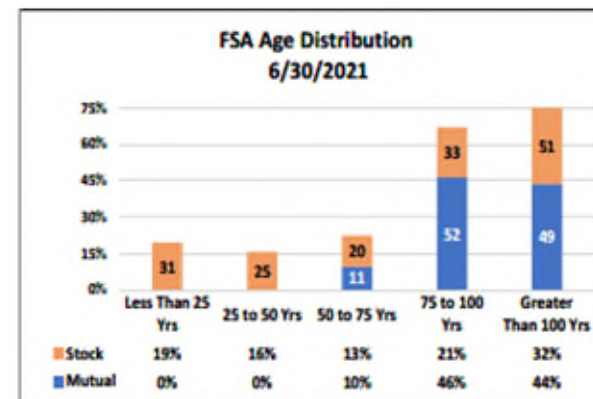
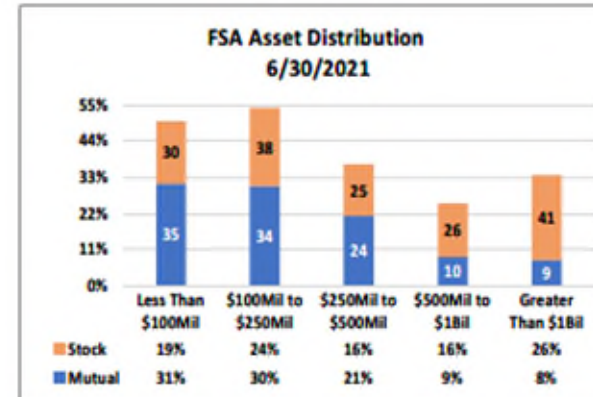
## FSAs by Type

- Mutual FSAs and stock FSAs in MHCs (that have not issued shares) represent 51 percent of OCC-regulated FSAs.
- FSAs with total assets of \$20 billion or less as of December 31, 2017, may elect to operate as covered savings associations (CSAs). CSAs represented 22 or 8 percent of FSA charters and 4 percent of FSA assets as of June 30, 2021.



## Mutual FSAs Asset Size and Age

- Mutual FSAs are typically smaller in size than their stock counterparts. Only 8 percent of mutual FSAs have total assets greater than \$1 billion versus 26 percent of stock FSAs.
- Mutual FSAs represent some of the oldest financial institutions in the United States. Forty-four percent of mutual FSAs were formed more than 100 years ago. Ninety percent have operated for 75 years or more.





- Federal Mutuals and MHCs without public shareholders represent only 24% of all mid-sized and national community banks and federal associations.
- Mutual Federals with assets under \$500 million constitute 82% of the univers of all Federal Mutuals.
- There are approximately 125 Federal Mutuals in traditional or MHC form.

## CURRENT ENHANCEMENTS TO MUTUAL CHARTER

- FRB Small Bank Capital Rule allows debt to be effectively included as Tier 1 Capital at subsidiary bank level for MHCs under \$3 billion in assets.
  - However, HC debt will have to be repaid at maturity or rolled over.
- OCC adopted the Covered Association regulation giving Federals the election to adopt national bank investment powers without QTL restrictions.
- FRB has clarified QTL exception with conditions including FR bank membership.
- Various states have adopted savings bank chartering authority.
  - Some, such as Pennsylvania, have by operation of statute abolished the SL charter converting SLS to savings banks eliminating the QTL problem.

## CURRENT ENHANCEMENTS TO MUTUAL CHARTER (CONT.)

- The OCC allowed MHCs to organize limited purpose national banks as separate subs to receive municipal deposit.
- The FRB allowed a state SL subsidiary of MHC to convert to a state commercial bank.
- The OCC has in one case allowed a MHC subsidiary bank to convert to a national bank.

## CURRENT REGULATORY DEVELOPMENTS WITH MHCs

- Business Developments
  - There have been a number of large MHC mergers in New England. However, the \$10 billion in assets regulatory hurdle serves as a disincentive for further consolidation for MHCs with assets over \$5 billion.
- Presently most large MHCs are bank holding companies with savings bank subsidiaries.
- SB MHCs are not chartered by the FRB. Their governance is by self-perpetuating Board of Trustees or Managers.
- S&L HCs are chartered by the FRB pursuant to Reg MM and subject to QTL, comprehensive organization and post-formation depositor governance requirements.

## CURRENT REGULATORY DEVELOPMENTS WITH MHCs (CONT.)

- FDIC Governance and Risk Management Proposal
  - The FDIC has proposed adoption of governance requirements (12 CFR 364) that would fundamentally upset the governance and Board composition of MHCs with assets over \$10 billion and invite regulatory creep for banks under \$10 billion.
  - The proposal would require a majority of an MHC Board to be independent – meaning it could not serve on the subsidiary bank Board.
  - It would conflate safety and soundness with state law corporate fiduciary duty legal concepts and substitute state law with a preemptive Federal standard.
  - It would likely confuse governance standards applicable to stock institutions with duties of fiduciaries to Mutual members.
- State regulators have entertained favorably more restrictive anti-stock conversion bylaw and charter provisions in MHC formations.

## CURRENT REGULATORY DEVELOPMENTS WITH MHCs (CONT.)

- The Super Mutual
  - The OCC has recently allowed a SL to form an MHC and convert its sub to a commercial bank.
  - In another, it has allowed a state-chartered savings bank sub of an MHC to convert to a national bank.
  - Does this portend the rise of the super nationally chartered Mutual?

# MUTUAL GOVERNANCE DEVELOPMENTS

- Epic litigation spanning over 20 years has shaped legal governance of Mutual Banks in New Jersey because of the persistent efforts by a number of activists.
  - Various decisions have applied legal theories to Mutual thrifts appropriate for stock companies.
  - This New Jersey development is contrary to national trend phasing out the concept of depositor governance as states embrace the savings bank model.
  - New Jersey Supreme Court decisions have undermined the transactional authority of the Bank Commissioner contrary to prevailing concepts of administrative authority.
  - New Jersey court decisions have undermined the business judgment rule invalidating corporate action whenever a fiduciary has a personal interest, even if the action is in the compelling interest of the bank.
  - Activists are now seeking legislation to impose depositor voting on MSBs in New Jersey.

## MUTUAL GOVERNANCE DEVELOPMENTS (CONT.)

- There are now conflicting legal decisions on the application of fiduciary rules to directors of an MHC with minority stockholders that refuse to undertake a full conversion.



# CAPITAL

- The FDIC insured the deposits of the first Denovo Mutual State Bank since the 1960s.
- As part of the approval, it approved as Tier 1 capital mutual certificates which closely mimic mutual capital certificates approved by the OCC.
- OCC approved First Mutual Holding Company, MHC purchase of a certificate with terms mirroring an MCC issued by its bank subsidiary as additional Tier 1 capital.

# MEET THE TEAM



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