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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 4, 5, 7, 14, 24, 32, 34, 100, 116, 143, 144, 145, 146, 150, 152, 159, 160, 161, 162, 163, 174, 192, 193

Docket ID OCC-2014-0007

RIN 1557-AD80

Integration of National Bank and Federal Savings Association Regulations: Licensing Rules

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is adopting a final rule to integrate its rules relating to policies and procedures for corporate activities and transactions involving national banks and Federal savings associations, to revise some of these rules in order to eliminate unnecessary requirements consistent with safety and soundness and to promote fairness in supervision, and to make other technical and conforming changes. The OCC also is adopting amendments to update its rules for agency organization and function.

DATES: This final rule is effective July 1, 2015.

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SUPPLEMENTARY INFORMATION:

I. Background

Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[1] transferred to the OCC all functions of the former Office of Thrift Supervision (OTS) and the Director of the OTS relating to Federal savings associations.[2] As a result, the OCC is now responsible for the ongoing examination, supervision, and regulation of Federal savings associations, in addition to national banks and Federal branches and agencies. With some exceptions, the OCC has one set of rules applicable to national banks and another set of rules applicable to Federal savings associations, or, where appropriate, to all savings associations.[3]

[1] Pub. L. 111-203, 124 Stat. 1376 (2010).

[2] Title III of the Dodd-Frank Act transferred the functions of the former OTS relating to state savings associations to the Federal Deposit Insurance Corporation (FDIC). Dodd-Frank Act, section 312(b)(2)(C), 12 U.S.C. 5412(b)(2)(C). The Dodd-Frank Act also transferred to the OCC the rulemaking authority of the OTS relating to all savings associations, both state and Federal, unless rulemaking authority is provided to another agency by a specific statute. See Dodd-Frank Act, section 312(b)(2)(B)(i)(II), 12 U.S.C. 5412(b)(2)(B)(i)(II). On July 21, 2011, the OCC issued an interim final rule and request for comments that restated the former OTS regulations as 12 CFR parts 100 through 197, with nomenclature and other technical changes. See 76 FR 48950 (Aug. 9, 2011). The FDIC has identified a number of independent bases for rulemaking authority for state savings associations in some cases. Where there is no such independent rulemaking authority, the FDIC will enforce applicable OCC regulations for state savings associations.

[3] The OCC previously has issued rulemakings that integrated, or proposed to integrate, its rules for national banks and Federal savings associations relating to lending limits, capital, flood insurance, and safety and soundness standards. See 78 FR 37930 (June 25, 2013), 78 FR 62018 (Oct. 11, 2013), 78 FR 65108 (October 30, 2013), and 79 FR 54518 (September 11, 2014), respectively. Furthermore, the OCC has integrated its rules relating to consumer protection in insurance sales, Bank Secrecy Act compliance, management interlocks, appraisals, disclosure and reporting of Community Reinvestment Act (CRA)-related agreements, and the Fair Credit Reporting Act. See 79 FR 28393 (May 16, 2014).

The OCC is in the process of reviewing its rules to determine whether it is appropriate to integrate them into a single set of rules for both national banks and savings associations, taking into account consistency with the underlying statutes that apply to each type of institution. The key objectives of this review are to reduce regulatory duplication, promote fairness in supervision, eliminate unnecessary burden consistent with safety and soundness, and create efficiencies for both national banks and savings associations, as well as the OCC.[4]

As part of this review of our national bank and savings association rules, the OCC published in the Federal Register[5] on June 10, 2014, a proposal to integrate its rules relating to corporate activities and transactions involving national banks and Federal savings associations (licensing rules). One of the objectives of this rulemaking is to create, where possible, filing parity for all activities and transactions addressed in the OCC's licensing rules. The OCC believes that it is more equitable and efficient to have a single filing and review process for corporate activities and transactions of national banks and Federal savings associations. In addition, the OCC is in the latter stages of developing an electronic applications filing system capable of handling applications and other filings from both national banks and Federal savings associations. Accordingly, another important objective of this rulemaking is to complete the

[4] Concurrent with our integration of national bank and Federal savings association rules, the OCC also is reviewing OTS-issued supervisory policies to integrate them into the OCC's policy framework and to rescind any issuances that are duplicative, outdated, or replaced by other supervisory guidance. Our goal is to produce uniform policies for national banks and Federal savings associations, while recognizing differences that exist in statute. This policy review is occurring in conjunction with this integration rulemaking project. Many OTS-issued supervisory policies already have been integrated, rescinded, or replaced by new or existing OCC guidance. We will update this policy guidance, as appropriate, to reflect the integration of OCC rules as of the effective date of the final rules. Until that time, the Dodd-Frank Act provides that all such OTS issuances continue in effect until modified, terminated, set aside, or superseded. See Dodd-Frank Act section 316(b)(2) (12 U.S.C. 5414(b)(2)); OCC Bulletins 2011-47 (Dec. 11, 2011), 2012-2 (Jan. 6, 2012), 2012-3 (Jan. 6, 2012), 2012-15 (May 17, 2012), 2013-34 (Nov. 20, 2013), and 2014-49 (Oct. 1, 2014); and www.occ.gov/publications/publications-by-type/comptrollers-handbook/index-comptrollers-handbook.html.

[5] 79 FR 33260.

integration of our licensing rules expeditiously so that we can include these integrated rules in this new applications system.

Concurrently, the OCC also is participating in an interagency review of regulations pursuant to section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).[6] The EGRPRA requires the Federal Financial Institutions Examination Council (FFIEC) and the OCC, the FDIC, and the Board of Governors of the Federal Reserve System (Federal Reserve Board) (collectively, the Agencies) to conduct a review of all their regulations to identify outdated, unnecessary, or unduly burdensome regulations applicable to insured depository institutions. The FFIEC and the Agencies must conduct this review at least once every 10 years, and the next review must be completed by December 31, 2016. Over the next two years the OCC, FDIC and Federal Reserve Board will issue joint notices requesting comments on their rules pursuant to the EGRPRA. The EGRPRA contemplates that the Agencies will initiate appropriate rulemakings to change or eliminate outdated, unnecessary, or unduly burdensome rules, as appropriate, based on the comments received.

The Agencies published the first EGRPRA notice on June 4, 2014,[7] and requested comments on three categories of rules, including the Agencies' licensing rules.[8] The licensing Notice of Proposed Rulemaking (NPRM or proposed rule) indicated that the OCC would consider comments received in response to both the EGRPRA notice and the NPRM when finalizing its licensing integration rule. We received eight comment letters on our licensing rules

[6] 12 U.S.C. 3311.

[7] 79 FR 32172.

[8] The OCC issued its second EGRPRA notice, requesting review of banking operations, capital, and the Community Reinvestment Act regulations, on February 13, 2015, 80 FR 7980.

and our licensing proposed rule in response to our first EGRPRA notice, and this final rule reflects these comments.

As part of this EGRPRA review, the Agencies also are holding a number of outreach meetings to provide interested parties with an opportunity to comment on regulatory burden reduction in our regulations. This preamble discusses relevant comments received at outreach meetings held on December 2, 2014, in Los Angeles, Calif., and February 4, 2015 in Dallas, Texas, to the extent they relate to OCC licensing rules.

II. Overview of the Final Rule

Twelve CFR part 5 sets forth the OCC's rules, policies and procedures for national bank corporate activities and transactions. Subpart A sets forth the generally applicable rules and procedures, while subparts B through D contain the rules for national bank initial activities, the expansion of activities, and other changes in activities and operations. Subpart E addresses a national bank's payment of dividends, and subpart F addresses Federal branches and agencies. The OCC's equivalent rules, policies and procedures for Federal savings associations are dispersed throughout parts 100 – 199 with the generally applicable rules and procedures in part 116. This final rule revises part 5 to make it applicable to both national banks and Federal savings associations and, to the extent appropriate, deletes the corresponding provisions found in parts 100 through 199.

Specifically, the final rule consolidates most licensing provisions for Federal savings associations into the existing national bank rule in part 5 and eliminates parts 116, 146, 152, 159, 174 and the corresponding provision in parts 143, 144, 145, 150, 160, and 163. These combined rules are as follows:

- Rules of general applicability (subpart A)

- Organizing a national bank or Federal savings association (§ 5.20)
- Conversion from a national bank or Federal savings association to a state bank or state savings association (§ 5.25)
- Fiduciary powers of national banks or Federal savings associations (§ 5.26)
- Business combinations involving a national bank or Federal savings association (§ 5.33)
- Bank service company investments of a national bank or Federal savings association (§ 5.35)
- Investment in national bank or Federal savings association premises (§ 5.37)
- Change in location of a main office of a national bank or home office of a Federal savings association (§ 5.40)
- Corporate title of a national bank or Federal savings association (§ 5.42)
- Voluntary liquidation of a national bank or Federal savings association (§ 5.48)
- Change in control of a national bank or Federal savings association; reporting of stock loans (§ 5.50)
- Changes in directors and senior executive officers of a national bank or Federal savings association (§ 5.51)
- Change of address of a national bank or Federal savings association (§ 5.52)
- Substantial asset change by a national bank or Federal savings association (§ 5.53)

In other cases, this final rule retains separate rules for national banks and Federal savings association in part 5 because the rules do not apply to both charters, are better organized as separate rules, or their differences and complexity make integration difficult. The new Federal savings association rules are as follows:

- Federal mutual savings association charters and bylaws (§ 5.21)
- Federal stock savings association charters and bylaws (§ 5.22)
- Conversion to become a Federal savings association (§ 5.23)
- Establishment, acquisition, and relocation of a branch and establishment of an agency office of a Federal savings association (§ 5.31)
- Operating subsidiaries of a Federal savings association (§ 5.38)
- Increases in permanent capital of a Federal stock savings association (§ 5.45)
- Capital distributions by a Federal savings association (§ 5.55)
- Inclusion of subordinated debt securities and mandatorily redeemable preferred stock as supplementary (tier 2) capital (§ 5.56)
- Pass-through investments by a Federal savings association (§ 5.58)
- Service corporations of Federal savings associations (§ 5.59)

The remaining rules in part 5 continue to be applicable only to national banks, with the exception of subpart E. (Subpart E applies only to Federal branches and agencies, and we did not propose to amend it in the NPRM.) We are amending some of these rules to be consistent with the changes for Federal savings associations, revising the titles of some of these rules to reflect the inclusion of rules applicable to Federal savings associations in part 5, and making other technical changes. These national bank-only rules are as follows:

- Conversion to become a national bank (§ 5.24)
- Establishment, acquisition, and relocation of a branch of a national bank (§ 5.30)
- Expedited procedures for certain reorganizations of a national bank (§ 5.32)
- Operating subsidiaries of a national bank (§ 5.34)

- Other equity investments by a national bank (§ 5.36)
- Financial subsidiaries of a national bank (§ 5.39)
- Changes in permanent capital of a national bank (§ 5.46)
- Subordinated debt issued by a national bank (§ 5.47)
- Payment of dividends by national banks (Subpart E)

In addition to the placement and integration of Federal savings association rules, the final rule makes substantive changes to the OCC's licensing rules to eliminate unnecessary requirements and to further the safe and sound operation of the institutions the OCC supervises. Furthermore, the final rule makes conforming and technical changes to the rules in parts 5, 7, and 34 and in various provisions of parts 100 through 199 to reflect the movement of the licensing rules for savings associations to part 5, to adjust section titles, and to conform cross-references. In particular, the final rule replaces, where appropriate, references to "bank" with "national bank," because it better parallels the term "Federal savings association." Finally, the rulemaking amends the OCC's licensing rules to make consistent the OCC office to which a national bank or Federal savings association must file its notice or application. Specifically, the final rule amends each rule in part 5 to direct such filings to the institution's appropriate OCC licensing office or appropriate OCC supervisory office, as applicable, and, in clarifying amendments, updates the description of the OCC's supervisory structure in part 4.

A description of amendments made by this final rule, the comments received on the proposed rule, relevant comments received in response to the June 2014 EGRPRA notice, and licensing-related comments made at the EGRPRA outreach meetings held in Los Angeles, California and Dallas, Texas appears in the section-by-section description of the final rule set forth below in Section III of this preamble. Section IV of the preamble summarizes the

significant changes for national banks and Federal savings associations resulting from this final rule. Section VI of the preamble contains a redesignation table that indicates changes in the numbering of the rules as a result of this final rule. Sections IV and VI may be used as a quick-reference guide to our rulemaking and are intended to assist national banks and Federal savings associations, especially community institutions, in understanding the changes made by this rulemaking.

III. Description of the Final Rule and Public Comments

The OCC received one comment in response to the proposed rule, and that comment referred the OCC to a comment received in connection with the June 2014 EGRPRA notice. The OCC also received 48 public comments in response to the June 2014 EGRPRA notice, seven of which addressed issues related to licensing rule integration. These comments, the provisions they address, and the resulting changes to the OCC's rules are discussed below.

A. Part 4 - District Offices (§ 4.5)

Part 4 covers several areas, including regulations pertaining to the OCC's organizational structure. Section 4.4 describes the role of the OCC's Washington, D.C. office. Section 4.5 describes the role of the OCC's district and field offices and sets forth the address of, and the geographical area covered by, each district office. However, §§ 4.4 and 4.5 do not completely describe all of the OCC's supervisory offices. We proposed to amend 12 CFR 4.5 to reflect more accurately the current supervisory structure for national banks and Federal savings associations. Specifically, we proposed to revise § 4.5 to include a description and address of the OCC's Midsize Bank Supervision program, and to provide that the district offices supervise community banks not otherwise supervised by the Washington office or Midsize Bank Supervision. The NPRM also proposed to replace the outdated reference to "duty stations" with the currently used

term "field office." We received no public comments on the proposed § 4.5 amendments and adopt them as proposed with some technical changes. First, the final rule adds American Samoa to the list of territories in § 4.5(b)(1). It was inadvertently left out of the proposed rule. Second, the final rule replaces the term "field office satellite offices" with "other supervisory offices" in § 4.5(b)(2), and makes changes to paragraph headings.

B. Part 5 - Rules, Policies, and Procedures for Corporate Activities

General Comments

A number of public commenters made general comments regarding the OCC's licensing rule integration effort. One commenter, a banking trade association, supported the OCC's efforts to integrate its licensing rules as a starting point for a more efficient and streamlined regulatory regime for both national banks and Federal savings associations. However, this commenter stated that, by including a number of new substantive requirements and amendments, this rulemaking will increase burden on the industry, and is therefore inconsistent with the stated purpose of the EGRPRA process. This commenter requested that the OCC issue a separate proposed rule for any substantive changes that create burdens greater than those imposed by existing rules.

We note that the OCC has taken several considerations into account in integrating the national bank and Federal savings association rules. As stated in the preamble to the proposal, the key objective of this rulemaking is to integrate the national bank and Federal savings association rules in a way that promotes fairness in supervision, reduces regulatory duplication, eliminates unnecessary burden consistent with safety and soundness, and creates efficiencies for both national banks and savings associations, as well as the OCC. The final rule reflects a balance of these considerations.

In addition, this commenter stated that the OCC should have conducted industry outreach in advance of proposing the integration of national bank and Federal savings association licensing rules and should create a plan for outreach and the education of institutions on the proposed changes going forward. We note that we do intend to engage in efforts to educate the industry on the final rule, including discussing these changes in meetings with bankers, trade groups, and other interested parties, as appropriate, and providing summaries of the changes on the OCC's Internet Web page, www.occ.gov. In addition, we note that OCC staff is available to provide assistance to institutions planning a filing under the revised rules, as needed. Furthermore, the Comptroller's Licensing Manual provides applicants with more detailed explanations of the requirements and procedures for licensing filings with the OCC. The OCC is in the process of revising the Comptroller's Licensing Manual to reflect the changes made by this final rule. We will post the individual booklets of the Manual to the OCC Web site as they are finalized.

Another trade association commenter requested that the OCC provide tiered regulation that would provide different treatment for large banks and community banks. The OCC is committed to finding ways to reduce burden on community banks without negatively affecting the safety and soundness of those institutions, including applying less burdensome regulatory requirements where permissible and appropriate. However, we note that tiered regulation based on asset-size is not always appropriate in the licensing context because many of the application requirements are mandated by statutes that do not authorize the OCC to differentiate among institutions based on size or status as a community bank.

Rules of General Applicability (Part 5, Subpart A)

Twelve CFR part 5, subpart A, and 12 CFR part 116 set forth the OCC's generally applicable rules and procedures for processing filings[9] related to corporate activities and transactions of national banks and Federal savings associations. Both sets of regulations include filing requirements and explain where and how to file. We believe that it is more efficient to have a single filing process for national banks and Federal savings associations, where possible. As proposed, this final rule amends subpart A to apply to both national banks and Federal savings associations, to make additional substantive and technical changes to subpart A, and to remove part 116 in its entirety.

Section 5.2 Rules of General Applicability. Current rules differ with respect to the scope and applicability of the generally applicable licensing procedures for national banks and Federal savings associations. The national bank rule at 12 CFR 5.2(a) states that the subpart A procedures apply to all part 5 filings, unless otherwise stated.[10] Section 5.2(b) states that the OCC may adopt materially different procedures if it provides notice to affected parties. In contrast, the Federal savings association rule at § 116.1 states that the part 116 prefiling and filing procedures and the rules for OCC review apply to all required filings related to Federal savings associations, but that the publication requirements and the comment and meeting procedures apply only when an OCC regulation specifically incorporates these procedures or the OCC otherwise requires. Section 116.1(b) also specifies that part 116 does not apply to filings

[9] Current rules use slightly different terminology for national banks and Federal savings associations. Under 12 CFR 5.3(i), a "filing" is an application or notice submitted under part 5. Twelve CFR 116.1(a) uses the word "application" to mean an application, notice, or filing related to a Federal savings association. In this preamble, when it is not necessary to distinguish among the three, we use the word "filing" to refer to an application, notice, or other filing.

[10] Certain substantive activity or transaction rules in part 5 specify that one or more of the procedures in subpart A do not apply. In some cases, the rule specifies other procedures.

related to transactions under sections 13(c) or (k) of the Federal Deposit Insurance Act (FDI Act);[11] certain final agency action requests; certain requests related to litigation, enforcement proceedings, or supervisory directives or agreements; or applications filed under an OCC regulation that prescribes other application processing procedures and time frames.

We proposed to apply all subpart A procedures to all part 5 OCC filings, unless the substantive rule specifically exempts the filing or the OCC states otherwise. We received no comments on this provision and adopt the procedures as proposed. This change creates more parity for national banks and Federal savings associations when filing an application for activities and transactions addressed in part 5.

Section 5.2(c) also states that the Comptroller's Licensing Manual provides additional filing information and is available on-line and, for a fee, in print. We proposed to revise this provision to state only that the Manual is available on-line. This proposed revision reflected the OCC's decision to stop printing the Manual in hard copy, to reduce paper consumption and to ensure that the public receives only the most up-to-date information. The OCC also is in the process of updating the Manual, as well as filing forms, to contain information on both national bank and Federal savings association filings. As indicated earlier in this preamble discussion, we are updating our electronic filing system so that a single system will receive filings from both national banks and Federal savings associations.

Additionally, § 5.2(d) states that the OCC may permit electronic filing for any class of filings. In order to reflect the agency's move toward the more efficient and less costly electronic filings, we proposed to revise this provision to state that the OCC encourages all filings to be made electronically. We received one comment on the § 5.2 filing procedures, which requested

[11] 12 U.S.C. 1823(c) and (k).

that the OCC make electronic submission available for all forms and reporting requirements. Currently, certain OCC licensing forms can be filled and submitted electronically, e.g., branch establishment. Furthermore, the modifications the OCC is currently making to its electronic filing system, as discussed above, will permit national banks and Federal savings associations to submit all filings electronically. No changes are needed to our proposed rule to incorporate this comment, and we therefore adopt § 5.2(d) as proposed.

Section 5.3 Definitions. Section 5.3 contains definitions of terms used throughout part 5. We proposed to amend many of these definitions so that they would apply to both national bank and Federal savings association filings in part 5. For example, we proposed to amend the definition of "capital and surplus" to include reference to Federal savings associations.[12]

The OCC also proposed to amend the definition of "eligible bank" in § 5.3(g) to add the term "eligible savings associations." Currently, an "eligible bank" is a national bank that (1) is well capitalized under the OCC's Prompt Corrective Action (PCA) regulations, (2) has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (CAMELS), (3) has an "Outstanding" or "Satisfactory" Community Reinvestment Act (CRA) rating, and (4) is not subject to a cease and desist order, consent order, formal written agreement, or PCA directive, or, if it is, the OCC has informed the bank that it may nonetheless be treated as an "eligible bank." Under certain rules in part 5, an eligible bank may receive expedited review of a filing in the manner set out in the rule. Section 5.13(a)(2) sets out additional information about the expedited review process.

[12] We note that the OCC issued a final rule on October 11, 2013 that, among other things, integrates the OCC's national bank and Federal savings association capital rules. See 78 FR 62018. The OCC issued an interim final rule on Feb. 28, 2014, that amends the OCC's rules, including part 5, to reflect this integration. 79 FR 11300.

Part 116 also has an expedited review process for certain filings. Specifically, § 116.5 provides that a Federal savings association filing will receive expedited treatment unless: (1) it has a composite or compliance rating below 2 or a CRA rating of "Needs to Improve" or "Substantial Noncompliance," (2) it fails any part 3 capital requirement, as applicable, and has been notified that it is in troubled condition,[13] (3) it does not have a composite, compliance, or CRA rating, or (4) the applicable regulation does not specifically state that expedited treatment is available.

We proposed to amend § 5.3(g) by defining "eligible bank or eligible savings association" (instead of "eligible bank") and by adding an OCC compliance rating of 1 or 2 to the eligibility requirements for all institutions. As indicated in the preamble to the proposed rule, the OCC believes that a bank's compliance with consumer-related statutes and regulations should be a factor in determining whether a bank may qualify for expedited treatment. In addition, we note that, because a Federal savings association's compliance rating is included in part 116 as one of the criteria for expedited review, the addition of this rating to § 5.3(g) is a change for national banks, but not for Federal savings associations. However, as explained in greater detail below, because § 5.13(a)(2)(i) permits the OCC to remove a filing from expedited review if it raises certain issues, including compliance concerns,[14] this is not a significant change for national banks. We are making one technical clarification to this provision, however. We are replacing the reference to OCC compliance rating with consumer compliance rating under the

[13] "Troubled condition" for this purpose is currently defined at 12 CFR 163.555.

[14] In addition, § 5.2(b) provides the OCC with the authority to make exceptions for particular filings, where appropriate.

Uniform Interagency Consumer Compliance Rating System, which is the more accurate name for this rating.

Also, the proposal clarified that the CRA rating component of "eligible bank or eligible savings association" applies only if the CRA is applicable to the institution. We proposed this change because some limited purpose banks, such as trust banks, are not subject to the CRA.

We received one comment on proposed § 5.3(g). This commenter stated that adding a compliance rating as part of the eligibility requirement is redundant because it is already included in the CAMELS composite rating. However, while compliance is a factor in the management component of the CAMELS rating, the compliance rating referred to by the commenter, and in our proposed rule, is a separate assessment from the CAMELS rating, with different objectives and assessment factors. This commenter also stated that adding a compliance rating component to the expedited review process would create no greater certainty for national banks regarding eligibility for expedited review because the OCC would still have the discretion to remove filings from expedited review. The OCC disagrees. As indicated above, the OCC may remove a filing from expedited review if it raises compliance concerns. Because banks would know prior to applying for expedited processing whether or not their consumer compliance rating would prevent them from qualifying for such treatment, we believe that this change would provide more certainty regarding a bank's eligibility for expedited review before it begins that process.

For these reasons, the OCC is adopting the amendment to § 5.3(g) as proposed, with the technical clarification to the name of the compliance rating, discussed above.

We note that, with respect to Federal savings associations, there may be changes for some filings because the criteria in §§ 5.3 and 116.5 are not identical. Under the current rules, the two

standards are similar in that they both require a composite CAMELS rating of 1 or 2 and a CRA rating of outstanding or satisfactory. In addition, if an institution has not received a rating, it is not eligible for expedited treatment under either set of current rules and would remain ineligible under the final rule. However, under the current savings association rule both well and adequately capitalized institutions are eligible for expedited treatment. Under the final rule, only savings associations that are well capitalized qualify for expedited review. We proposed to apply the well capitalized requirement to savings associations because, in the OCC's experience, national banks and Federal savings associations that are less than well capitalized are more likely than other institutions to present supervisory concerns and, therefore, expedited review is not necessarily appropriate. As a result, some savings associations that qualify for expedited treatment under the current rule may no longer qualify for such treatment under the final rule.

A second difference involves the supervisory condition of the savings association. Under the current savings association rule, the OCC must not have notified the institution that it is in a troubled condition while, under the new rule, an eligible savings association must not be subject to certain orders, agreements or directives. Although these standards are slightly different, we expect the outcomes generally will be similar and we will monitor for significant disparities.

The OCC also proposed to amend the definition of "eligible depository institution" to address the fact that either a national bank or a Federal savings association may enter into a transaction with an eligible depository institution. We received no comments on this provision and adopt it as proposed.

We also proposed to change the § 5.3 definition of "notice." Section 5.3(j) defines a notice as a submission informing the OCC that a national bank intends to engage in or has commenced certain corporate activities or transactions. Under § 5.3, an "application" is a

submission requesting prior OCC approval to engage in various corporate activities and transactions. The two definitions suggest that a "notice" does not require OCC approval. However, the rules use the term "notice" in several different ways. In some rules, a "notice" is the same as an application in that the filer must obtain prior OCC approval before engaging in the activity or transaction. In other rules, a "notice" is similar to an application in that, while the OCC does not "approve" the filing, the OCC may disapprove it. In still other rules, the notice only informs the OCC that the filer intends to engage in or has engaged in a transaction. The OCC may review the notice, but there is no requirement of prior OCC approval. Some of the latter notices can be filed after-the-fact. We proposed to add language to § 5.3(j) stating that the specific meaning of notice depends on the context of the rule in which it is used and may require the filer to obtain prior OCC approval before engaging in the activity or transaction, may provide the OCC with authority to disapprove the notice, or may be informational requiring no official OCC action. We also proposed to add Federal savings associations to § 5.3(j). We received no comments on this provision and adopt it as proposed.

The OCC also proposed to strike the § 5.3 definition of "appropriate district office" and, instead, to define "appropriate OCC licensing office" as described at www.occ.gov and "appropriate OCC supervisory office" as described in subpart A of 12 CFR part 4. We proposed this change to eliminate confusion caused by the current definition with respect to where a filing should be made. The proposal included conforming changes throughout part 5. We received no comments on these proposed changes, and we adopt the amendments as proposed.

The OCC also proposed to change the definition of "short-distance relocation," a term that is used in current national bank branch and main office relocations regulations,[15] to reference both national bank main office relocations and Federal savings association home office relocations, consistent with the changes proposed in 12 CFR 5.40 and discussed elsewhere in this rulemaking.[16]

The current "short-distance relocation" definition in the banking rule also references whether a branch is located within a "central city of a MSA (metropolitan statistical area)." The Office of Management and Budget (OMB), which designates MSAs, uses the term "principal city" in describing MSAs.[17] The current Federal savings association regulation also uses the term "principal city." We proposed to amend the rule for national banks to use the term "principal city," to conform with the MSA terminology used by OMB. We received no comments on these proposed changes and adopt the amendments as proposed.

§ 5.4 Filing required. Section 5.4(a) directs a depository institution to file an application or notice with the OCC to engage in national bank activities and transactions described in part 5. As a result of the other changes made by this final rule to part 5, this directive also applies to Federal savings associations with respect to part 5 transactions and activities. No change is needed to the regulatory language in § 5.4 to achieve this result.

We received one comment letter on the general requirement to file a notice or application. This commenter advocated that institutions that are well capitalized and well managed generally should be exempt from prior notice or approval requirements, as in the FRB's

[15] See 12 CFR 5.30(h)(2) and 12 CFR 5.40(d)(5)(ii), respectively.

[16] As explained in the discussion of the changes to 12 CFR 5.40, the Federal savings association home office is the equivalent of a national bank main office.

[17] See, e.g., www.ffiec.gov/Geocode/help1.aspx (referencing MSAs and principal cities).

Regulation Y (12 CFR 225.4(b)(1)) for purchases and redemptions of holding company stock for well-capitalized holding companies that meet certain requirements. The OCC disagrees with this comment. In many cases, we are required to consider approval standards under the relevant statute, and in these cases and in others, the review process serves a significant supervisory purpose. Furthermore, as described below, our licensing rules provide expedited processing for certain highly rated institutions for many filings. We therefore decline to make this change.

Section 5.4(b) states that forms and instructions for filings are available in the Comptroller's Licensing Manual or from an OCC district office. We proposed to revise this section because the Manual is now only available on-line. As noted above, the OCC will be updating this Manual, and it will contain information on both national bank and Federal savings association filings.

Section 5.4(c) states that, at a filer's request, the OCC may accept another agency's form or filing if it contains substantially the same information required by the OCC. Section 116.25(c), which allows the OCC to waive certain filing requirements, has been used for this same purpose with respect to Federal savings association filings. Under the final rule, this option remains available for both national banks and Federal savings associations.

Section 5.4(d) directs a filer to submit a filing or other submission to the OCC's Director for District Licensing at the appropriate district office, unless directed otherwise in a prefiling communication. For Federal savings associations, § 116.40(a) directs filings to the Director for District Licensing at the appropriate OCC licensing office or the OCC licensing office at OCC headquarters. In addition, under § 116.40(b), if a filing involves significant issues of law or policy, or if the applicable regulation or form so directs, the applicant must also file copies at the OCC headquarters licensing office.

We proposed to change § 5.4(d) to direct that applicants address part 5 filings and related submissions to the appropriate OCC licensing or appropriate OCC supervisory office (unless the OCC advises otherwise through a prefiling communication) and to state that the relevant addresses are on the OCC's Internet Web page, www.occ.gov.

Furthermore, the OCC's current rules do not specify how many copies an applicant must file with the OCC. This information generally is stated on the form itself or in the Comptroller's Licensing Manual. In contrast, § 116.40(a) states that Federal savings association filers must submit to the appropriate licensing office or the OCC licensing office at headquarters the original form plus the number of copies specified on the application. If the number of copies is not specified there, § 116.40(a) directs applicants to submit the original plus two copies. We proposed to remove this requirement from the regulation for Federal savings associations and, instead, direct Federal savings association filers to consult the appropriate form and the Comptroller's Licensing Manual for information on the number of required copies.

Section 5.4(e) permits an applicant to incorporate by reference information contained in another OCC application or filing, provided that the material (1) is attached to the application, (2) is current, and (3) is responsive to the requested information. The filing must clearly indicate that the information is incorporated and include a cross-reference to the incorporated information. With respect to Federal savings association filings, § 116.25(c), which allows the OCC to waive certain filing requirements, is currently used to allow incorporation by reference. Moreover, the Federal savings association filing forms themselves typically provide for incorporating by reference other documents. We proposed to apply § 5.4(e) to all filings with the OCC, without any change to the regulatory language and with no material change to affected institutions or persons.

Finally, § 116.15(b)(2) encourages all applicants to contact the appropriate OCC licensing office to determine whether the applicant must attend a prefiling meeting or whether the submission of a draft business plan or other information would expedite the application review process. Section 116.20 describes the required contents of a draft business plan.[18] In contrast, part 5, subpart A does not include rules on prefiling meetings, although other rules in part 5 may address these meetings,[19] and the OCC may request such a meeting on a case-by-case basis under § 5.2(b). Subpart A also does not address the submission of business plans to the OCC.

The OCC has found that prefiling meetings, as well as the submission of business plans or other information before such meetings, often result in a more efficient review process. Accordingly, we proposed to revise subpart A by adding a new § 5.4(f) that encourages application filers to contact the OCC to determine the need for a prefiling meeting, regardless of whether a prefiling meeting is specifically required by another regulation. This new provision also states that the OCC will decide on a case-by-case basis whether a meeting is necessary and that the prior submission of a draft business plan or other relevant information may expedite the process. Unlike part 116, however, the new provision does not specify the information to include in a draft business plan because that level of detail is better handled in the Comptroller's Licensing Manual.

[18] Certain Federal savings association activity and transaction rules also address these meetings. See, e.g., 12 CFR 116.15(a)(1) (discussing prefiling meetings when organizing a Federal savings association).

[19] See, e.g., 12 CFR 5.20(i) (discussing prefiling meetings when organizing a national bank); and 12 CFR 5.24(d)(2) (discussing prefiling meetings when converting to a national bank).

We received no specific public comments on these proposed changes to § 5.4. However, one commenter at the Los Angeles EGRPRA outreach meeting advocated the use of prefiling meetings for both the agency and the organizers. We are adopting the amendments as proposed.

Section 5.5 Filing fees. Section 5.5 states that an applicant shall submit filing fees in the form of a check made payable to the OCC. The rule also states that the OCC publishes a fee schedule annually and does not generally refund filing fees. Section 116.45(a)(3) addresses the payment of Federal savings association filings fees, directing applicants to submit fees to the appropriate OCC licensing office and permitting applicants to pay fees by check, money order, cashier's check, or wire transfer.

We proposed to apply § 5.5 to all fees paid to the OCC and to revise § 5.5 to state that fees may be paid by check, money order, cashier's check, or wire transfer. This statement is consistent with both the current Federal savings association rule and the OCC's ability to accept these forms of payment from all filers. The proposed section also states that additional filing fee information, including where to submit the fee, can be found in the Comptroller's Licensing Manual. Finally, as a technical amendment, we proposed to remove the word "annually" from the § 5.5 description of when the OCC publishes a fee schedule, to clarify that, as stated in 12 CFR 8.8, the OCC may publish an interim or amended filing fee schedule, in addition to its annual publication.

We received no public comments on the proposed § 5.5 amendments and adopt these amendments as proposed.

Section 5.7 Investigations. Section 5.7 states that the OCC may examine or investigate and evaluate facts related to a filing to the extent necessary to reach an informed decision. Section 116.230 has a narrower scope and time frame, providing that the OCC may conduct an

eligibility examination at any time before it deems an application complete. We proposed to apply § 5.7 to all filings received by the OCC, including those related to Federal savings associations, because the OCC believes that the more flexible approach in § 5.7 is preferable.

Section 5.7 also states that, as described in 12 CFR 8.6, the OCC has the authority to assess fees for special examinations and investigations. Section 8.6 is currently applicable to both national banks and Federal savings associations and related filings, as a result of the July 21, 2011 final rule,[20] discussed above. As a result, the application of § 5.7 to Federal savings association filings is a technical change only.

We received no public comments on the proposed § 5.7 amendments, and adopt them as proposed.

Section 5.8 Public notice. Under § 5.8(a), on the date of filing or as soon as practicable before or after filing, a national bank applicant shall publish a public notice in a general circulation newspaper in the community in which the applicant proposes to engage in business. The rules do not specify the language in which the applicant must publish the notice.

Under § 116.60, a Federal savings association applicant must publish notice no earlier than seven days before, and no later than the date of, the filing. Under § 116.80, the applicant must publish this notice in an English-language newspaper unless the OCC determines that the primary language of a significant number of adult residents of the community is not English, in which case the agency may require the applicant to publish simultaneously one or more additional notices in the appropriate language or languages.

[20] 76 FR 43549.

We proposed to apply § 5.8(a) to all applicants, and we are adopting the amendments as proposed. As a result, Federal savings associations are no longer required to publish a public notice within the seven days before the filing date but may publish as soon as practicable before or after filing, unless otherwise required.[21] This change provides Federal savings association filers with the same flexibility that national bank filers have on when to publish a public notice while still providing the public with timely notice.

In addition, final § 5.8(a) includes the requirement from § 116.80 to publish notices in English and, if the OCC determines it is necessary, also in other languages. This change further ensures that interested persons have meaningful access to the § 5.8(a) notice.

Section 5.8(b) now states that a public notice must include: (1) a statement that a filing is being made, (2) the date of the filing, (3) the applicant's name, (4) the subject matter of the filing, (5) a statement that the public may submit comments to the OCC and where such comments should be sent, (6) the comment period closing date, and (7) any other information that the OCC requires. Section 116.55 requires similar, but not identical, information to be included in a public notice.

The OCC proposed to revise § 5.8(b) to include Federal savings associations and to add some requirements to the notice included in § 116.55. We did not receive any comments on these proposed changes and are adopting the amendments as proposed. As a result, in addition to what § 5.8(b) currently requires, a public notice related to a national bank filing must also include: (1) the name of the institution that is the subject of the filing, (2) a statement that the public portion of the filing is available on request, and (3) the address of the applicant. The public notice also

[21] Certain activities and transactions are exempt from the § 5.8 notice requirements and subject to other notice requirements. See, e.g., 12 CFR 5.50(g) (notice of change in bank control).

must state that the public may submit comments to the appropriate OCC licensing office and provide the address of this office. A public notice related to a Federal savings association filing, in addition to the information currently required under § 116.55, also must include a specific statement that a filing is being made and the date of the filing. The OCC believes that new § 5.8(b) will provide the public with the full range of helpful information and will treat all part 5 filings consistently, while adding little additional burden for filers. We also are adopting other proposed minor technical changes to § 5.8(b).

Section 5.8(c) currently requires a filer to confirm that the § 5.8(a) notice has been published by delivering to the OCC a statement of the date of publication, the name and address of the paper in which notice was published, and a copy of the notice. Federal savings association filers are required to do the same, although this requirement is set forth on the application itself and not included in the regulatory text. The OCC is adopting the proposal to apply § 5.8(c) to both national bank and Federal savings association filings pursuant to part 5.

Section 5.8(d) currently states that the OCC may consider more than one transaction, or a series of transactions, to be a single filing for purposes of the publication requirements of this section. When filing a single public notice for multiple transactions, the filer shall explain in the notice how the transactions are related. Although this is not specifically permitted under part 116, it has been an accepted practice for Federal savings association filings. No changes to § 5.8(d) are necessary for it to apply to a Federal savings association filing. Under this rulemaking, both national banks and Federal savings associations may continue to engage in this practice, which eliminates unnecessary publications while ensuring that the public's need for notice is met.

Section 5.8(f) allows the OCC to require or give public notice and request comment on any filing and in any manner that it determines is appropriate for a particular filing. There is no equivalent provision in part 116. The OCC is adopting the proposal to apply this provision to both national banks and Federal savings associations.

In addition, § 116.240(b) provides that, prior to the end of the applicable review period, if the OCC determines that an issue of law or change in circumstances has arisen that will substantially affect an application, it may require an applicant to publish, among other things, a new public notice. Although no specific national bank rule provides for this result, the OCC has a similar practice for national bank filings. In order to codify and clarify this practice, the OCC proposed to add a new § 5.8(g) that states that the OCC, at its discretion, may require an applicant to publish a new public notice if: (1) the applicant submits either a revised filing or new or additional information related to a filing, (2) there is a major issue of law or a change in circumstances that arises after a filing, or (3) the agency determines that a new public notice is appropriate. This provision does not represent a material change for either national bank or Federal savings association filers. The OCC did not receive any comments on this change, and we are adopting the amendment as proposed.

Section 5.9 Public availability. Section 5.9 addresses access to the public portion of a filing and the confidential treatment that may be provided to certain information in a filing. Specifically, § 5.9(a) states that the OCC will provide a copy of the public portion of a pending filing in response to a written request made to the appropriate district office. A person may submit a written request to the OCC's Communication's Division for a copy of the public portion of a decided or closed application. In either case, the OCC may impose a fee for the copy. Section 5.9(b) explains that a public file consists of the portions of the filing, supporting

data, supplementary information, and information submitted by interested persons to the extent that these items have not been afforded confidential treatment.

Section 5.9(c) addresses the confidential treatment of information included in a filing, explaining both that an applicant and an interested person submitting information may request that specific information be treated as confidential under the Freedom of Information Act (FOIA)[22] and how to make this request. The provision also states that if the OCC does not consider the information to be confidential, the agency may include that information in the public portion of a filing after providing notice to the submitter. In addition, it permits the OCC to determine, on its own initiative, that certain information should be treated as confidential and to withhold that information from the public file.

Section 116.35 addresses the public and confidential aspects of a Federal savings association filing. Paragraph (a) states that the OCC generally makes part 116 submissions available to the public but may keep portions confidential. Section 116.35(b) provides that an applicant may request confidential treatment of certain portions of a filing and explains how to make this request. It also states that the OCC will not treat as confidential the portion of a filing that describes how an applicant plans to meet its CRA objectives and notes that the agency will advise an applicant before it makes information designated as confidential available to the public.

We proposed to apply § 5.9 to all filings made pursuant to part 5, as revised. We received no public comments on the proposed § 5.9 amendments, and are adopting them as proposed. This revision is not intended to result in material changes for either national bank or Federal savings association filings. Although § 5.9 does not explicitly address the OCC's treatment of filing

[22] 5 U.S.C. 552.

information regarding how a filer plans to meet its CRA objectives, the OCC does not treat this information as confidential.

We are also adopting other minor proposed changes to § 5.9(a) and (c), including to which OCC office a request to obtain the public portion of a decided or closed application or to withhold information from a public file should be submitted.

Section 5.10 Comments. Section 5.10(a) provides that any person may submit a comment to the appropriate district office during the comment period. Section 5.10(b)(1) provides that, unless otherwise stated, the comment period runs for 30 days after publication of the § 5.8(a) public notice. Under § 5.10(b)(2), the OCC may extend the comment period if an applicant either fails to file all required publicly available information in a timely manner or makes a request for confidential treatment that is not granted by the OCC and that delays the public availability of information. The comment period also may be extended to develop factual information needed to consider the application or if the OCC determines that other extenuating circumstances exist. In addition, the rule provides that the OCC may give an applicant an opportunity to respond to comments received during the comment period.

The Federal savings association rules are much more detailed, particularly with respect to application comments. Section 116.110 provides that any person may comment on a filing and § 116.120(a) states that a comment should include all relevant facts supporting the commenter's position. It further provides that a comment should address at least one reason why the OCC may deny the application under relevant law, recite facts and data supporting these reasons, and discuss how the approval could harm the commenter or any community. Under § 116.120(b), any request for a meeting must be included with the comment. Section 116.130 states that a commenter must file with the appropriate OCC licensing office and simultaneously must provide

a copy of any written comment to the applicant. Under § 116.140, a commenter must file a comment within 30 days after publication of the initial public notice and further states that the OCC may consider later filed comments if the comment will assist in the disposition of the application.

The OCC has found that the less detailed and prescriptive approach in the current part 5 rules works well for both filers and the public and proposed to apply § 5.10 to all filings received by the OCC, with one clarification. We received no public comments on the proposed § 5.10 amendments and are adopting them as proposed. Therefore, the final rule will result in two changes with respect to Federal savings association filings. First, the amended rule does not specify what information to include in a comment. Second, a commenter on a Federal savings association filing will not be required to provide a copy of the comment to the Federal savings association, although the commenter may still do so if preferred. Instead, the Federal savings association will obtain a copy of the public portion of any comment from the OCC. The rule clarifies that comments relating to either a national bank or a Federal savings association should be submitted to the appropriate OCC licensing office. This is consistent with the current Federal savings association rule.

The OCC also is adopting other proposed changes to § 5.10 that affect both national banks and Federal savings associations. First, as revised, § 5.10(b)(1) provides that the OCC may require a new comment period of up to 30 days if a new public notice is required under proposed § 5.8(g). This change is necessary to provide interested parties with an opportunity to comment when a new notice is published, which, as explained in the discussion of proposed § 5.8(g), may be required in certain circumstances. Finally, the OCC is adopting a minor change to § 5.10(b)(2)

to clarify that the OCC can extend any comment period, either an original or a new comment period. We did not receive any comments on these provisions.

Section 5.11 Hearings and other meetings. Pursuant to § 5.11(a), any person can request a hearing on a filing by submitting to the appropriate district office a description of the issues or facts to be presented and explaining why a written submission is not adequate. The requestor must simultaneously provide the request to the applicant. As noted above, under § 116.120(b), the person must include a request for a hearing (referred to as a meeting in this section) in the comment and explain why written submissions are insufficient. Also under § 116.130, the person must file the comment, including the meeting request with the appropriate OCC licensing office, with a copy to the applicant.

We proposed to apply § 5.11(a) to all OCC hearing requests with respect to both national banks and Federal savings associations. As with the other proposed changes to § 5.11, the OCC did not receive any comments related to § 5.11(a) and we are adopting it as proposed, with one technical change. As a result, pursuant to the new § 5.11(a), a person seeking a hearing on a filing pertaining to a Federal savings association will no longer be required to request a hearing as part of a comment submission, and a hearing request would be submitted to the appropriate OCC office. This revision provides added flexibility to those requesting hearings related to Federal savings association filings.

Section 5.11(b) states that the OCC may grant or deny a hearing request, limit the issues to those it deems relevant or material, and order a hearing in the public's interest. Under § 5.11(c), if the OCC denies a hearing request, the agency will notify the requestor of the reason for the denial. Sections 116.170(a) and (b) are substantively the same as § 5.11(b) and (c). The

OCC is adopting the proposal to apply § 5.11(b) and (c) to all hearings with no substantive change for affected parties.

Section 5.11(d) describes the OCC's pre-hearing procedures. Specifically, under § 5.11(d)(1), if the OCC decides to hold a hearing, it sends a Notice of Hearing to the applicant, the person requesting the hearing, and anyone else who requests a copy. The Notice states the subject and date of the filing, the time and place of the hearing, and the issues to be addressed at the hearing. Section 5.11(d)(2) states that the OCC appoints a presiding officer to conduct a hearing.

There are no equivalent provisions in the Federal savings association regulations. Instead, § 116.170(a) states that the OCC may either grant a meeting request or hold one on its own initiative, and it may limit the issues considered at a meeting to those it deems relevant or material. The OCC is adopting the proposal to apply § 5.11(d)(1) to all part 5 OCC hearings so that all interested parties are notified of an upcoming hearing when it is scheduled. As proposed, the rule would have amended § 5.11(d)(1) to state that the OCC may limit the issues considered at a hearing to those it determines are relevant or material. We are removing this statement in § 5.11(d)(1) in the final rule because it is duplicative of the language in § 5.11(b), and therefore unnecessary.

Section 5.11(e) states that a person who wishes to appear at a hearing shall notify the appropriate district office within 10 days after the OCC issues a Notice of Hearing. It also requires, at least five days before the hearing, that each participant submit the names of witnesses and one copy of each exhibit to be presented, to the OCC, the applicant, and any other person the OCC requires. There are no equivalent rules for Federal savings associations. The OCC is adopting the proposal to apply § 5.11(e) to all persons who wish to appear at an OCC hearing.

Section 5.11(e) allows the OCC and other persons to prepare for a hearing and results in a more efficient and productive hearing.

Section 5.11(f) states that the OCC arranges for a hearing transcript and states that the person requesting a hearing generally bears the cost of one copy of the transcript. There is no equivalent part 116 provision. The OCC is adopting the proposal to apply this provision to all OCC hearings and also to replace the "generally bears" phrase with "may be required to bear." This change reflects the fact that the OCC generally has not passed this cost onto a person who requests a hearing but may find it appropriate to do so in certain cases. Although this is a technical change with respect to national bank filers, a person requesting a hearing on a filing pertaining to a Federal savings association should be aware that, under the amended rule, a hearing transcript will be prepared and that the person may be required to pay its cost.

Section 5.11(g) explains how a part 5 hearing is conducted, providing generally that the applicant and participants may make opening statements and present witnesses, material, and data. It also requires a copy of any documentary material to be provided to the OCC, the applicant, and each participant. In contrast, the § 116.180 procedures for Federal savings association hearings provide that the OCC may conduct a meeting in any format, including telephone conferences, face-to-face meetings, or formal meetings. In addition, both §§ 5.11(g) and 116.180 provide that the Administrative Procedure Act, the Federal Rules of Evidence, the Federal Rules of Civil Procedure, and the OCC's relevant rules of practice and procedure (12 CFR part 19 and part 109, respectively) do not apply to these hearings. The OCC is adopting the proposal to apply § 5.11(g) to all subpart A hearings.

Under § 5.11(h), at an applicant's or participant's request, the OCC may keep the hearing record open for up to 14 days following its receipt of the hearing transcript. The agency resumes

processing the filing after the record closes. Section 116.190 states that if the OCC conducts a meeting, it may suspend the applicable filing time frames. If suspended, the time period will resume when the OCC determines that the record has been sufficiently developed to support a determination on the issue(s) considered at the meeting.

The proposal would apply § 5.11(h) to all filings on which a hearing is held. The OCC is adopting this provision in the final rule unchanged, and as a result, all applicants, commenters, and other interested persons should be aware that the hearing record may be kept open for up to 14 days following receipt of the transcript, after which the OCC will resume processing the filing. The OCC believes that the public and affected parties benefit from knowing how long the record will remain open following a hearing.

Finally, § 5.11(i) addresses meetings other than hearings that the OCC may hold in connection with an application. Section 5.11(i)(1) states that the OCC may hold a public meeting either in response to a written request received during the comment period or on its own initiative. These public meetings are arranged and overseen by a presiding officer. Alternatively, under § 5.11(i)(2), the OCC may arrange a private meeting with an applicant or other interested parties to clarify, narrow, and resolve the issues. As noted above, § 116.180 states that the OCC may conduct meetings related to Federal savings association filings in any format.

As proposed, the OCC is adding paragraph (i)(3) to § 5.11, stating that the OCC may limit the issues considered at a meeting to those it determines to be relevant or material. This provision is substantively the same as the provision added to § 5.11(d) (regarding hearings) and permits the agency to ensure that meetings are meaningful and efficient. The OCC also is adopting minor, clarifying changes to § 5.11(i).

The final rule adds a new paragraph § 5.11(i)(4) that states that the OCC may conduct a meeting in any format that it determines is appropriate, including a telephone conference, a face-to-face meeting, or a more formal meeting. This new provision, which mirrors § 116.180(a), does not change what is permissible for the OCC, but rather highlights the options available to the agency. The proposed rule included this provision in § 5.11(g)(4). However, as the subject matter of paragraph (g) is hearings, this provision more appropriately belongs in paragraph (i), which contains the rules for meetings.

Section 116.185 states that the OCC will not approve or deny an application at a meeting. Although no similar language is included in either current or revised § 5.11, it is the OCC's practice not to decide on applications at hearings or other meetings. While hearings and meetings provide an opportunity for interested persons to share information with the OCC, the OCC considers information obtained at a hearing together with other materials and information pertaining to the application before rendering a decision. Decisions on filings are discussed in greater detail below.

In addition, § 116.190 provides that the OCC may suspend the application processing time frames if it decides to conduct a meeting. Although the part 5, subpart A rules do not state this directly, § 5.10(b)(2) allows the OCC to extend a comment period when necessary, § 5.11(h) allows the OCC to keep a hearing record open for 14 days after a hearing and resume processing the filing only when the record closes, and revised § 5.13(a)(2) allows the OCC to extend the expedited review period in certain circumstances or remove a filing from expedited review when necessary. These provisions provide the OCC with the tools it needs to adjust the processing time frames when appropriate, while balancing the need for interested persons to have a predictable set of procedures on which to rely.

Section 5.12 Computation of time. The OCC computes the relevant time periods related to a national bank filing by including the day of the act or event (e.g., the date an application is received by the OCC) and the last day of a time period even if it is a Saturday, Sunday, or legal holiday. Under § 116.10, for a Federal savings association filing, the OCC does not include the day of the act or the event that commences the time period. When the last day is a Saturday, Sunday or Federal holiday, the time period runs until the end of the next day that is not a Saturday, Sunday or Federal holiday.

A single set of time computation rules for OCC filings would promote efficiency. Accordingly, we proposed to change § 5.12 to mirror the current Federal savings association rule. We received one comment in support of this change, and we are adopting the amendment as proposed. We also note that revised § 5.12 replaces "legal holiday" with "Federal holiday," consistent with the current Federal savings association rule, to eliminate confusion when a legal state holiday is not also a Federal holiday.

Section 5.13 Decisions. Under § 5.13(a), the OCC may approve or deny a national bank filing based on the OCC's review and consideration of the record, including the activities, resources, or condition of a filer's affiliate to the extent relevant. Under § 5.13(a)(1), the OCC may impose conditions on an approval, including to address significant supervisory, CRA (if applicable), or compliance concerns.

Section 5.13(a)(2) explains the OCC expedited review process for filings concerning "eligible" banks, as defined in § 5.3. Specifically, these filings are deemed approved a certain number of days after the filing date or the close of the public comment period (or extension of the comment period under § 5.10), unless, prior to this date, the OCC notifies the filer otherwise. The number of days after which a particular filing is deemed approved varies depending on the

activity or transaction at issue and is set out in the substantive part 5 rule for that particular activity or transaction.[23]

Under § 5.13(a)(2)(i), the OCC may extend the expedited review period for filings subject to the CRA up to 10 days if the OCC receives comments containing certain assertions about the bank's CRA performance. Section 5.13(a)(2)(ii) states that the OCC will remove a filing from expedited review if a filing or a comment raises a significant supervisory, CRA (if applicable), compliance, legal, or policy concern or issue. The OCC will provide a written explanation if this removal occurs. Section 5.13(a)(2)(iii) also states that not all adverse comments cause the OCC to extend the expedited review period or remove a filing from expedited review.

Finally, § 5.13(a)(2)(iv) provides that if approval of a filing is contingent on the approval of another filing, or if multiple requests for approval are combined in a single application, none of the filings is deemed approved unless all of the applications are subject to expedited review procedures and the longest time period expires without the OCC issuing a decision or notifying the bank that the filings are not eligible for expedited review.

Filings that are not eligible for, or do not receive, expedited review are considered under the standard review process. The process and timeframes associated with the standard review process vary depending on the nature and circumstances of a filing and are set forth in the applicable rule.

[23] For example, § 5.20(j) provides that certain applications to establish a national bank are deemed preliminarily approved as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC takes certain action to remove the filing from expedited review.

Under § 5.13(b), the OCC may deny a filing if a significant supervisory, CRA (if applicable), compliance, legal, or policy concern exists or if an applicant fails to provide the OCC with information that it requests. Pursuant to § 5.13(c), a filing must contain the information required in the applicable part 5 rule, as well as any information the OCC may require. Section 5.13(c) further provides that the OCC may deem a filing abandoned if information that is required or requested is not provided within a specified time period and may return a filing it finds to be materially deficient.

Section 5.13(d) provides that the OCC will notify a filer and other interested party (or parties) of the final disposition of a filing, including a notification confirming expedited review. If a filing is denied, the OCC will explain the reasons for the denial. Under § 5.13(e), the OCC will make a decision public if it represents new or changed policy or issues of general interest. In rendering decisions, the OCC also may elect not to disclose information that it deems to be private or confidential.

Section 5.13(f) provides that a filer can appeal a decision by writing to the Deputy Comptroller for Licensing or the OCC Ombudsman (or, in some cases, to the Chief Counsel). Section § 5.13(g) provides that when the OCC approves or conditionally approves a filing, the agency generally gives the filer a specified period of time in which to commence the activity and generally does not grant extensions.

Finally, § 5.13(h) states that the OCC can nullify a filing decision if, for example, it discovers a misrepresentation or omission in a filing or supporting material after it renders a filing decision. A person responsible for a material misrepresentation or omission may be subject to various sanctions, including criminal penalties. The OCC also may nullify a filing decision

that is contrary to law, regulation, or OCC policy or that was granted due to clerical or administrative error or a material mistake of law or fact.

Pursuant to part 116, a Federal savings association filing may receive either expedited treatment or standard treatment. If a filer is eligible for expedited treatment, as determined under § 116.5, it may file its application in the form of a notice. Pursuant to § 116.200, 30 days after filing a notice, the filer may engage in the proposed activity or transaction unless the OCC: (1) requests additional information;[24] (2) determines that standard treatment is appropriate; (3) suspends the applicable time frame under § 116.190; or (4) disapproves the notice.

Pursuant to § 116.25, an applicant files a standard application if it is not eligible for expedited treatment. Under § 116.210, within 30 calendar days after receiving a standard application, the OCC will: (1) notify the applicant that the application is complete and review will commence; (2) request more information; or (3) determine that the application is materially deficient, in which case the OCC will not process the filing. If the OCC takes no action, an application is deemed complete and the review period begins. Under § 116.270, this review period is generally 60 calendar days after an application is complete but may be extended. For example, under § 116.270(c), the OCC may extend the review period for up to 30 days for any reason or for as long as needed if the application presents a significant issue of law or policy requiring additional time to resolve. In either situation, the OCC must provide a written notification of any extension.

[24] Section 116.200(a) explains the sequence of events and timing when the OCC requests additional information about a notice.

Section 116.280 explains that the OCC will approve or deny an application before the end of the applicable review period and will notify applicants of the decision. Under § 116.280(b), the application is approved if the OCC fails to notify an applicant.

Section 116.220 provides a detailed explanation of how the OCC will process an application if the OCC requests more information to complete a filing, including the time frames for taking certain actions. Section 116.240(a) explains that even if an application is deemed complete under § 116.210, the OCC may still require the filer to provide additional information to resolve or clarify an issue presented by the application. If the OCC determines that a major issue or law or change of circumstances has arisen, it may notify the filer that the application is now incomplete and require a new public notice to be filed under § 116.250. Under § 116.290, an application that is not approved or denied within two calendar years of filing is deemed withdrawn, subject to certain exceptions.

As is clear, the OCC has two different, albeit similar, sets of application processing procedures. In order to gain the efficiencies inherent in administering a single set of procedures and to create parity for OCC-regulated institutions, we proposed to apply § 5.13 to all OCC filings and to amend § 5.13, as described below.

The OCC did not receive written comments on any of the proposed changes to § 5.13. Commenters at both the Los Angeles and Dallas EGRPRA outreach meetings requested that the OCC make decisions on new charters and other applications at the district level instead of in Washington, D.C. We agree with the importance of the relevant district office in the decision-making process, and our current process involves district level input in application decisions as well as our licensing office in Washington. Most filings are processed by the relevant district office and typically involve examination staff familiar with the applicant. The Comptroller's

Licensing Manual also encourages applicants to contact the director for district licensing at the appropriate OCC district office to discuss the proposal.[25] However, it is also important for the OCC's Washington office to be involved in the applications process in order to address significant or novel issues, to provide consistency in OCC decision-making, and to utilize staff expertise available in OCC headquarters. For these reasons, we decline to make any changes to our rule to reflect this comment.

We therefore are adopting § 5.13 as proposed.

As a result, Federal savings association filers will need to determine whether a filing is eligible for expedited review under subpart A based on the § 5.3(g) definition of "eligible bank or eligible savings association." Because, as explained above, the criteria in §§ 5.3 and 116.5 are substantively similar, the OCC believes the status of most savings associations as eligible or not eligible will not be affected by the requirement to use the definition in § 5.3, nor does the OCC anticipate that there will be a significant difference in the filings that are eligible for expedited review under the current rules and the rules as revised. Furthermore, unlike § 116.200, part 5, subpart A, does not state the applicable expedited review time frames. These time frames are unique to the type of activity or transaction and are set out in the relevant part 5 section detailing that activity or transaction. If a filing is not eligible for expedited review, the filer must follow the standard review procedures set out in the rules applicable to the particular activity or transaction at issue.

In addition, the OCC is adopting the following proposed changes to § 5.13, which apply to filings related to both national banks and Federal savings associations. Specifically, the final rule adds a statement to the § 5.13(a) introductory language providing that when reviewing a

[25] See, e.g., the Charters Booklet of the Comptroller's Licensing Manual, p. 23.

filing, the OCC may consider information available from any source, including any comments submitted by interested parties or views expressed by interested parties at meetings with the OCC.

With respect to § 5.13(a)(2) concerning expedited review, the final rule removes the clause that states that the OCC grants eligible banks expedited review within a specified time, "including any extension of the comment period granted pursuant to § 5.10." This change reflects the fact that when the OCC grants an extension of the comment period under § 5.10 a filing is no longer considered under the expedited review procedures. The circumstances that lead to an extended comment period are generally not compatible with expedited review.

In addition, as discussed above, § 5.13(a)(2)(i) provides that the OCC may extend the expedited review period for a filing subject to the CRA for up to 10 days if a comment makes certain assertions about the CRA and § 5.13(a)(2)(ii) provides that the OCC will remove a filing from expedited review if the filing presents significant supervisory, CRA (if applicable), compliance, legal or policy concerns or issues. This section also explains what constitutes a significant CRA concern in this context.

The final rule combines § 5.13(a)(2)(i) and (ii) into new § 5.13(a)(2)(i). These changes simplify § 5.13(a)(2) and are not intended to have a substantive effect on expedited review procedures. Comments and concerns about the CRA will continue to be given the same weight. The OCC also is adopting other proposed minor, technical, or conforming changes to § 5.13.

Organizing a National Bank or Federal Savings Association; Federal Savings Association Charters and Bylaws (§ 5.20, new § 5.21, new § 5.22)

Overview. Twelve CFR 5.20 sets forth the requirements and procedures involved in organizing a de novo national bank. Corresponding rules applicable to organizing Federal

savings associations are set forth in various CFR parts: part 143 sets forth the requirements and procedures for organizing a Federal mutual savings association; part 144 covers the charter and bylaws of Federal mutual savings associations; and part 152 sets forth the requirements and procedures for organizing a Federal stock savings association and also contains the requirements for the charter and bylaws of Federal stock savings associations, as well as related matters, including shareholders, board of directors, and officers. In addition, § 163.1 imposes certain rules concerning a Federal savings association's charter and bylaws.

Many of the procedures organizers must follow to charter a national bank or Federal savings association are substantively similar. The OCC believes that many of these rules should be coordinated and harmonized to promote consistency and equal treatment between the two types of institutions and to remove unnecessary regulatory burden where possible. To accomplish these goals, the proposed rule amended § 5.20 to include Federal savings associations, added to § 5.20 some provisions that address the organizing process currently in parts 143 and 152, and removed other provisions in part 143, 152, and 163 that address the organizing process (§§ 143.2 through 143.7, 152.1 and 152.2, and 163.1).

The regulations for national banks and for Federal savings associations treat the provisions related to "organizing documents" (organization certificate and articles of association for national banks, charter for Federal savings associations, and bylaws) differently.[26] For

[26] It may be helpful to clarify terminology. For national banks, the term "charter" is used to refer to the certificate of authority to commence banking issued by the OCC under 12 U.S.C. 27. A national bank's "articles of association" is similar to a business corporation's articles of incorporation setting out the general features of the business's organizational structure and purpose. A Federal savings association's "charter" issued by the OCC under 12 U.S.C. 1464(a)(2) is the agency's authorization to engage in business as a savings association, but it also contains provisions comparable to a national bank's articles of association.

national banks, there are several applicable statutes, but few regulations.[27] For Federal savings associations, there are no statutory requirements, but §§ 144.1 and 152.3 contain requirements for charters of Federal mutual savings associations and Federal stock savings associations, respectively, and §§ 144.2 and 152.4 contain requirements for the bylaws of Federal mutual savings associations and Federal stock savings associations, respectively. Also, the charter provisions for Federal mutual savings associations are substantially different from national banks and Federal stock savings associations. These differences stem from the unique characteristics of Federal mutual charters, such as the inability of members to communicate directly with each other (because membership is based on the depository relationship) under § 144.8, the use of "running proxies,"[28] and the potential that certain charter or bylaw provisions could later affect a mutual-to-stock conversion by the association. These characteristics require greater controls over changes to the Federal mutual charter to prevent the inappropriate transfer of the association's equity and to prevent provisions that may impede a mutual-to-stock conversion.

In order to preserve the enforceability of the Federal savings association charter and bylaw requirements and to ensure the necessary controls unique to the Federal mutual savings association charter, we proposed to continue to include separate provisions concerning a Federal savings association's charter and bylaws.

Specifically, we proposed to amend 12 CFR part 5, subpart B, by: (1) revising § 5.20 to apply to both national banks and Federal savings associations and to make certain other changes

[27] Additional guidance for national banks is provided by sample articles and bylaws in the Comptroller's Licensing Manual (www.occ.gov/publications/publications-by-type/licensing-manuals/index-licensing-manuals.html#sd) and by review of the proposed documents during the application process.

[28] A "running proxy" generally is a proxy executed by a member of a mutual savings association, which authorizes directors of the association to cast the votes the member otherwise would be authorized to cast, and which, rather than pertaining to a specific member meeting, is effective for an indefinite period of time.

as described below; (2) adding a new § 5.21 (based on part 144) to specify the language and requirements for the Federal mutual savings association charter, bylaws, and charter amendments and to require a Federal mutual savings association to make its charter and bylaws available to accountholders; and (3) adding a new § 5.22 (based on §§ 152.3 through 152.11) to specify the language and requirements for the Federal stock savings association charter, bylaws, charter amendments, and related matters. In addition, we proposed to amend parts 143, 144, 152, and 163 by rescinding various provisions in those parts concerning charters and bylaws.

Applying Existing National Bank Requirements to Federal Savings Associations. The majority of the proposed changes to § 5.20 apply existing requirements for organizing a national bank to organizing a Federal savings association by inserting "Federal savings association" where appropriate. Most of these amendments result in little or no change to existing practices concerning an application to charter a Federal savings association. However, potential organizers should carefully review the following amendments that would change the current process.

First, based on statute and longstanding practice, the OCC uses a two-part approval process for de novo national bank charters. The OCC will issue a preliminary approval after an application is filed, if the OCC determines it meets the applicable standards. Once it has received this approval, the national bank in organization proceeds to organize, raise capital, obtain any other regulatory approvals, and become ready to commence business. Many of these steps are not specified in § 5.20 but instead are provided in the OCC's preliminary approval and in the Charters Booklet of the Comptroller's Licensing Manual. The OCC issues a "final approval" and the national bank's charter only after all these steps are concluded, including compliance with any conditions imposed in the preliminary approval. Under the current Federal savings association rule, the OCC issues only one approval before it issues the charter but this approval

is subject to the institution completing various post-approval organizational steps and other requirements before it can commence business. These steps and requirements are specified in §§ 143.4, 143.5, 143.6, and 152.1(c) through 152.1(i).

The national bank and Federal savings association processes in practice may not be different, but the OCC believes that use of a formal two-part approval framework provides more certainty and reduces the risk of an institution inadvertently operating before it has completed all required steps. Applying the bank rule's two-step approval process to savings associations also enhances consistency between the chartering application process for national banks and Federal savings associations. Therefore, we proposed to make an application to charter a Federal savings association subject to the two-part approval process contained in § 5.20(i)(5) and to remove §§ 143.4, 143.5, 143.6, and 152.1(c) through 152.1(i). We did not receive any comments on this change and are adopting it as proposed.

Second, § 5.20(i)(5)(iv) provides that preliminary approval expires if the national bank has not raised the required capital within 12 months or has not commenced business within 18 months. Sections 143.5(d) and 152.1(i) provide that a Federal savings association's charter becomes void if organization is not completed within six months after approval. The OCC proposed to amend § 5.20(i)(5)(iv) to apply the same 12- and 18-month expiration periods to Federal savings associations, rather than the six-month period. We received one comment in support of this change, and we are adopting it as proposed.

Third, we proposed to add Federal savings associations and savings and loan holding companies to § 5.20(j), which allows for expedited review of an application to establish a full-service national bank filed by a bank holding company with a lead depository institution that is an eligible depository institution. The current regulations for chartering a de novo Federal

savings association do not have a comparable expedited review process. Under this expedited review, the application is deemed preliminarily approved by the OCC as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC notifies the applicant prior to that date that: (1) the filing is not eligible for expedited review, (2) the OCC is extending the review period, or (3) the OCC has determined the proposed bank will offer banking services that are materially different than those provided by the lead depository institution of the holding company. We also proposed to limit the availability of this expedited review to applications to charter a national bank or Federal savings association where the existing lead depository institution is an eligible national bank or eligible Federal savings association. In those cases, the OCC will have knowledge and experience of the lead institution's operations and will be familiar with the holding company. In cases where a state institution is the lead depository institution, the OCC will not have that knowledge and experience, and we believe expedited review would not be appropriate. We did not receive any comments on these changes, and are adopting the amendments as proposed.[29]

Fourth, the OCC is adopting the proposal to add Federal savings associations to § 5.20(k)(3), which addresses investments in bankers' banks and § 5.20(l), which addresses chartering special purpose institutions. These provisions reflect authority that national banks and Federal savings associations possess. We did not receive any comments on this change.

[29] We note that we received comments at the Los Angeles EGRPRA outreach meeting requesting that the Agencies shorten their review period for de novo applications. In general, the OCC review period is 120 days for independent national banks and Federal savings associations and 45 to 90 days for institutions that are part of a holding company. The OCC believes that this timing is appropriate as it provides us with sufficient time to complete our analysis of the application, including the assessment of proposed management and the reasonableness of the proposed business plan. We therefore decline to make any change to this review period.

Fifth, parts 143, 144, 152, and 163 contain various filing procedural matters. As discussed above, the OCC is amending part 5, subpart A, rules of general applicability, to include filing rules and procedures for Federal savings associations for all matters covered by part 5. Thus, because Federal savings associations are included in § 5.20 and new §§ 5.21 and 5.22 are added to part 5, filings related to the organizing process and to charters and bylaws will be governed by the filing provisions in subpart A. The final rule, therefore does not include the filing procedures provisions in parts 143, 144, 152, and 163 in the amendments to § 5.20, or in new §§ 5.21 and 5.22.

Amendments that Specifically Cover Federal Savings Association Matters. The OCC proposed to incorporate certain provisions contained in parts 143 and 152 into § 5.20. Specifically, with respect to an application to organize a Federal savings association, section 5(e) of the Home Owners' Loan Act (HOLA)[30] requires the OCC to consider whether: (1) the applicants are of good character and responsibility; (2) there is a need for the association in the community to be served; (3) there is a reasonable probability of usefulness and success; and (4) there will be undue injury to existing local thrift and home financing institutions. These criteria are included in §§ 143.2(g)(1) and 152.1(b)(1), and the proposed rule added them to § 5.20(e). We received one comment suggesting that the OCC should no longer consider whether there is necessity for the Federal savings association in the community to be served because this would be duplicative of other factors the OCC considers, such as probability of usefulness and success under § 152.1(b)(1)(iii). However, the OCC's consideration of whether a "necessity exists" is required by section 5(e) of the HOLA. We therefore adopt the amendments as proposed.

[30] 12 U.S.C. 1464(e).

Sections 143.2(g)(2)(i) and 152.1(b)(3)(i) provide that approval of an application to organize a Federal mutual or stock savings association, respectively, is conditioned on OCC receipt of written confirmation from the FDIC that accounts will be insured. Similar requirements appear in §§ 143.5(c) and 152.1(f) (when a charter is issued, a Federal savings association, or a Federal stock savings association, respectively, must promptly meet all requirements necessary to obtain FDIC insurance of its accounts), as well as §§ 143.5(d) and 152.1(h)(1) (organization of a Federal savings association, or a Federal stock savings association, respectively, is complete when, among other things, the OCC receives confirmation of FDIC insurance).

For these reasons, the OCC proposed in § 5.20(e)(3) to retain the requirement that all Federal savings associations be insured by the FDIC. We did not receive any comments on this proposed change and adopt the amendment as proposed.

Application of Federal Savings Association Application Requirements to National Bank Applications. The OCC proposed to amend § 5.20 to apply certain requirements applicable to Federal savings associations to both national banks and Federal savings associations. First, § 143.1(a) prohibits a Federal savings association from adopting a title that misrepresents the nature of the institution or the services it offers. The OCC believes that incorporating such a provision in a regulation is good public policy because it protects both customers and the institution. Therefore, we proposed to amend § 5.20(e)(1) to apply this requirement to both Federal savings associations and national banks. We received one comment in support of this proposal and we adopt the amendment as proposed.

Second, § 143.3(b)(1) requires that all securities of a particular class in an initial offering must be sold at the same price. The OCC proposed to amend § 5.20(i)(5)(iii) to apply this

requirement to both Federal savings associations and national banks. This requirement promotes fairness and uniformity, does not allow insiders to gain an unfair advantage over other shareholders, and discourages the formation of an institution for speculative purposes. Moreover, the FDIC also imposes this requirement in determining whether to approve an application for deposit insurance.[31] We did not receive any comments on this proposed change and adopt it as proposed.

Third, §§ 143.5(d) and 152.1(i) require that, in the event the organization of a Federal savings association is not completed, all cash collected on subscriptions shall be returned. We proposed to amend § 5.20(i)(5)(iv) to apply this requirement to both Federal savings associations and national banks. We received no comments on this proposed change and adopt it as proposed.

Elimination of Certain Federal Savings Association Approval Criteria. The OCC proposed to rescind the following provisions of parts 143 and 152 that are redundant, unnecessary, or no longer appropriate.

First, the OCC did not propose that § 5.20 include §§ 143.2(g)(1) and 152.1(b)(1), which require the OCC to consider whether the Federal savings association will provide credit for housing in a safe and sound manner and whether the factors in § 143.3 (regarding capitalization, business and investment plans, the board of directors, and management) will be met. These approval criteria are not statutorily required. In most cases, these factors are similar to factors the OCC currently considers either under § 5.20 or as a matter of practice. Moreover, the provision

[31] See FDIC Statement of Policy on Applications for Deposit Insurance, 63 FR 44752, 44757 (Aug. 20, 1998), and FDIC Financial Institution Letter FIL-56-2014 (Nov. 20, 2014) and related Q&As at https://www.fdic.gov/news/news/financial/2014/fil14056a.pdf).

of housing credit also is addressed by the lending and investment provisions of 12 U.S.C. 1464(c) and the qualified thrift lender test of 12 U.S.C. 1467a(m).

Second, as proposed, the final rule does not include the requirement in § 143.3(d) that the majority of a de novo Federal savings association's board of directors be representative of the state in which the association is located. We believe that this requirement is outdated and unnecessary given the advanced communication technology available today, and that it may unnecessarily impede the formation of new Federal savings associations. We note that one commenter to the June EGRPRA notice requested that we remove this requirement. The final rule retains the existing provision in § 5.20(g)(1), applicable to Federal savings association by this rulemaking, that the institution's initial board of directors generally is composed of many, if not all, of the organizers of the institution, and that the organizing group must include diverse community involvement.

Third, the OCC proposed to rescind §§ 143.7 and 152.17, which exempt from the requirements of part 143 and §§ 152.1 and 152.2 Federal savings associations created in connection with an association in default or in danger of default. These provisions are not necessary in light of the FDIC's authority, as part of the resolution process, to create new and bridge Federal savings associations under 12 U.S.C. 1821(m) and (n).

Fourth, we proposed to rescind § 143.3(f), which provides that the normal requirements that apply to an application to charter a Federal savings association do not apply to a supervisory transaction. This provision is not necessary because the OCC has the ability to waive such requirements under 12 CFR 5.2(b). Also, we proposed to rescind the requirements in §§ 143.5(c) and 152.1(f) for a proposed Federal savings association to promptly qualify as a member of a Federal Home Loan Bank. The HOLA no longer requires such membership.

We did not receive comments opposed to the removal of these provisions. Therefore, we adopt the amendments as proposed.

Amendments to Reflect Current OCC Policy or Practice. The OCC proposed several amendments to update § 5.20 to reflect current OCC policy or practice. Specifically, the OCC proposed to amend § 5.20(f)(1) to update the OCC's general policy in making determinations regarding charter applications to reflect the OCC's statutory mission as amended in section 314 of the Dodd-Frank Act.[32]

Second, § 5.20(g)(2) notes that, as a condition of a charter approval, the OCC retains the right to object to the hiring of any officer or appointment or election of any director for a two-year period from the date the institution commences business. We proposed to clarify that, in appropriate instances, the OCC may impose this condition for a longer period. This regulatory change reflects current authority and practice.

Third, § 5.20(g)(3)(ii) requires a proposed director to be able to supply or have a realistic plan to enable the institution to obtain capital when needed. The OCC proposed to clarify that this requirement applies to the proposed directors as a group, rather than each director individually.

We did not receive comments on any of these proposed changes. Therefore, we adopt the amendments as proposed.

Federal Mutual Savings Association Charter, Bylaws and Related Provisions. As discussed above, the OCC believes it is necessary and appropriate to continue to include separate regulations setting forth the provisions concerning a Federal savings association's charter and bylaws. With respect to Federal mutual savings associations, these provisions are currently in

[32] 12 U.S.C. 1.

part 144. The OCC proposed to add a new § 5.21, "Federal Mutual Savings Associations Charters and Bylaws," which incorporates most of part 144. We did not receive comments on any of proposed new § 5.21 and adopt this section as proposed, with minor changes to § 5.21(j), discussed below.

New § 5.21(d) sets forth exceptions to the rules of general applicability. More specifically, it provides that §§ 5.8 through 5.11 do not apply to this section. These sections provide for public notice, public availability, comments and hearings on an application. The OCC believes it is not necessary to subject the charter and bylaws requirements to these provisions. This belief is consistent with current requirements for Federal mutual savings associations as well as national banks. New § 5.21(e) prescribes the language and requirements for a Federal mutual savings association charter and is substantively identical to § 144.1. New § 5.21(f) through (h) cover matters related to charter amendments and are substantively identical to § 144.2. New § 5.21(i) requires a Federal mutual savings association to make its charter, bylaws, and all amendments available to accountholders at all times in each savings association office, and to deliver to any accountholders a copy of the charter, bylaws or amendments, upon request. This provision is substantively identical to § 144.7.[33]

New § 5.21(j) specifies the language and requirements for Federal mutual savings association bylaws. This new paragraph reflects the provisions in § 144.5. To reflect advances in technology, the final rule updates the provision regarding meetings of the board of directors by permitting telephonic or electronic participation of board members. The current rule provides

[33] See related discussion concerning 12 CFR 163.1(b) infra.

only for telephonic participation. We note that the final rule also adds section headings and makes corresponding paragraph numbering changes to § 5.21(j).

Section 144.5(b)(11) provides that directors may only be removed "for cause" as defined in § 163.39 of this chapter, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors," and § 144.5(b)(10) provides that "[a]ny officer may be removed by the board of directors with or without cause, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed." For ease of use, the OCC is including the definition of "for cause" in new § 5.21(j)(2)(x)(B), rather than cross-referencing the definition in § 163.39. Where the term "for cause" is used elsewhere in § 5.21, and in § 5.22, for Federal stock savings associations, the regulation references the definition at § 5.21(j)(2)(x)(B).

The OCC believes that many of the bylaw provisions in § 144.5 are unnecessarily detailed or self-evident. Therefore, new § 5.21 does not include the provisions described below.[34]

Section 144.5(b)(1) discusses the annual meeting of members. It provides, among other things, that the meeting be held "as designated by its board of directors, at a location within the state that constitutes the principal place of business of the association, or at any other convenient place the board of directors may designate." New § 5.21(j)(2)(i) does not include the requirement that the meeting be held in the state that constitutes the principal place of business of the association. The OCC believes that this requirement introduces unnecessary detail into the regulation and that, in certain cases, there may be locations outside the state constituting the

[34] Federal mutual savings associations will not be required to amend their existing bylaws to conform to these changes.

association's principal place of business at which the annual meeting may be held that are appropriately convenient to members.

Section 144.5(b)(2) provides, among other things, that the subject matter of a special shareholder meeting must be established in the notice for such meeting. The OCC believes this provision is self-evident and unnecessarily detailed and it is not included in new § 5.21(j).

Section 144.5(b)(3) covers the requirements for providing notice of meetings to members. Among other things, it provides that notice must be provided at a member's last address appearing on the books of the association. The OCC believes this provision merely states the obvious and it is not included in new § 5.21(j)(2)(iii).

Section 144.5(b)(4) states that the purpose of determining the record date is to determine the "members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose." The OCC believes this provision is self-evident and it is not included in new § 5.21(j)(2)(iv).

Section 144.5(b)(6) provides that procedures must be established for voting by proxy pursuant to the rules and regulations of the OCC, "including the placing of such proxies on file with the secretary of the association, for verification, prior to the convening of such meeting." The OCC believes the inclusion language is self-evident and unnecessarily detailed and it is not included in § 5.21(j)(2)(vi).

Section 144.5(b)(9) provides that board of director meetings "shall be under the direction of a chairman, appointed annually by the board; or in the absence of the chairman, the meetings shall be under the direction of the president." The OCC believes this provision is unnecessarily detailed and it is not included in § 5.21(j)(2)(ix).

Section 144.5(b)(10) provides, among other things, that "[a]ll officers and agents of the association, as between themselves and the association, shall have such authority and perform such duties in the management of the association as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws. In the absence of any such provision, officers shall have such powers and duties as generally pertain to their respective offices." The OCC believes this provision is unnecessary and self-evident and it is not included in § 5.21(j)(2)(x).

Section 144.5(b)(11) covers vacancies, resignation, and removal of directors. New § 5.21(j)(2)(xi) does not include the requirements in § 144.5(b)(11) that directors be elected by ballot and that resignation of a director be by written notice. The OCC believes that these provisions are self-evident.

Section 144.5(b)(12) covers the powers of the board of directors. It provides, among other things, that a board may, by resolution, "appoint from among its members and remove an executive committee and one or more other committees, which committee[s] shall have and may exercise all the powers of the board between the meetings or the board; but no such committee shall have the authority of the board to amend the charter or bylaws, adopt a plan of merger, consolidation, dissolution, or provide for the disposition of all or substantially all the property and assets of the association. Such committee shall not operate to relieve the board, or any member thereof, of any responsibility imposed by law." This section further provides that a board may fix the compensation of directors, officers, and employees. The OCC believes these provisions are self-evident and unnecessarily detailed, and therefore, they are not included in § 5.21(j)(2)(xii).

Section 144.5(b)(14) provides in part that procedures for the introduction of new business at the annual meeting may require that such new business be stated in writing and filed with the secretary prior to the annual meeting at least 30 days prior to the date of the annual meeting. The OCC believes this provision is overly detailed and unnecessary. Accordingly, the OCC is not including this provision in new § 5.21(j)(2)(xiv).

Finally, § 144.5(b)(16) provides that the bylaws may address age limitations for directors or officers as long as they are consistent with applicable Federal law, rules or regulations. The OCC believes this provision is self-evident and unnecessary and therefore it is not included in new § 5.21(j)(2)(xvi).

Federal Stock Savings Association Charter, Bylaws and Related Provisions. The provisions concerning the charter and bylaws of a Federal stock savings association, as well as related provisions, are currently in §§ 152.3 through 152.9. The OCC proposed to add a new § 5.22, "Federal Stock Savings Association Charters and Bylaws," which incorporates most of §§ 152.3 through 152.9. We did not receive any comments on this proposed change and are adopting new § 5.22 as proposed, with one change to § 5.22(l)(1) as discussed below.

New § 5.22(d) sets forth exceptions to the rules of general applicability. More specifically, it provides that §§ 5.8 through 5.11 do not apply to this section. These sections provide for public notice, public availability, comments and hearings on an application. The OCC believes it is not necessary to subject the charter and bylaws requirements to these provisions.

New § 5.22(e) prescribes the language and requirements for a Federal stock savings association charter and is substantively identical to § 152.3. New § 5.22(f) through (i) cover matters related to charter amendments and are substantively identical to § 152.4, with the

addition of one provision. Section 152.4(b)(8) provides that a Federal stock savings association may amend its charter by adding certain anti-takeover provisions following mutual to stock conversions. One such provision is a prohibition on a person acquiring more than 10 percent of any class of equity securities of the association, unless "the purchase of shares [is] by a tax-qualified employee stock benefit plan which is exempt from the approval requirements under § 174.3(c)(2)(i)(D) of the OCC's regulations." The final rule eliminates the cross-reference and includes the appropriate language in § 5.22(g)(8). The OCC does not intend for this amendment to have any substantive effect.

New § 5.22(j) specifies the requirements for adopting and filing Federal stock savings association bylaws. This paragraph reflects the provisions in § 152.5 with two exceptions. The first sentence of § 152.5(a) provides that "[a]t its first organizational meeting, the board of directors of a Federal stock association shall adopt a set of bylaws for the administration and regulation of its affairs." The third sentence requires the bylaws to contain sufficient provisions to govern the association in accordance with the requirements of other sections of part 152 and prohibits the bylaws from containing a provision that is inconsistent with those sections or with applicable laws, rules, regulations or the association's charter. The OCC believes that these two provisions are unnecessarily detailed and self-evident and they are not included in new § 5.22(j).

The OCC is adding a new § 5.22(k) to address shareholder meetings and related matters. This paragraph reflects the provisions in § 152.6 with two exceptions. Section 152.6(a) provides, among other things, that shareholder meetings must be held in the state in which the association has its principal place of business. With respect to shareholder voting by proxy, § 152.6(f) provides, in part, that a "proxy may designate as holder a corporation, partnership or company as

defined in part 174 of this chapter, or other person." Section 5.22(k) does not include these provisions because the OCC believes they are unnecessary.[35]

The OCC is adding a new § 5.22(l) to address matters involving a Federal stock savings association's board of directors. This paragraph reflects the provisions in § 152.7, with certain exceptions. Section 152.7(b) sets forth the permissible number and terms of directors to be included in an association's bylaws. It provides, among other things, that in "the case of a converting or newly chartered association where all directors shall be elected at the first election of directors, if a staggered board is chosen, the terms shall be staggered in length from one to three years." Section 152.7(g) addresses matters concerning executive and other committees of a board of directors. It provides in pertinent part that each committee, to the extent provided in the resolution or bylaws of the association, shall have and may exercise all of the authority of the board of directors, subject to certain exceptions. The OCC believes these provisions are overly detailed and unnecessary. Accordingly, § 5.22(l)(2) and (7), respectively, do not include these provisions. In addition, this final rule does not include the provision in proposed § 5.22(l)(1), taken from §152.7(a), that requires the savings association's board of directors to annually elect a chairman of the board from among its members and designate the chairman of the board, when present, to preside over meetings. As proposed, the final rule does not include this requirement in the new Federal mutual savings associations rule, § 5.21 because we find it to be unnecessarily detailed. We are removing this provision from § 5.22(l)(1) for the same reason and to conform our rules for stock and mutual Federal savings associations.

[35] Federal stock savings associations will not be required to amend their existing bylaws to conform to these changes.

New § 5.22(m) addresses matters involving a Federal stock savings association's officers. This paragraph is substantively identical to § 152.8, with one exception. Section 152.8 mandates that a Federal stock savings association have certain officers. It further provides that the "board of directors also may elect or authorize the appointment of such other officers as the business of the association may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices." The OCC believes that the quoted provision is self-evident and unnecessary and therefore has not included it in new § 5.22(m).

New § 5.22(n) addresses stock certificates. This new paragraph is substantively identical to § 152.9, with one exception. Section 152.9(a) provides in pertinent part that the "certificates shall be signed by the chief executive officer or by any other officer of the association authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the association itself or one of its employees. Each certificate for shares of capital stock shall be consecutively numbered or otherwise identified." The OCC believes this provision is overly detailed and is not included in new § 5.22(n)(1).

Federal Savings Association Charter and Bylaws Availability Requirement. Section 163.1(b) requires each Federal savings association to cause a true copy of its charter and bylaws and all amendments thereto to be available to accountholders at all times in each office of the savings association, and to deliver to any accountholders a copy of such charter and bylaws or

amendments thereto, upon request. As discussed above, § 144.7 imposes the same requirement, but is applicable only to Federal mutual savings associations.

There is no comparable requirement for national banks and the OCC believes this provision is no longer necessary for Federal stock savings associations as this information is relatively easy for accountholders of these types of institutions to obtain. Conversely, accountholders of Federal mutual savings associations may not have easy access to these documents in light of the inability of accountholders to communicate directly with each other under § 144.8. Accordingly, the final rule continues to apply this requirement only with respect to Federal mutual savings associations under new § 5.21(i).

Disposition of current Federal savings association organization, charter, and bylaws provisions. As discussed above, we proposed amendments to remove from Title 12 of the Code of Federal Regulations §§ 143.2 through 143.7, all of part 144 except § 144.8, § 152.1(b)(1), § 152.1(c) through (i), §§ 152.2 through 152.9, § 152.17, § 163.1(b), and § 163.22(b)(1)(ii) and (b)(2). We did not receive any comments on these proposed changes and are adopting the amendments as proposed.

Section 144.8, which addresses communication between members of a Federal mutual savings association, is not a licensing regulation and does not involve an application process. The OCC is leaving it unchanged. Because it will be the only section that remains in part 144, the OCC is renaming part 144 as part 144 – Federal mutual savings associations – communication between members.

Other provisions of § 152.2, which provide procedures for the organization of interim Federal savings associations, are addressed in revisions to the business combinations regulation – § 5.33, described below. The remaining provisions of part 143, part 152, and part 163 contain

other provisions applicable to Federal mutual and stock savings associations. The OCC is rescinding some of these provisions as described elsewhere in this preamble.

Charter Conversions (new § 5.23, § 5.24, new § 5.25)

Twelve CFR 5.24 sets forth the rules and procedures that a state bank, state savings association, or Federal savings association must follow to convert to a national bank and for a national bank to convert to a state bank or Federal or state savings association. The OCC's rules for a mutual depository institution to convert to a Federal mutual savings association are at 12 CFR 143.8 through 143.14, and the rules for a stock form depository institution to convert to a Federal stock savings association are at 12 CFR 152.18. The rules for a Federal savings association to convert to a national bank or state bank are set forth at 12 CFR 152.19 and 163.22(b)(1)(ii) and (b)(2). While there are some differences in procedures, as discussed below, the rules for national banks and Federal savings associations are substantively similar.

We proposed to simplify this regulatory framework by: (1) revising § 5.24 to include only rules for converting into a national bank, (2) placing all rules for converting into a Federal savings association (either stock or mutual) in new § 5.23, and (3) placing rules for conversion from national bank and Federal savings association charters in new § 5.25. We also proposed additional substantive and technical changes to these rules. The substantive changes include provisions implementing section 612 of the Dodd-Frank Act, which prohibits conversions from state to Federal charter, or Federal to state charter, in certain circumstances and adds requirements to the conversion process.

We did not receive any comments related to charter conversions. We therefore adopt the amendments to these provisions as proposed, with the changes described below.

Implementation of section 612 of the Dodd-Frank Act. Section 612 of the Dodd-Frank

Act added several provisions that address conversions. First, section 612(b) amended 12 U.S.C. 35 to provide that the OCC may not approve an application by a state bank or a state savings association to convert to a national bank or Federal savings association during any period in which the state bank or state savings association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, a state banking supervisor or the appropriate Federal banking agency with respect to a significant supervisory matter or a final enforcement action by a state Attorney General. We do not need to amend our regulations to implement this prohibition because current regulations include compliance with applicable law among the criteria for approval or denial, and this criterion is carried over in the final rule.[36] Specifically, §§ 5.24(e)(2)(x) and 5.23(d)(2)(ii)(J) require the conversion application to include information about enforcement actions and other supervisory criticisms and the applicant's analysis of whether conversion is permissible under 12 U.S.C. 35, as amended by section 612. We will use this information to assess the permissibility of the proposed conversion under section 35, including the possibility of using the exception to the prohibition on conversions provided in section 612.[37]

[36] See §§ 5.23(d)(1) and 5.24(d) (each incorporating § 5.13(b)).

[37] Subsection (d) of section 612 provides for an exception to the prohibition. Specifically, the prohibition on conversion does not apply if: (1) the Federal banking agency that would be the appropriate Federal banking agency after the conversion (the OCC in conversions of a state-chartered institution to a national bank or Federal savings association) gives written notice of the proposed conversion to the current Federal appropriate banking agency or state bank supervisor that issued the enforcement action, including a plan to address the significant supervisory matter in a manner that is consistent with the safe and sound operation of the institution; (2) the current Federal appropriate banking agency or state bank supervisor that issued the enforcement action does not object to the conversion or the plan; (3) after conversion, the plan is implemented; and (4) in the case of a final enforcement action by a state Attorney General, approval of the conversion is conditioned on the institution's compliance with the terms of such final enforcement action. Section 612(d) is codified as a note attached to 12 U.S.C. 35. Applicants should be aware that the Agencies have issued interagency guidance stating the Agencies' position that such exceptions would be rare, and generally would occur only when the institution already has substantially addressed the matters in the enforcement action or there are substantial changes in circumstances. See Interagency Statement on Section 612 of the Dodd-Frank Act: Restrictions on Conversions of Troubled Banks (November 26, 2012), available at www.occ.gov/news-issuances/bulletins/2012/bulletin-2012-39a.pdf.

Second, section 612(b) added a new section 12 U.S.C. 214d prohibiting a national bank from converting to a state bank or state savings association during any period in which the national bank is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, the OCC with respect to a significant supervisory matter. Section 612(c) similarly added a new paragraph (6) to the end of section 5(i) of the HOLA[38] prohibiting a Federal savings association from converting to a state bank or state savings association during any period in which the Federal savings association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, the OTS or the OCC with respect to a significant supervisory matter. The exception to the prohibitions on conversions in section 612(d), discussed above, applies to the prohibitions in sections 214d and 1464(i)(6). As amended by this final rule, § 5.25(d)(3) requires that the information that must be submitted to the OCC when a national bank or Federal savings association plans to convert to a state bank or state savings association must include a discussion of the impact of any enforcement action on the permissibility of the conversion under 12 U.S.C. 214d or 1464(i)(6). This discussion will assist the OCC in monitoring compliance with these statutes.

Third, paragraph (e)(1) of section 612 requires that at the time an insured depository institution files a conversion application, it must transmit a copy of the conversion application to both the appropriate Federal banking agency for the institution and the Federal banking agency that would become the appropriate Federal banking agency for the institution after the proposed conversion. Reflecting this statutory requirement, as noted above, the final rule adds to our

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[38] Section 5(i), 12 U.S.C. 1464(i)(6).

regulations at §§ 5.23(d)(2)(ii), 5.24(e)(2), and 5.25(d)(3)(i)(last sentence) a requirement to send a copy of the conversion application to the appropriate Federal banking agencies. Including the requirement in our regulations will help ensure applicants are aware of this requirement.

Conversion to a national bank charter. As part of the reorganization of the conversion rules, the final rule moves the provisions governing national bank conversions to a state bank or Federal savings association from § 5.24 to new §§ 5.25 and 5.23, respectively. As a result, § 5.24 applies only to conversions to become a national bank. The final rule also makes several other changes to § 5.24.

The final rule adds "stock state savings associations" to the description of the types of institutions that can apply to convert to a national bank and also adds the word "stock" before the phrase "Federal savings associations" throughout revised § 5.24. Stock state savings associations currently are included in the rule because they are within the definition of "state bank" incorporated from 12 U.S.C. 214(a). We are adding the express term both in the interest of eliminating any confusion and because section 612 added the term "state savings association" to 12 U.S.C. 35. We are adding the term "stock" to Federal savings association for clarity as well. National banks are corporate bodies, and a mutual institution cannot become a national bank unless it has first changed into corporate form under other law. These changes clarify the existing regulation and have no substantive impact.

Section 5.24(d) states the OCC's policy for approving and disapproving conversions to national bank charters. The final rule adds a statement that the institution seeking to convert to a national bank charter must obtain all necessary regulatory and shareholder approvals. Although this requirement is not new, it was not previously stated in § 5.24. There is a similar provision in the current Federal savings association regulation, § 143.8(a)(2). The final rule continues this

requirement for Federal savings associations in § 5.23, and adds this requirement for national banks as well.

The final rule also clarifies the information the applicant must include in the application. As proposed, § 5.24(e)(2)(vii) in the final rule requires applicants to add bank service company investments and other equity investments to the current requirement to identify subsidiaries. This change reflects the OCC's current practice in conversion applications of reviewing the legal permissibility for the converted national bank to continue to hold these investments.

The OCC currently requests an applicant to include a business plan in the application on a case-by-case basis during the application process. Proposed 5.24(e)(2)(ix) requires the application to include a business plan if the converting institution: (1) has been operating for less than three years, or (2) plans to make significant changes to its business after the conversion. [39] We believe this requirement should apply to all such applications because a business plan would provide valuable information about the financial institution's safety and soundness and allow the OCC to make a more informed decision. The final rule amends this provision to also require a business plan at the request of the OCC. This amendment allows the OCC to require a business plan in other circumstances, as necessary, and conforms this provision to that included in new § 5.23(d)(2)(ii)(I). Though the preamble to the proposed rule referred to this amendment, it was inadvertently omitted in the regulatory text of proposed § 5.24.

Section 5.24 currently addresses the OCC's authority to permit a national bank to retain nonconforming assets of a converting state bank, subject to the requirements in 12 U.S.C. 35. The final rule (redesignated as paragraph (e)(4) in the revised regulation) clarifies that a

[39] Appendix G of the "Charters" booklet of the Comptroller's Licensing Manual (Significant Deviations after Opening) contains a discussion of what constitutes a "significant change."

converted national bank also may be permitted to retain nonconforming activities (as well as assets) of a state bank or stock state savings association and nonconforming assets or activities of a Federal stock savings association for a transition period after conversion. We believe this provision facilitates the transition from a state institution or Federal savings association to a national bank and also incorporates current OCC practice.

Current OCC rules require both a notice or application to the OCC to convert out of a Federal savings association charter[40] and an application to the OCC to convert to the new national bank charter.[41] The notice or application to convert out must demonstrate compliance with applicable laws regarding the permissibility, requirements, and procedures for the conversion.[42] The proposed rule included both a notice requirement to convert out of the existing charter in proposed § 5.25(e) and the application requirement to convert to a national bank in proposed § 5.24. Upon further review, we are removing the conversion out notice requirement from § 5.25(e) and instead adding a new paragraph (f) to § 5.24 to require a Federal savings association to include the information from this notice in its application to convert to a national bank. This process is less burdensome for Federal savings associations as they will no longer be required to file both a "conversion out" notice and a "conversion in" application to the OCC to accomplish the conversion transaction.

As proposed, the final rule also amends the expedited review provisions for a conversion application filed by an eligible depository institution. These provisions are set forth in the current rule at § 5.24(d)(4) and redesignated in this final rule as § 5.24(h). The final rule limits the

[40] § 163.22(b).

[41] § 163.22(b)(2).

[42] § 5.24.

availability of expedited review to applications by institutions already supervised by the OCC (i.e., conversions from a Federal savings association to a national bank pursuant to § 5.24 or from a national bank to a Federal savings association pursuant to § 5.23). In those cases, the OCC is already familiar with the institution. The OCC will require more time to review a state institution applicant's condition and proposal, and therefore, expedited review would not be appropriate in those cases.

The final rule also extends the expedited review period from 30 days to 60 days. New § 5.23(d)(4) contains a similar expedited review provision for conversions of an eligible national bank to a Federal savings association.

In addition, the final rule adds a new paragraph (i) to § 5.24 (paragraph (h) in the proposed rule) providing that the resulting national bank after a conversion is the same business and corporate entity as the converting institution, and all assets, rights, liabilities, obligations, and other business of the converting institution continue in the resulting national bank by operation of law. This paragraph reflects longstanding case law under 12 U.S.C. 35[43] and is similar to statutory provisions in 12 U.S.C. 214b (continuation in conversion of national bank to state bank or merger of national bank into state bank) and 12 U.S.C. 215(e) and 215a(e) (continuation in consolidation or merger of national or state bank into national bank). The specific language is based on 12 U.S.C. 214b and on current provisions governing Federal savings associations at §§ 146.14 (Federal mutual savings associations) and 152.18(b) (Federal stock savings associations).

[43] See, e.g., Michigan Insurance Bank v. Eldred, 143 U.S. 293, 300 (1892); Metropolitan National Bank v. Claggett, 141 U.S. 520, 527 (1891). See generally, CJS Banks and Banking, § 529 (citing cases); 10 Am. Jur. 2d § 203 (citing cases).

Finally, the final rule adds provisions to § 5.24 to implement section 612 of the Dodd-Frank Act, which are discussed below, and makes several technical or housekeeping changes to § 5.24 to make it easier to read.

Conversion to a Federal savings association charter. As noted above, the final rule creates a new § 5.23 to address conversions of a mutual depository institution to a Federal mutual savings association or of a stock depository institution to a Federal stock savings association. This new section is similar to § 5.24, conversions to a national bank, except that references to national banking laws are replaced by references to the HOLA, including the statutory criteria in section 5(e) of the HOLA for granting a Federal savings association charter.

The requirements of § 5.23 include many of the requirements in the current Federal savings association conversion regulations. However, the final rule does not retain certain provisions in parts 143 and 152 for which there is no statutory requirement in the HOLA. These include the confidentiality provisions set forth at § 143.8, which instead are addressed under the OCC's general confidentiality regulations, 12 CFR part 4, and the public notice and inspection requirements set forth at § 143.9(a)(2) (incorporating § 143.2(d)), which require public notice and inspection for applications to organize a new savings association. The OCC believes public notice is unnecessary in the case of conversions because the business of the existing institution continues under its new charter. We note that if there are instances where the OCC believes publication is warranted, the OCC could require publication under § 5.23(d)(3), which allows the OCC to require public notice if an application presents significant or novel policy, supervisory, or legal issues.

The final rule excludes a number of provisions in § 143.9 that advise applicants of the various steps in the process. Instead, the OCC addresses this information through the Comptroller's Licensing Manual, application forms, and the application process.

As with the amendments to § 5.24, the final rule adds a new paragraph § 5.23(f) that contains the provision regarding the "conversion out" aspect for national banks applying to convert to a Federal stock savings association originally included in proposed § 5.25(e)(1) and (e)(3). As a result, a national bank converting to a Federal stock savings association must include in its application filed pursuant to § 5.23 information demonstrating compliance with the applicable requirements of 12 U.S.C. 214a instead of including this information in a separate notice to the OCC. This process is less burdensome for national banks because they will not have to file both a notice and an application for these transactions, as provided in the current and proposed rule.

We note that there are four significant differences between §§ 5.24 and 5.23. First, the definition of "depository institution" for purposes of § 5.23, which is based on the definition in §§ 143.8(a) and 152.13, includes credit unions, unlike the definition in § 5.3(f), which is used in § 5.24. This is because credit unions may convert to a mutual Federal savings association but not to a national bank. Second, paragraph (c) of § 5.23 provides that the converting institution must have deposits insured by the FDIC or, if it is not so insured, must obtain insurance before converting. While some national banks may be uninsured, i.e., trust banks that do not accept deposits, all Federal savings associations are required to be insured. Third, paragraph (d)(2)(ii)(K) of § 5.23, requires a converting institution that does not meet the qualified thrift lender test of 12 U.S.C. 1467a(m) to include a plan to achieve compliance within a reasonable period of time and to request an exception from the OCC in the application. This requirement

reflects agency practice but is not expressly included in the current regulation. Fourth, paragraph (e) of § 5.23 includes certain provisions contained in § 143.10 that are unique to conversions of a mutual depository institution to a Federal mutual savings association. These provisions reflect the unique organizational structure of mutual depository institutions, which are not owned by shareholders but are mutual enterprises composed of depositor-members.

Lastly, the final rule includes provisions in § 5.23 to implement section 612 of the Dodd-Frank Act, as discussed below.

Conversion from a national bank or Federal savings association charter to a state charter. New § 5.25 addresses conversions from a national bank or Federal savings association to a state charter. Proposed § 5.25(d) provided that converting from a Federal charter does not require prior OCC approval. Instead, the institution must file a notice with the OCC. This process is a change for some Federal savings associations. Under the current regulations, Federal savings associations that are not eligible for expedited treatment must file an application to convert to a national bank or state bank.[44] Under the new rule, this notice must contain a copy of its conversion application to the regulator to which it is applying for approval to convert (as required by section 612 of the Dodd-Frank Act), a showing of its compliance with applicable requirements for converting from the charter (as required under the current rule), and a discussion of any issues regarding the permissibility of the conversion under section 612 of Dodd-Frank Act. This section also requires the institution to file a copy of its conversion application with the Federal banking agency that would become its appropriate Federal banking agency after the conversion, pursuant to section 612 of the Dodd-Frank Act, as discussed below.

[44] See 12 CFR 152.19 and 163.22(b)(2).

The proposed rule had required, at new § 5.25(e), institutions planning to convert between a national bank and a Federal savings association to file a notice with the OCC to convert out of the old charter. This filing would be in addition to filing an application to convert to the new charter. As noted above, the final rule removes this notice requirement and instead adds a provision to § 5.23(f) and to § 5.24(f) to require that this "conversion-out" information be included in its application filed pursuant to § 5.23 or § 5.24. As a result, national banks and Federal savings associations will not have to file both a notice and an application for these transactions, as required by the current and proposed rule.

As discussed above, the applicable "converting-in" regulation (§5.24 or § 5.23) requires the institution to file an application with the OCC with respect to the "converting-in" aspect of the transaction.

Disposition of current Federal savings association conversion regulations. Sections 5.23 and 5.25 will replace most of the current Federal savings association regulations on conversions. Accordingly, the final rule removes §§ 143.8, 143.9, 143.10, 143.14, 152.18, and 152.19.[45] As proposed, the final rule also removes § 143.11, which provides for an organizational plan for governance during the first six years after a state mutual savings bank converts to a Federal charter. The OCC believes that the application process is sufficient for the OCC to monitor a the converting institution's compliance with the requirements for Federal mutual savings banks.

[45] This preamble discusses the removal of § 163.22(b)(1)(ii) and (b)(2) in the discussion of amendments to the OCC's rules regarding the organization of a national bank or Federal savings association and Federal savings association charters and bylaws, above. Other provisions of this rulemaking remove the remaining provisions of part 143 (except for § 143.12), part 152 and § 163.22.

Section 143.12, which implements section 5(i)(4) of the HOLA,[46] addresses grandfathered authority of certain Federal savings associations. It is not a licensing regulation and does not involve an application process. The final rule leaves §143.12 unchanged. As a result of other changes in this rulemaking, it will be the only section that remains in part 143. Therefore, the final rule renames part 143 as part 143 – Federal Savings Associations -- Grandfathered Authority.

Fiduciary Powers (§ 5.26)

Twelve CFR 5.26 contains the application requirements and processes for national banks' fiduciary powers. Twelve CFR part 150, subpart A (§§ 150.70 through 150.125) addresses the fiduciary powers application requirements and processes for Federal savings associations. We proposed to consolidate the application and notice filing procedures for fiduciary powers for national banks and Federal savings associations by revising § 5.26 to cover Federal savings associations, incorporating certain provisions from part 150 in § 5.26, amending § 150.70 to remove the current language regarding filing requirements, directing Federal savings associations to § 5.26 for the application and notice procedures they should follow, and deleting §§ 150.80 through 150.125, which contain additional current Federal savings association filing requirements. We received one comment on our fiduciary powers rule, discussed below. We are adopting the amendments to § 5.26 and part 150, subpart A as proposed.

In general, the final rule revises § 5.26 by adding language that makes it applicable to both national banks and Federal savings associations. The final rule also makes the following revisions to the application requirements in § 5.26.

[46] 12 U.S.C. 1464(i)(4).

First, the final rule adds § 5.26(e)(2)(iii) to provide examples of factors the OCC will consider when reviewing an application to exercise fiduciary powers. These factors include financial condition, adequacy of capital, character and ability of proposed trust management, the adequacy of any proposed business plan, and the needs of the community served. These factors help to clarify the standard of review the OCC will use. Three of the factors are requirements found in both the National Bank Act[47] and the HOLA:[48] capital adequacy, requiring that the needs of the community be served, and providing that the OCC may consider any other factors or circumstances that the agency considers proper. A review of the financial condition of the national bank or Federal savings association, the experience and character of the management of the institution, and the adequacy of any proposed business plan are all factors that the OCC already takes into account when reviewing an application submitted by a national bank or Federal savings association to conduct fiduciary powers. In addition, the Federal savings association rule, § 150.100, includes the factor requiring assessment of the financial condition, the overall performance, and the proposed supervision of the Federal savings association.

Second, the final rule adds a new paragraph (e)(5) to § 5.26. This paragraph requires a national bank or a Federal savings association that has not conducted previously approved fiduciary powers for 18 consecutive months to provide a notice to the OCC containing the information required by § 5.26(e)(2)(i) 60 days in advance of commencing the activities. This amendment is similar to a requirement for Federal savings associations at § 150.560, which requires filing a notice if the savings association has not conducted the fiduciary activity for five

[47] 12 U.S.C. 92a(i).

[48] 12 U.S.C. 1464(n)(8).

years after it was approved to engage in the activity. We have determined, however, that 18 months is a more appropriate timeframe for this notice because the management and condition of a national bank or Federal savings association may change in a shorter period of time. This amendment ensures that both a national bank and a Federal savings association previously granted fiduciary powers will still have the financial ability and managerial expertise necessary to conduct fiduciary activities in a safe and sound manner. The OCC also believes this notification is important because it will enable the agency to allocate supervisory resources to evaluate the institution when it resumes fiduciary activities in which it has not engaged for a long period of time.

Third, the final rule adds a new § 5.26(e)(1)(iv) that specifies that a national bank or Federal savings association that has received approval from the OCC to exercise limited fiduciary powers and would like to exercise full fiduciary powers must apply to the OCC. An applicant can apply for approval to offer limited services (authority for one or more specific type of fiduciary powers described in the application) or to offer full services (authority to exercise all powers authorized under the law). If an institution received prior approval to offer only certain services, it would need to file an application if it wished to begin offering other services. However, an institution that received approval to exercise full fiduciary powers could add to the activities in which it engages without additional application.

Finally, incorporating Federal savings associations in the application framework of § 5.26 also results in some other minor changes or clarifications of requirements for Federal savings associations. New paragraphs (b)(2) and (4) of § 5.26 set out circumstances in which a Federal savings association does not need to apply for fiduciary powers in connection with certain mergers. The new provision in § 5.26(e)(1)(iv), discussed above, requiring an application when

an institution previously approved only to exercise specified limited powers planned to exercise more powers, replaces a current provision requiring a Federal savings association to apply if it planned to conduct fiduciary activities that are "materially different" from those previously approved, regardless of whether the prior approval had been for limited or full powers. Section 5.26(e)(3) provides for expedited review of applications by eligible national banks and eligible Federal savings associations. Part 150 does not provide for expedited treatment of fiduciary powers applications by Federal savings associations.

We received one comment with respect to fiduciary powers in response to our June EGRPRA notice. This comment requested that we amend the approval process in the existing Federal savings association rule, §150.70(b), so that once the OCC has granted a Federal savings association permission to exercise some fiduciary powers, the association may exercise all fiduciary powers without further approval. The OCC disagrees with this commenter. The exercise of all fiduciary powers may raise safety and soundness concerns not associated with the exercise of limited fiduciary powers. Therefore, as described above, we are adopting the provision as proposed. We note that the change in standard of fiduciary activities "materially different from previously approved" in the current Federal savings association rule to the standard of limited powers to full powers in § 5.26 should reduce regulatory burden by lessening the need for a later filing.

Establishment, Acquisition, and Relocation of a Branch (§ 5.30 and § 5.31)

Overview. Section 5.30 of the OCC's rules addresses the establishment, acquisition, and relocation of national bank branch offices. Sections 145.92, 145.93, 145.95, and 145.96 address these subjects for Federal savings associations and also cover agency offices for Federal savings

associations.[49] While these national bank and Federal savings association rules address a common subject there are two important differences between them, namely the definition of "branch" (and many provisions related to the definition) and the scope of the requirement for prior OCC approval.[50] These differences stem from the statutes applicable to national banks and Federal savings associations.

Specifically, with respect to national banks, the term "branch" is defined by statute. The McFadden Act defines a "branch" as an office "at which deposits are received, or checks paid, or money lent."[51] Over the years, the meaning of the term in various contexts has been addressed extensively in case law and regulatory interpretation. The OCC codified much of that interpretive explanation in § 5.30 and in a number of provisions in part 7 that specify what constitutes a branching activity and what does not. For Federal savings associations, the HOLA does not have a general definition of "branch."[52] Consideration of whether an office of a Federal savings association is a branch office has focused on activities involving deposit accounts, not lending. Furthermore, there is little in the regulations specifying which activities are branching activities and which are not.

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[49] An agency office is an office of a Federal savings association that services, originates, or approves loans and contracts; manages or sells real estate owned by the savings association; or conducts fiduciary activities or activities ancillary to the savings association's fiduciary business, or, with the approval of the OCC, provides other services. See 12 CFR 145.96.

[50] There are also differences in the locations at which a national bank or a Federal savings association may establish a branch. Generally, Federal savings associations have somewhat broader branching authority than national banks. The relevant application procedure regulations do not address this subject.

[51] Section 5155(j) of the Revised Statutes, 12 U.S.C. 36(j).

[52] There is a definition of "branch" in section 5(m) of the HOLA, 12 U.S.C. 1464(m), but it addresses branching only in the District of Columbia. In that subsection, branch is defined as an office "at which accounts are opened or payments are received or withdrawals are made." 12 U.S.C. 1464(m)(2).

In addition, the statutes authorizing a national bank to establish a branch require that it obtain approval from the OCC.[53] Accordingly, the OCC licensing regulations at 12 CFR 5.30 require national banks to file an application and obtain OCC approval for every branch. The HOLA does not have a general provision requiring approval for a Federal savings association to establish a branch.[54] By regulation, at §145.93, the OCC (continuing a provision originally adopted by the OTS) requires an application for a Federal savings association to establish or relocate a branch, but this rule also provides certain exceptions.[55]

The proposal retained these differences between national banks and Federal savings associations. Specifically, we proposed to add a new § 5.31 to part 5 in order to bring the establishment and relocation of branches by a Federal savings association within the licensing procedures of part 5 and did not propose adding Federal savings associations to 12 CFR 5.30 New § 5.31 is similar in format to § 5.30, but includes provisions based on §§ 145.92 and 145.93 regarding the definition of "branch" and the scope of the application requirements. Section 5.31 also includes the provisions of § 145.96 regarding agency offices. As a result, national banks and Federal savings associations generally will continue to be subject to different branching application provisions and requirements.

The preamble to the proposed rule also requested comment on two alternatives to the proposed rule's treatment of branching by Federal savings associations. The first alternative required Federal savings associations to file applications to establish or relocate a branch without

[53] See 12 U.S.C. 36(b), 36(c), 36(g).

[54] However, the provision regarding branching in the District of Columbia does require prior regulatory approval. 12 U.S.C. 1464(m)(1).

[55] As part of the OCC's EGRPRA review, the OCC will consider whether to recommend to Congress a statutory change to make the requirements for establishing or relocating a branch consistent for national banks and Federal savings associations.

exceptions. This alternative would harmonize the treatment of the branch licensing regulations of national banks and Federal savings associations in order to simplify our licensing procedures and provide for comparable treatment of national banks and Federal savings associations. The second alternative approach required Federal savings associations to file an after-the-fact notice instead of an application in cases where an application was not required. Such a notice would enable the OCC to obtain timely information on Federal savings association branching activity without requiring eligible Federal savings association to obtain prior OCC approval to engage in an activity that they now may do without approval.

We also proposed several minor substantive clarifications in § 5.30.

We adopt § 5.30 as proposed. We also adopt § 5.31 as proposed with the addition of the second alternative outlined above. We received one comment letter on this branching proposal and the alternatives. This comment is discussed below. Also as proposed, the final rule removes 12 CFR 145.93, 145.95 and 145.96, and makes a conforming change to § 145.92.

Branches of national banks (§ 5.30). The final rule revises § 5.30(c), the scope section. Section 5.30(c)(2) (formerly part of § 5.30(c)) continues to provide that the standards of § 5.30 (governing review and approval of applications by the OCC) and, as applicable, 12 U.S.C. 36(b), applies to branches established as a result of a business combination approved under § 5.33. The final rule adds branches acquired or retained in a conversion approved under § 5.24 to the scope of § 5.30, while maintaining the application procedures set forth in § 5.24 for these transactions. The addition of branches acquired or retained in a conversion under § 5.24 to this section reflects current practice.

The final rule also revises the definition of "branch." Section 5.30(d)(1)(ii)(B) currently excepts from the definition of "branch" a facility that is located at the site of, or is an extension

of, an approved main office or branch office of the national bank. The final rule amends this paragraph to state that the OCC will consider a drive-in or pedestrian facility located within 500 feet of a public entrance to an existing main office or branch office to be such an extension, provided the functions performed at the drive-in or pedestrian facility are limited to functions ordinarily performed at a teller window. This "bright-line" 500-foot test for national banks is consistent with § 145.93(b)(1), which provides this exception for Federal savings associations. The final rule also adds new § 5.30(d)(1)(iii) to describe more clearly what is not a branch, including ATMs and remote service units,[56] as well as loan production offices, deposit production offices, administrative offices, and any other office that does not engage in any of the activities set out in paragraph (d)(1).

In addition, the final rule updates § 5.30(e), relating to the principles that guide the OCC in making determinations on applications under this section, to reflect the OCC's statutory mission as amended in section 314 of the Dodd-Frank Act.[57]

Finally, the final rule amends § 5.30(f)(6), which sets forth the procedures for expedited review of applications by eligible national banks. This change clarifies that the time period for review of an application for a short-distance relocation is the 15th day after the close of the comment period or the 30th day after the filing is received by the OCC, whichever is later. This period is consistent with the shorter comment period for applications for short-distance relocations (15 days rather than the standard 30 days).

[56] The final rule also amends § 7.4003 (establishment and operation of a remote service unit) to add a number of additional examples of remote service units. The rule expands this illustrative list in order to modernize the regulation to capture new technology with similar functional capability.

[57] 12 U.S.C. 1(a).

Branches and agency offices of Federal savings associations (§ 5.31). As indicated above, new § 5.31 addresses the establishment or relocation of branches, or the establishment of agency offices, by Federal savings associations. Its format follows that of § 5.30, but it does not include provisions from § 5.30 that apply only to national banks.

The OCC received one comment on proposed § 5.31. This commenter stated that the OCC should retain the different branching rules for national banks and Federal savings associations, as proposed, and strongly supported this approach over the first alternative described in the preamble, which would require both national banks and Federal savings associations to file an application to establish or relocate a branch. With respect to this first alternative, the commenter noted that an application requirement would impose an unnecessary regulatory burden on Federal savings associations by making their branching decisions subject to prior OCC approval and by requiring Federal savings associations to adapt to the extensive case law and regulatory history associated with the meaning of "branch." Finally, this commenter noted that implementing this alternative would reverse a burden reducing measure adopted as a result of the last EGRPRA review at the same time that the OCC is seeking further burden reducing measures in its second EGRPRA review.

The OCC has decided not to adopt the first alternative but to adopt the second alternative that requires the filing of an after-the-fact notice. This notice will enable the OCC to obtain timely information on Federal savings association branching activity without imposing significant regulatory burden. Specifically, an after-the fact notice will strengthen the OCC's ability to monitor savings association branching activity and will enable the OCC to maintain comprehensive supervisory and structural data for Federal savings associations. We note that we received no comments on this after-the-fact notice alternative.

Section 5.31 as adopted by this final rule, and its differences with the current Federal savings association branching rule, are described below.

Section 5.31(a) recites the statutory authority for the rule. Section 5.31(b) sets out the basic requirement that a Federal savings association must file an application to establish or relocate a branch, unless the transaction qualifies for one of the exceptions in the rule.

Section 5.31(c), the scope section, generally describes what the section covers – namely, the procedures and standards for review and approval of applications to establish or relocate a branch, the circumstances in which an application is not required, and the authority to establish agency offices. Section 5.31(c)(2) (similar to § 5.30(c)(2) as amended by this final rule) provides that the standards of § 5.31 (governing review and approval of applications by the OCC) apply to branches acquired or retained in a conversion approved under § 5.23 or a business combination approved under § 5.33, but that such branches are subject only to the application procedures set forth in §§ 5.23 or 5.33. Section 5.31(c)(3) states that § 5.31 also implements section 5(m) of the HOLA,[58] which addresses branching by Federal and state savings associations in the District of Columbia.

Section 5.31(d) adds a definition of "branch office" for Federal savings associations for purposes of § 5.31 by referring to the definition in 12 CFR 145.92(a). The final rule also includes a definition of "home state" – the state in which the association's home office is located.

Section 5.31(e) sets forth the policy principles that guide the OCC's review of an application to establish or relocate a branch. These principles reflect the OCC's statutory mission

[58] See 12 U.S.C. 1464(m).

as amended in section 314 of the Dodd-Frank Act, and are identical to those principles set forth in § 5.30(e) for the OCC's review of a national bank branch application or relocation.[59]

Paragraph (f)(1) of § 5.31 requires each Federal savings association to submit a separate application to establish or relocate a branch, unless the transaction qualifies for an exception in paragraph (f)(2). Sections 145.93 and 145.95 contain a number of provisions regarding the filing of notices and applications with the OCC as well as notices to the public. These provisions are no longer necessary once Federal savings association branch filings are subject to part 5. Paragraph (e) of § 145.93 does not have a corresponding provision in § 5.30, and the OCC is not including it in § 5.31. Under § 145.93(e), a Federal savings association may not file an application or notice, or use any of the exceptions, to establish a branch if the association has filed an application to merge or otherwise surrender its charter and the application has been pending for less than six months.

Paragraph (f)(2) of § 5.31 incorporates three of the exceptions from § 145.93(b) to the requirement to file an application: (1) the exception for the establishment of a drive-in or pedestrian office that is located within 500 feet of an existing home or branch office, (2) the exception for a short-distance relocation of a branch, and (3) the exception for the establishment or relocation of a branch by highly rated Federal savings associations.[60]

Under this third exception in §145.93(b)(3), a highly rated Federal savings association is not required to file an application to change the permanent location of an existing branch or to

[59] 12 U.S.C. 1(a).

[60] The final rule replaces the fourth exception (which provides that a Federal savings association may re-designate an existing branch office as a home office at the same time that it re-designates its existing home office as a branch office) with provisions in § 5.40. Section 5.40 governs changes in the locations of a national bank's main office or a Federal savings association's home office. Changes in the location of a home office, including to an existing branch office, are subject to § 5.40. If the Federal savings association proposes to establish a branch at its former home office location, paragraph (c)(3) of § 5.40 directs the association to follow § 5.31.

establish a new branch if it meets certain requirements. Those requirements are: (1) the Federal savings association is eligible for expedited treatment, (2) it publishes notice, at a time period specified in the rule, of its intent to establish or relocate a branch, (3) in the case of a relocation, it posts notice of its intent to relocate the branch at the existing branch, and (4) no person files a comment opposing the action, or if a comment is filed, the OCC determines the comment raises issues that are not relevant to the standards for approving a branch application.

The final rule continues these qualifying requirements with the following differences. First, as with other sections in part 5, the condition for qualifying is that the Federal savings association is an "eligible savings association" rather than eligible for expedited treatment. As discussed earlier in this preamble, there are some differences in these tests. Second, the application exceptions in § 5.31(f)(2) do not apply in the context of section 5(m) of the HOLA, described below in the discussion of § 5.31(j).

Section 5.31(f)(3) requires that highly rated Federal savings associations not required to file a branch application must file a notice with the OCC within 10 days after the opening of the branch. This notice must include the date the bank established or relocated the branch and the address of the branch. As indicated above, this is a new requirement for Federal savings associations.

Paragraph (d) of § 145.93 provides that the bank may retain such branches after a conversion or combination unless the transaction approval specifies otherwise. The final rule does not retain this provision in § 5.31. Instead, the final rule addresses the retention of branches in a conversion or business combination in the conversion and business combination regulations (in this final rule, § 5.23 for conversions to become a Federal savings association and § 5.33 for business combinations resulting in a Federal savings association).

Paragraph (g) of § 5.31 sets out exceptions to the rules of general applicability for applications by a Federal savings association to establish or relocate a branch. Specifically, the OCC may waive or reduce the public notice and comment period in certain emergency situations or with respect to certain temporary branches.

Paragraph (h) of § 5.31 provides that the OCC's approval of a branch expires if the branch has not commenced business within 18 months, unless the OCC grants an extension. This period is longer than the current 12-month expiration period for branch approvals for Federal savings associations under § 145.95(c).

Paragraph (i) of § 5.31 provides that Federal savings associations must comply with the portions of 12 U.S.C. 1831r-1 that apply to Federal savings associations with respect to branch closings.

Section 5.31(j) implements section 5(m)(1) of the HOLA.[61] Section 5(m)(1), which applies to both Federal and state savings associations, provides that no savings association incorporated under the laws of the District of Columbia or organized in the District or doing business in the District shall establish any branch or move its principal office or any branch without the Comptroller's prior written approval and that no savings association shall establish any branch in the District or move its principal office or any branch in the District without the Comptroller's prior written approval. Section 145.93(c) currently provides prior approval for any savings association branch that would be subject to section 5(m)(1), if the association meets the requirements of § 145.93(b) for an exception to the branch application filing requirement. As indicated in the preamble to the proposed rule, the OCC believes requiring an application and issuing a prior written approval for each application is more consistent with the statutory

[61] 12 U.S.C. 1464(m)(1).

language of section 5(m)(1). Accordingly, the final rule amends the provisions implementing section 5(m)(1) of the HOLA to require an application. The rule provides a short paraphrase of the statutory provision and instructs savings associations requiring approval under section 5(m)(1) to follow the application procedures of 12 CFR 5.31.

Finally, paragraph (k) to § 5.31 includes provisions currently in § 145.96 regarding agency offices.

We note that the comment letter we received on the branching proposal asked the OCC to clarify that mobile phones and similar devices are not branches. With respect to national banks, if the mobile phone or similar device belongs to the customer, then it is not a facility established by the bank. If the mobile phone or similar device is owned or controlled by the bank, then it would be a remote service unit, and therefore not a branch pursuant to 12 U.S.C. 36(j) and 12 CFR 7.4003. Moreover, the final rule at § 5.30(d)(1)(iii) implicitly addresses this point by including "personal computer" as an example of a remote service unit.

With respect to Federal savings associations, a mobile phone is an "electronic means or facility" pursuant to current § 155.200 and excluded from the definition of branch under current § 145.92, as incorporated in proposed § 5.31.

Expedited procedures for certain reorganizations (§ 5.32).

Twelve CFR 5.32 provides the procedures for OCC review and approval of a national bank's reorganization to become a subsidiary of a bank holding company or a company that will, upon consummation of such reorganization, become a bank holding company. Section 5.32 currently does not expressly exempt such reorganizations from the general procedures in part 5 for public notice, public availability, and hearings and other meetings (§§ 5.8, 5.9, and 5.11). When originally adopted, it was not the OCC's intent to apply these procedures to these

reorganizations, and, in general, the OCC has not required national banks to comply with these procedures. The OCC proposed to amend § 5.32 to make clear in the regulation that these procedural requirements do not apply unless the OCC concludes that an application presents significant and novel policy, supervisory, or other legal issues. This approach is consistent with procedural exceptions for conversions (§ 5.24), fiduciary powers (§ 5.26), operating subsidiaries (§ 5.34), bank service companies (§ 5.35), and change in asset composition (§ 5.53). The OCC did not receive any comments related to § 5.32, and we adopt it as proposed.

Business Combinations (§ 5.33)

Business combinations include mergers and consolidations, as well as certain purchase and assumption transactions. The OCC's regulations governing the application requirements and procedures for national banks engaging in business combinations are contained in 12 CFR 5.33. The regulations governing the application requirements and procedures for Federal savings associations engaging in business combinations are contained in 12 CFR 163.22. The statutes governing mergers and consolidations by national banks contain extensive specifications for their authority, the procedures the bank must follow, and the effect of the merger or consolidation.[62] Thus, there are few OCC regulations on these matters. By contrast, the statutes governing mergers and consolidations by Federal savings associations contain few provisions addressing these matters.[63] Accordingly, the OCC (and its predecessor regulators of Federal savings associations) has adopted extensive regulations addressing the authority of Federal savings associations to engage in mergers and consolidations, the procedures the savings

[62] See 12 U.S.C. 214 – 214d, 215 – 215b, and 215c, respectively.

[63] See 12 U.S.C. 1464(d)(3)(A) and 1467a(s).

association must follow, and the effect of the merger or consolidation. These rules are contained in 12 CFR part 146 for Federal mutual savings associations and in 12 CFR 152.13, 152.14, and 152.15 for Federal stock savings associations.

While these rules address a common subject, there are a number of differences between them. We proposed to harmonize the treatment of the business combination activities of national banks and Federal savings associations where consistent with underlying statutory authorities, to consolidate our regulations by amending 12 CFR 5.33 to apply to Federal savings associations, and to remove 12 CFR part 146 and 12 CFR 152.13, 152.14, 152.15, and 163.22.[64] These changes are intended to reduce regulatory duplication and promote fairness in supervision. We also proposed to include in § 5.33 some provisions from the Federal savings association application requirements and procedures, to make several other substantive changes in § 5.33, and to make a number of clarifying or technical amendments. As explained below, the OCC proposed to subject national banks and Federal savings associations to the same application requirements and procedures. In addition, we proposed to add to § 5.33 new paragraphs, based on 12 CFR part 146 and 12 CFR 152.13 and 152.14, that would continue to provide regulations addressing the authority of Federal savings associations to engage in mergers and consolidations, describe the procedures the savings association must follow, and explain the effect of the merger or consolidation.

We received three comment letters addressing proposed § 5.33. These comment letters and revised § 5.33 are discussed below.

[64] The removal of part 146 and § 163.22 also is discussed elsewhere in this preamble.

Scope. The final rule modifies the scope section, § 5.33(b), to remove the reference to a merger between a national bank and its nonbank affiliate because those transactions are now covered in the revised definition of "business combination," discussed below. The final rule also revises the language regarding notices to the OCC relating to when a national bank or Federal savings association is not the resulting institution to address situations in which the merger is with an entity that is not a "depository institution" as defined for purposes of § 5.33.[65] In addition, the final rule adds a footnote to the licensing requirements section indicating that some of the transactions that do not require an application under § 5.33 may require an application under 12 CFR 5.53 for a substantial asset change.

Definitions. Section 5.33(d) contains definitions. The final rule revises and reorganizes the definition of "business combination," § 5.33(d)(2), in several ways. First, § 5.33(d)(2)(i) now includes consolidations and mergers of Federal savings associations with state trust companies. Second, new § 5.33(d)(2)(ii) includes mergers and consolidations between a Federal savings association and a credit union in the definition of business combinations. Federal savings associations have authority to engage in these transactions under certain circumstances but national banks do not. Third, new § 5.33(d)(2)(iii) includes the provision in the current definition regarding mergers between a national bank and its nonbank affiliates. National banks have this merger authority, but Federal savings associations do not.

Fourth, new § 5.33(d)(2)(v) revises an existing provision in § 5.33(d)(2), which currently includes in the definition of business combination only the assumption of deposit liabilities from another depository institution, to also include the assumption, from a credit union or any other institution that is not FDIC-insured, of deposit accounts or other liabilities that will become

[65] Under § 5.3(f), "depository institution" means any bank or savings association.

deposits at the assuming national bank or Federal savings association. Section 163.22(c) requires an application by a Federal savings association in such cases.[66] The final rule keeps this requirement and extends it to national banks. This requirement will assist the OCC in monitoring acquisitions of deposit liabilities from outside the FDIC-insured system.

Fifth, the final rule includes the new term "other combination" in § 5.33(d)(10) to describe the following combinations that do not require application to the OCC under § 5.33: (1) mergers or consolidations where a national bank or Federal savings association is not the resulting institution; (2) the transfer of deposit liabilities by a national bank or Federal savings association to another insured depository institution, a credit union, or any other institution; and (3) acquisitions by a national bank or Federal savings association of all, or substantially all, of the assets or liabilities of any company not an insured depository institution (whole entity purchase and assumption transactions).

Currently, a Federal savings association has authority to engage in whole entity purchase and assumption transactions only with an entity with which it could engage in a consolidation or merger. These entities do not include a nonbank affiliate or other company. When a Federal savings association is permitted to engage in such transactions, it is required to file an application. A national bank has authority to engage in a whole entity purchase and assumption transaction without regard for whether it has the authority to consolidate or merge with the counterparty. The purchase and assumption of bank-permissible assets and liabilities is an exercise of a bank's power to engage in the business of banking under 12 U.S.C. 24(Seventh), not the power to combine organically with another institution, as in a merger. As proposed, the final rule adopts the same position regarding the power of a Federal savings association to

[66] Section 163.22(c) also is discussed elsewhere in this preamble in connection with 12 CFR 5.53.

engage in purchase and assumption transactions. Thus, a Federal savings association will have the authority to engage in a whole entity purchase and assumption without regard to whether it has authority to consolidate or merge with the counterparty because such transactions are included in the final rule at § 5.33(n)(2).

While national banks currently have this whole entity purchase and assumption authority, they are not required to apply to the OCC for approval unless it is a whole entity purchase and assumption with a depository institution. The proposed rule required an application for both national banks and Federal savings associations for a whole entity purchase and assumption that would result in a 25 percent or more increase in the asset size of the bank or savings association. We included this provision in the business combination rule because these transactions are similar to a merger. One commenter opposed this new application requirement, stating that the requirement is not connected to the integration of national banks and Federal savings association rules. We note, however, that Federal savings associations in current § 163.22(c) are subject to an application requirement for the purchase or sale in bulk not in the ordinary course of business. However, upon further consideration, we have amended this provision to streamline our rules. Because whole entity purchase and assumption transactions meeting the 25 percent asset size threshold may be subject to an application requirement under revised § 5.53(c)(1)(iii) as a substantial asset change, we find that the application requirement in § 5.33 for such transactions is not necessary. We therefore have removed these transactions from § 5.33 in the final rule by removing whole entity purchase and assumption transactions that result in a 25 percent or more increase in asset size from the definition of "business combination" in § 5.33(d)(2) and removing the asset size qualification from § 5.33(d)(10)(iv).

The OCC also is adding definitions of "credit union," "savings association," "state savings association," and "state trust company" in § 5.33(d)(6), (11), and (12), respectively. In addition, the final rule is revising the definition of "home state" included in the proposed rule to remove references to savings associations, as this term is only used with respect to national banks in § 5.33.

Policy factors. The final rule expressly adds to § 5.33(e)(1), in new paragraph (i), the general factors the OCC uses to evaluate all business combination applications, including both those the OCC reviews under the Bank Merger Act and those the OCC does not. These factors are: (1) the institution's capital level; (2) the conformity of the transaction to applicable law, regulation, and supervisory policies; (3) the purpose of the transaction; (4) the impact of the transaction on safety and soundness; and (5) the effect of the transaction on the institution's shareholders (or members in the case of a mutual savings association), depositors, other creditors, and customers. These factors all reflect current practice. Some of these factors are included in § 5.33(g)(4) and (5) now for a merger with a nonbank affiliate, in which the OCC does not review the transaction under the Bank Merger Act. Other factors are included in the Federal savings association regulations at § 163.22(d). Section 163.22(d)(1)(vi) also has factors relating to the fairness of and disclosure concerning the transaction and includes a detailed presentation of considerations involved in assessing the factor. The OCC believes it is not necessary to include this detailed material in the regulation. We believe the factor in § 5.33(e)(1)(i)(E) regarding the effect of the transaction on the institution's shareholders,(or members in the case of a mutual savings association), depositors, other creditors, and customers is sufficient to provide a basis to review such matters in appropriate cases.

The final rule includes three additional factors in § 5.33(e)(1)(ii) for applications in which the OCC reviews the transaction under the Bank Merger Act. First, the rule moves the money laundering factor included in current § 5.33(e)(1)(iii) to the Bank Merger Act paragraph because it is a factor in the Bank Merger Act. The rule adds factors relating to financial stability and deposit concentration limit because the Dodd-Frank Act added these factors to the Bank Merger Act.[67]

As in the current rule, proposed § 5.33(e)(1)(iii) provides that, when the OCC evaluates an application for a business combination under the CRA, the OCC also considers the performance of the applicant and the other depository institutions involved in the business combination in helping to meet the credit needs of the relevant communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices. One commenter recommended that the OCC require banks to demonstrate a record of strong community development and that this requirement should go beyond demonstrating a Satisfactory rating or above on the most recent CRA exam. This commenter also recommended that the OCC require banks to demonstrate a clear public benefit to both the current and expanded assessment areas, together with a formal CRA agreement with the local communities. The OCC declines to accept these recommendations. The commenter's proposed standards of a record of strong community development and clear public benefit are more stringent than the statutory requirement under the CRA. They are also different than the convenience and needs factor under the Bank Merger Act, 12 U.S.C. 1828(c)(5).

[67] Pub. L. 111-203, sections 604(f) and 623(a), 124 Stat. 1376, 1602, and 1634 (2010).

Another commenter stated that, in considering office closings in their assessment of the convenience and needs and CRA factors as part of a merger application review, the Federal banking agencies should recognize technological advancements that have led consumers to make greater use of alternative means to obtain products and services, including the use of mobile phones. The commenter states that the agencies should balance the consideration of office closings with consideration of an institution's use of alternative technologies that serve the public. We agree that an office closing does not necessarily result in a negative impact on service to the community given the increased use of alternate systems for delivering retail banking services. In assessing the probable effects of the business combination on the convenience and needs of the community to be served, the OCC would consider alternative systems for delivering retail banking services to the extent that the alternative delivery systems are available and effective in providing financial services to low- and moderate-income geographies and individuals. Furthermore, one reason the OCC's review of a merger application focuses on office closings is because of the branch closing procedural requirements of 12 U.S.C. 1831r-1. We therefore decline to make any change to our regulations on this point.

The final rule also clarifies the information the applicant must include in its application. Section 5.33(e)(2) currently requires an applicant to disclose the location of any branch it will acquire and retain in a business combination. The final rule provides that this disclosure include the location of any branches that are approved but not yet opened. Revised § 5.33(e)(3) adds a financial subsidiary investment, bank service company investment, service corporation investment, and other equity investment to the current requirement to identify subsidiaries and provide an analysis of the permissibility for the national bank or Federal savings association to hold the subsidiary or investment. This requirement reflects the current practice of the OCC to

review the legal permissibility for the resulting national bank or Federal savings association to continue to hold these other investments when evaluating a business combination application.

In addition, the final rule adds Federal savings associations to the provision in § 5.33(e)(5) that allows banks to retain nonconforming assets for a limited period of time after consummation of a business combination. The final rule also adds a new paragraph (e)(5)(ii) applicable to Federal savings associations to address provisions in the HOLA regarding certain nonconforming assets.

In the provision regarding the exercise of fiduciary powers by the resulting national bank or Federal savings association, § 5.33(e)(6), the final rule adds a new paragraph (e)(6)(ii) to clarify that if the applicant intends to exercise fiduciary powers after the combination and requires OCC approval for such powers, it must include in the business combination application the information required in § 5.26 for a request for fiduciary powers. This requirement reflects current practice.

In the provision regarding the expiration of approval, § 5.33(e)(7), the final rule shortens the time an approval expires if the transaction has not been consummated from one year to six months, and adds a provision under which the OCC can extend the six-month period.

Exceptions to rules of general procedure. Section 5.33(f) contains the exceptions to the rules of general applicability for filings under § 5.33. Paragraph (f)(1) addresses filings in which a national bank (and, as revised, a Federal savings association) is the applicant. The final rule amends paragraph (f)(1) to clarify that the requirement of public notice and comment apply only when the application is subject to a public notice requirement under the Bank Merger Act or other applicable statute that requires notice to the public. In such cases, the statutory requirements apply. In other cases, the public notice and comment provisions in §§ 5.8, 5.10, and

5.11 do not apply unless the OCC concludes a particular application presents significant or novel policy, supervisory, or legal issues.[68] Applying this provision to Federal savings associations results in a change for Federal savings associations with respect to the frequency and timing of publication for transactions that are subject to the Bank Merger Act. Section 163.22(e)(1)(i) requires an initial publication in a newspaper and then publication on a weekly basis during the public comment period. For national banks, the OCC requires an initial newspaper publication and two subsequent publications at intervals during the standard 30-day public comment period, as provided in the Comptroller's Licensing Manual.

One commenter requested that we allow other forms of public notice of proposed transactions in addition to the newspaper notice required by 12 U.S.C. 1828(c)(3)(D), such as notice on an institution's Web site, and specifically requested that the OCC endorse a statutory amendment to the Bank Merger Act that permits alternative forms of public notice. We note that providing additional alternative forms of notice does not require a change in the law or our rules. An institution may provide notice on its Web site on its own initiative if it so chooses and thereby provide for increased notice opportunities to the public. With respect to the requested statutory change, we believe that replacing the newspaper publication with alternative means could reduce the availability of the notice to the public. However, we will continue to review this proposal as we review other EGRPRA requests for statutory changes.

[68] Section 5.33(f) currently includes a list of several other statutory or regulatory requirements for publication in connection with certain mergers or consolidations that also except those transactions from the one-time publication of notice requirement of § 5.8(a). However, those provisions concern publication of notice of the shareholders' meeting being called to vote on the proposed merger or consolidation. They are not notices to the public inviting comment on the merger or consolidation application. Accordingly, the OCC is removing these referenced provisions in revised § 5.33(f)(1)(i).

Paragraph (f)(1)(ii) continues the current provisions under which a merger between a national bank and its nonbank affiliate is excepted from public notice and comment. Such mergers are merely internal reorganizations of the entities' existing operations.

Section 5.33(f)(3) addresses filings in which a national bank (and as revised, a Federal savings association) is the target company and will not be the resulting institution. The final rule clarifies this provision so that it no longer includes a Federal savings association as a resulting institution, as Federal savings associations now apply to the OCC under revised § 5.33(g)(3). The final rule also adds credit unions to this section because a merger or consolidation of a Federal savings association into a credit union may now be within the scope of § 5.33. In addition, the final rule removes §§ 5.2 (rules of general applicability) and 5.5 (fees) from the list of sections that do not apply to § 5.33(g)(6) and (g)(7), as they include general provisions that may be useful to apply in some situations.

Provisions governing consolidations and mergers of a national bank with other national banks and state banks. The final rule amends § 5.33(g)(1) (merger or consolidation of a national bank or a state bank into a national bank) to require that a national bank that will not be the resulting bank in a merger or consolidation with another national bank must file a notice to the OCC under § 5.33(k). This notice, which also is required whenever a national bank or Federal savings association merges or consolidates into another institution, provides the OCC information about the target national bank's compliance with requirements to combine into another bank, and describes the steps for the national bank to end its separate existence. Section 5.33(k) is discussed further below.

The final rule amends § 5.33(g)(2) (merger or consolidation of a Federal savings association into a national bank) to reflect that the OCC now is the regulator of Federal savings

associations. First, § 5.33(g)(2)(i)(B) includes requirements similar to those in 12 CFR part 146 and 12 CFR 152.13 and 163.22 (by referring to § 5.33(n) and (o)). In addition, § 5.33(g)(2)(i)(B) includes a provision under which a whole purchase and assumption of the target Federal savings association is treated as a consolidation for the Federal savings association, thus applying the procedural requirements in paragraph (o). The current regulations, at 12 CFR part 146 and 12 CFR 152.13, apply these requirements to these transactions through the definition of "combination" in § 152.13(b)(1), which includes a whole purchase and assumption transaction between depository institutions.

Second, because the OCC now has regulatory authority over both the national bank and the Federal savings association, the final rule amends the provision in § 5.33(g)(2)(ii), which currently provides that the OCC may conduct an appraisal of dissenters' shares of stock in a national bank involved in a consolidation with a Federal savings association if all the parties agree, to require that the OCC conduct this appraisal. The final rule also redesignates this provision as § 5.33(g)(2)(ii)(C).

Third, the final rule adds new § 5.33(g)(2)(ii)(A) and (B) to set out the process for appraisal of dissenters' shares of stock in a Federal stock savings association involved in a consolidation with or merger into a national bank. Consolidations and mergers of national and state banks into a national bank are governed by 12 U.S.C. 215 and 215a. These statutes include provisions on dissenters' rights. Consolidations and mergers of Federal savings associations into national banks are authorized under 12 U.S.C. 215c, but the statute has no provisions addressing dissenters' rights. Applications in which there are dissenting shareholders and the appraisal process is used are rare. The basic frameworks of the national bank and Federal savings association processes in the current rules are similar. In the interest of simplicity of

administration and similar treatment for each type of institution, the OCC prefers to use only one dissenters' rights process. Because the process governing national bank dissenters' rights included in current § 5.33 for national banks is required by 12 U.S.C. 215 and 215a, the final rule applies this process to transactions in which a Federal savings association is merging or consolidating into a national bank rather than continuing the regulatory dissenters' rights provision in 12 CFR 152.14. However, the final rule makes one change to this process. Under the statutes, the bank is required to bear all costs.[69] Under § 152.14(c)(9), the OCC may apportion costs. For transactions in which the process for dissenters' rights is not governed by statute, such as transactions governed by § 5.33(g)(2)(ii)(C), the final rule includes the authority for the OCC to apportion costs among the parties for both participating Federal savings associations and participating national banks.

Section 5.33(g)(2)(iii) includes a requirement that the consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution. This requirement is based on provisions in §§ 146.2(b)(9) and 152.13(f)(9). Although not currently in § 5.33, it is a requirement for national banks as discussed in the Comptroller's Licensing Manual.

New § 5.33(g)(3) addresses consolidations and mergers of other institutions into a Federal savings association.[70] This section requires application to the OCC and, in § 5.33(g)(3)(i)(A) (referring to § 5.33(n) and (o)), requires the Federal savings association to

[69] See 12 U.S.C. 214a(b), 215(d), and 215a(d).

[70] The final rule redesignates the provisions in current § 5.33(g)(3) that address a consolidation or merger of a national bank into a state chartered depository institution as § 5.33(g)(6). The provisions in current § 5.33(g)(3) that address a consolidation or merger of a national bank into a Federal savings association remain here in new § 5.33(g)(3) with modifications, as discussed in the text.

comply with requirements and procedures similar to those in 12 CFR part 146 and 12 CFR 152.13 and 163.22. Section 5.33(g)(3)(i)(A) also provides that if a combination involves a whole purchase and assumption of a Federal savings association, then the combination is be treated as a consolidation for participating Federal savings associations and the procedural requirements in paragraph (o) will apply. As discussed above, the current regulations, at 12 CFR part 146 and 12 CFR 152.13, apply these requirements to such transactions through the definition of "combination" in § 152.13(b)(1), which includes a whole purchase and assumption transaction between depository institutions.

Section 5.33(g)(3)(i)(B)(1) continues the provisions in current § 5.33(g)(3)(iii)(A) by requiring a target national bank to follow the procedures of 12 U.S.C. 214a and 12 U.S.C. 214c, as if the Federal savings association were a state bank. Section 5.33(g)(3)(i)(B)(2) continues the provisions in current § 5.33(g)(3)(iii)(B), under which the OCC may conduct an appraisal of dissenters' shares of stock in a target national bank involved in a merger or consolidation with a Federal savings association if all the parties agree. However, the final rule makes the appraisal of dissenters' rights in § 5.33(g)(3)(i)(B)(2) a required process because the OCC now has regulatory authority over both the national bank and the Federal savings association involved in the transaction. As discussed above, because we are applying this process by regulation to types of transactions that do not have statutory dissenters' rights provisions, the final rule includes the authority of the OCC to apportion appraisal costs between the institution and dissenters.

Section 5.33(g)(3)(i)(C) sets out the process for appraisal of dissenters' shares of stock in a Federal stock savings association involved in a consolidation or merger into another Federal savings association. In applications in which a Federal savings association is merging into another Federal savings association, the final rule applies the statutory provisions governing

national bank dissenters' rights in 12 U.S.C. 214a to Federal savings associations, as if the Federal savings association were a national bank merging into a state bank under section 214a. We are using the national bank dissenters' right process rather than continuing the regulatory dissenters' rights provision in 12 CFR 152.14 for the reasons discussed above. As above, because the process is being applied in these situations by regulation, not statute, the final rule includes a cost allocation provision. The final rule also includes the requirement from 12 U.S.C. 214a(b) that the plan of merger or consolidation must provide the manner of disposing of the shares of the resulting Federal savings association not taken by the dissenting shareholders. This requirement is a change from § 152.14(c)(11), under which such shares shall have the status of authorized and unissued shares of the resulting association. The plan of merger or consolidation could still provide such status for these shares, but such status is no longer mandatory.

Section 5.33(g)(3)(i)(D) provides that a state bank, state savings association or credit union that engages in a consolidation or merger into a Federal savings association follows the procedures and dissenters' rights process set out for such transactions in the law of the state or other jurisdiction under which it is organized. This provision is similar to the current provisions in § 5.33(g)(4) and (g)(5) for mergers between a national bank and its nonbank affiliate.

Section 5.33(g)(3)(ii) includes a requirement that the consolidation or merger agreement must address the effect upon and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution. This requirement is based on provisions in §§ 146.2(b)(9) and 152.13(f)(9). Although not currently in § 5.33, it is a requirement for national banks as discussed in the Comptroller's Licensing Manual.

Sections 5.33(g)(4) and (g)(5) address mergers between a national bank and its nonbank subsidiary or affiliate. Section 5.33(g)(4) covers mergers into the national bank; § 5.33(g)(5)

covers mergers into the nonbank subsidiary or affiliate. They implement a statute applicable only to national banks, not Federal savings associations.[71] The final rule amends § 5.33(g)(4), to clarify that the transaction is subject to review by the FDIC under the Bank Merger Act only when the national bank is insured. The final rule also removes the factors the OCC considers in reviewing these applications from § 5.33(g)(4)(i) and (g)(5)(i). These factors no longer are needed in these provisions because the final rule adds them to § 5.33(e)(1)(i) and applies them to all business combinations.

Section 5.33(g)(6) addresses a consolidation or merger under 12 U.S.C. 214a of a national bank with a state bank resulting in a state bank (as defined in 12 U.S.C. 214(a)). This new paragraph is based on the portions of current § 5.33(g)(3) that address a consolidation or merger of a national bank into a state bank.[72] The final rule also adds express provisions on procedures and dissenters' rights. These requirements are statutory and were implied in current § 5.33(g)(3)(i). The final rule moves the provisions on termination of charter and notice to the OCC in current § 5.33(g)(3)(i) and (ii) to new § 5.33(k). In § 5.33(g)(6)(iv), the final rule includes a requirement that the consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution. This requirement is based on provisions in §§ 146.2(b)(9) and 152.13(f)(9). Although not currently in § 5.33, it is a requirement for national banks as discussed in the Comptroller's Licensing Manual.

[71] See 12 U.S.C. 215a-3.

[72] The portions of current § 5.33(g)(3) that address a consolidation or merger of a national bank into a Federal savings association remain in revised § 5.33(g)(3).

The final rule adds a new § 5.33(g)(7), similar to proposed § 5.33(g)(6), to address a consolidation or merger of a Federal savings association into a state bank, state savings bank, state savings association, state trust company, or credit union. Under § 5.33(g)(7)(i), such transactions, where permissible, require only a notice to the OCC, not application and approval. This requirement is a change for Federal savings associations because, under § 163.22(c), an application is required for a combination with an uninsured bank, savings association or trust company or a credit union. Section 5.33(g)(7)(ii) addresses the procedures Federal savings association must follow to engage in the consolidation or merger and requires the association to follow the provisions of § 5.33(n) and (o), which are based on provisions in 12 CFR part 146 and 12 CFR 152.13 and 163.22. In addition, § 5.33(g)(7)(ii) includes a provision under which a whole purchase and assumption of the target Federal savings association is treated as a consolidation for the Federal savings association so that the procedural requirements in paragraph (o) apply. The current regulations, at 12 CFR part 146 and 12 CFR 152.13, apply these requirements to such transactions now through the definition of "combination" in § 152.13(b)(1), which includes a whole purchase and assumption transaction between depository institutions, in addition to a consolidation and a merger.

Section 5.33(g)(7)(iii) sets out the process for appraisal of dissenters' shares of stock in a Federal stock savings association involved in a consolidation or merger into a state bank, state savings bank, state savings association, state trust company, or credit union. The process is similar to the process included in § 5.33(g)(3)(i)(C), described above, for appraisal of dissenters' shares of stock in a Federal stock savings association involved in a consolidation or merger into a another Federal savings association. Section 5.33(g)(7)(iv) includes a requirement that the consolidation or merger agreement must address the effect upon, and the terms of the assumption

of, any liquidation account of any other participating institution by the resulting institution. This requirement is based on provisions in §§ 146.2(b)(9) and 152.13(f)(9). Although not currently in § 5.33, it is a requirement for national banks as discussed in the Comptroller's Licensing Manual.

Expedited review. Section 5.33(i) provides for expedited review of business reorganizations (defined in § 5.33(d)(3)) and for streamlined applications for eligible business organizations (described in § 5.33(j)). The proposal adds Federal savings associations to § 5.33(d)(3) and (j) so that Federal savings association applications that meet the requirements are eligible for expedited review. Under expedited review, an application is deemed approved as of the later of the 45th day after the application was filed or the 15th day after the close of the comment period, unless the OCC notifies the applicant that the application is not eligible for expedited review or the expedited review process is extended. Business reorganizations eligible for expedited review are (1) a business combination between eligible depository institutions owned by the same holding company, or (2) a business combination between an eligible bank or savings association and an interim national bank or interim Federal savings association that is being effected to form a holding company that would own the eligible bank or savings association. For both business reorganizations eligible for expedited review and for streamlined applications, the acquiring bank must be an eligible bank and the resulting institution must be well capitalized. There are several types of streamlined applications. The different types of streamlined applications vary depending on the other institutions' status as eligible institutions, the amount by which the resulting institution would grow in size, and, in some cases, a prefiling approval from the OCC to use a streamlined application.

Under the final rule, expedited review under § 5.33(j) replaces the automatic approval provision in § 163.22(f) for Federal savings associations. Under §163.22(f), an application is

deemed to be approved automatically 30 days after the OCC sends the applicant a written notice that the application is complete. An application is removed from the automatic approval process in a number of specified circumstances. Many of these circumstances are the same as those that would cause an application not to be eligible for expedited review under § 5.33(j). However, the size-based limit included in § 163.22(f) is more restrictive than eligibility for expedited review as a business reorganization or streamlined application in § 5.33. Under § 163.22(f)(10), an application does not qualify for the automatic approval process if the acquiring institution has assets of $1 billion or more and proposes to acquire assets of $1 billion or more. Business reorganizations have no size limit. Streamlined applications under § 5.33(j) have limits based on the relative size of the acquiring institution and the assets to be acquired but do not have a fixed maximum dollar amount limit on the size. In addition, under § 163.22(f) a number of the other disqualifying conditions are based on the competitive impact of the proposed combination, creating safe harbors that the proposal must meet in order to qualify for the automatic approval process. The OCC believes it is not necessary to include competitive impact thresholds in the regulation. The OCC will notify the applicant that the application is not eligible for expedited review if it raises potential competitive concerns. Accordingly, the final rule does not include the automatic approval process of § 163.22(f), but does add one of the disqualifying factors set forth in § 163.22(f) to the streamlined application provision. Specifically, under § 5.33(j)(2), an applicant would not qualify for a streamlined business combination application if the transaction is part of a mutual to stock conversion under 12 CFR part 192.

We received one comment on this expedited process advocating the removal of expedited review from the regulation, stating that no bank should be able to merge without explicitly outlining the public benefits that will result from the merger. This commenter also notes that

stating that the merger will not impede the bank's ability to comply with the CRA should not qualify as a plan under the CRA. The OCC disagrees with this comment. Allowing a merger only if explicit public benefits exist would represent a policy change and is more stringent than the statutory requirement. Furthermore, the OCC will remove the application from expedited processing if the application, or adverse comments regarding the application, presents a significant CRA concern. Finally, the OCC does not believe expedited processing should be withheld from the many filings where the CRA is not a concern.

The same commenter also requested that we actively continue to reach out to community organizations in the area affected by the transaction, through interviews and public hearings, to evaluate fully how the bank is addressing community needs and how it will do more after the merger. We note that in conjunction with the Federal Reserve Board the OCC has recently held a public meeting regarding a bank merger application and has periodically participated in public hearings or meetings sponsored by the Federal Reserve Board. The OCC will continue to consider carefully each application on the basis of all relevant factors when determining whether to grant a request for a public hearing, pursuant to § 5.11.

Exit Notice. The final rule adds a new § 5.33(k) for notices to be filed when a national bank or Federal savings association is consolidating or merging with another national bank or Federal savings association or with a state chartered institution or credit union and the target national bank or Federal savings association is not the resulting institution. This section also includes the steps an institution takes to terminate its status as a national bank or Federal savings association. This new provision gathers in one place material from current §§ 5.33(g)(3), 163.22(b) and 163.22(h)(1)(i) on filing the notice and the timing of the filing, material from § 163.22(h)(1)(i) and (ii) on the content of the notice, and material from §§ 5.33(g)(3), 146.2(g),

and 152.13(k) on termination of the institution's status as a national bank or Federal savings association. There is no change for Federal savings associations. However, national banks are required to include more information in the notice than currently required in § 5.33. This additional information includes a short description of the transaction or a copy of the filing made by the acquiring institution to its regulators for approval of the transaction and information showing the target national bank or Federal savings association has complied with the requirements to engage in the transaction (e.g., board and shareholder approval). The OCC is adding this requirement to monitor the transaction to ensure that the national bank or Federal savings association complies with applicable law. The institution should have compiled this information already and therefore this change likely will result in minimal additional burden to the institution. Finally, § 5.33(k)(5) provides that an institution must submit a new notice if the business combination contemplated by the notice has not occurred within six months after receipt of the notice unless the OCC grants an extension of time. This requirement is in § 163.22(h)(1)(ii), except that the time period is shortened in the final rule from one year to six months to be consistent with the expiration period for OCC approvals under § 5.33(e)(7). This expiration provision is new for national banks. After six months the information in the original notice could be out of date. Moreover, a delay in consummating the transaction may indicate changes in the condition or circumstances of the parties. Treating the notice as having expired and requiring a new notice is similar to the requirement in various sections of part 5 that an approval expires after a specified amount of time.

Transfer of assets and liabilities to the resulting institution. The final rule adds new § 5.33(l) to address corporate succession, i.e. the transfer of assets, liabilities, rights, franchises, interests, and fiduciary appointments to the resulting national bank or Federal savings

association. It reflects the corporate succession provisions in national bank statutes[73] and continues the substance of current regulations providing succession for a Federal savings association when it is the resulting institution in a consolidation or merger.[74]

Certification of combination; effective date. The final rule adds a new § 5.33(m) to address the certification of a consolidation or merger and documentation of its effective date. Specifically, § 5.33(m) requires the applicant to submit information showing that all steps needed to complete the transaction have been met and to notify the OCC of the planned consummation date. The OCC would then issue a certification letter documenting that the consolidation or merger occurred and specifying the effective date. This new section reflects current OCC practice for national banks. The new section accomplishes through an applicant notification letter and issuance of an OCC certification letter what § 152.13(j) does in requiring the applicant to submit two sets of "Articles of Combination" that are filed with the OCC, and then endorsed by the OCC, with one set returned to the applicant with a specification of the effective date. The difference in forms and terminology does not represent a change in substance for Federal savings associations.

Authority and limits on business combinations and other transactions by Federal savings associations. The final rule adds a new § 5.33(n), which includes provisions in §§ 146.2 and 152.13 that set out the authority for Federal savings associations to engage in various types of business combinations and the limitations on that authority. Section 5.33(n)(1) is based on § 152.13(a) and provides that Federal savings associations may enter into business combinations

[73] 12 U.S.C. 214b, 215(e) and 215a(e).

[74] 12 CFR 146.3 (Federal mutual savings associations); 12 CFR 152.13(l) (stock Federal savings associations).

only in accordance with § 5.33, the Bank Merger Act, and sections (5)(d)(3)(A) and 10(s) of the HOLA. Section 5.33(n)(2) is based on §§ 146.2(a) and 152.13(c), which provide that a Federal savings association may consolidate or merge with another depository institution, a state trust company or a credit union. However, in a merger or consolidation with a mutual Federal savings association, a mutual savings association must be the resulting institution. Section 5.33(n)(2) expands this authority to include the other business combinations listed in § 5.33(d)(2)(iv) and (v) and the other combinations listed in § 5.33(d)(10), including whole entity purchase and assumptions with any entity. Also, the final rule does not include the requirement in §§ 146.2(a) and 152.13(c) with respect to Federal Home Loan Bank membership because membership in a Federal Home Loan Bank is no longer mandatory. Section 5.33(n)(3), which provides requirements for Federal mutual savings association boards of directors, is based on § 146.2(d). Section 5.33(n)(4),which provides requirements for notifying accountholders of the transaction, is based on § 163.22(e)(2). The final rule makes a conforming change to this provision based on the final rule's amendment of the definition of business combination, discussed above.

Procedural requirements for Federal savings association approval of combinations. The final rule adds a new § 5.33(o), which includes various provisions in §§ 146.2 and 152.13 that set out the procedural requirements for board, shareholder (in the case of stock savings associations), and, if required by the OCC, voting member (in the case of mutual savings associations) approval of business combinations involving the Federal savings association. As noted earlier, §§ 146.2 and 152.13 use the term "combination" to include a whole purchase and assumption transaction, as well as a consolidation or merger, and therefore apply these procedural requirements to those transactions. Section 5.33 uses the term business combination more broadly. In order to avoid applying the requirements to a broader set of transactions and

achieve the same result as §§ 146.2 and 152.13, the final rule uses "consolidation or merger" instead of "combination" in § 5.33(o), and requires in § 5.33(g)(2), (g)(3), and (g)(7) that a whole purchase and assumption transaction be treated as a consolidation by a Federal savings association for purposes of applying the requirements of § 5.33(o).

Section 5.33(o)(1) is based on §§ 146.2(b) and 152.13(e), except that the final rule reduces the required majority for the board of directors approval for Federal stock savings associations from two-thirds to a majority. The final rule does not reduce the requirement for Federal mutual savings associations. The board of directors vote is the principal vote and there typically is not a vote of the voting members, unless the OCC requires it as provided in § 5.33(o)(4). The final rule does not include in § 5.33 the provisions in §§ 146.2(b)(1) and 152.13(f) that require the savings association to include all terms regarding the combination in a combination agreement and to set out in some detail provisions that the agreement must contain. OCC practice with respect to national banks has not been to include these requirements in detailed regulations, as the drafting of a merger agreement is a business matter for the participating parties. However, we note that the Comptroller's Licensing Manual includes sample agreements.

Operating Subsidiaries of a National Bank (§ 5.34)

The proposal included a number of changes to the provisions governing operating subsidiaries of national banks set forth at 12 CFR 5.34. Some of these changes incorporated elements of the Federal savings association operating subsidiary regulations currently contained in 12 CFR part 159 in order to promote consistency between the regulations for operating

subsidiaries for both charters.[75] A number of other changes clarified existing provisions in § 5.34.

The OCC is adopting the amendments to § 5.34 as proposed with one clarifying change related to joint ventures. A summary of changes to § 5.34 and the comments we received on this provision are set forth below.

Scope. The final rule amends the scope section in § 5.34(c) by including language from § 159.1(a) that provides that the OCC may, at any time, limit a national bank's investment in an operating subsidiary, or may limit or refuse to permit any activities in an operating subsidiary, for supervisory, legal, or safety and soundness reasons. While the OCC currently has this authority, we are clarifying the regulation by explicitly including this language.

Standards and requirements. The final rule adds a new § 5.34(e)(1)(ii), which provides that before beginning business an operating subsidiary must comply with other laws applicable to it, including applicable licensing or registration requirements. This is not a new requirement for national banks. The final rule also clarifies that compliance with § 5.34 and approval of an operating subsidiary by the OCC are not the only requirements that must be met to establish an operating subsidiary.

Section 5.34(e)(2) provides the criteria for a subsidiary to qualify as a national bank operating subsidiary. Section 5.34(e)(2)(i)(A) currently states that the national bank must have the ability to control the management and operations of the subsidiary. The proposed rule clarified this provision by adding that no other person or entity has the ability to control the

[75] Elsewhere in this final rule, we add a new § 5.38 to part 5 of our regulations to address Federal savings association operating subsidiaries. New § 5.38 is based on § 5.34, and many of its provisions are nearly identical or very similar. However, the rules reflect some differences between national bank operating subsidiaries and Federal savings association operating subsidiaries based on certain statutory provisions. The similarities and differences are discussed in the § 5.38 portion of this preamble.

management or operations of the subsidiary. This statement reflects current OCC practice regarding national bank operating subsidiaries and is based on a provision in § 159.3(c)(1). We added it to be consistent with that provision and the new Federal savings association operating subsidiary regulation.

We received two comments on this provision regarding control. One commenter stated that the current requirements already ensure the banks have sufficient control and that this new provision will create uncertainty for joint venture arrangements organized as national bank operating subsidiaries. Another commenter stated that the proposed language could be read to suggest that a bank must own 100 percent of the voting stock of an entity for that entity to be an operating subsidiary. This reading would prohibit a bank from acquiring a controlling interest in a joint venture as an operating subsidiary if another entity or person owns or controls a minority interest in the voting shares of the entity. The commenter noted that this would significantly depart from OCC precedent and therefore requests the OCC to clarify that a national bank may continue to invest in a joint venture or partnership that qualifies as an operating subsidiary under § 5.34(e)(2) if the bank has the ability to control the management and operations of the subsidiary and no other party controls more than 50 percent of the voting (or similar type of controlling) interest in the subsidiary.

As noted above, the proposed change was based on a provision in the Federal savings association rule and reflects current practice regarding national bank operating subsidiaries. However, to address the commenter's concern that this statement could be interpreted overly broadly, the final rule replaces the proposed language with the following statement: "and no other person or entity exercises effective operating control over the subsidiary or has the ability to influence the subsidiary's operations to an extent equal to or greater than that of the bank."

This language is taken in part from § 159.2, and we believe that it implements more clearly our intent that, for a joint venture company to qualify as an operating subsidiary, no other investor in the joint venture may have control or influence over the company that is equal to or more than the national bank.[76] The final rule makes a similar, conforming change to § 5.34(e)(5)(ii)(A)(3) in the context of joint ventures qualifying for expedited review, as discussed below.

The final rule also revises § 5.34(e)(2)(i)(B) to clarify that where the bank owns less than 50 percent of an operating subsidiary (but still controls it), no other party can own a greater percentage than the bank. This reflects current OCC practice set out in the Comptroller's Licensing Manual.

In addition, the final rule adds community development corporation subsidiaries under 12 U.S.C. 24(Eleventh) and part 24 as an additional example of the type of operating subsidiary not subject to § 5.34. The proposed rule did not include this example. We have added it to the final rule for clarification purposes.

Furthermore, the final rule adds a new § 5.34(e)(2)(iii) to clarify that the national bank must have reasonable policies and procedures to preserve the limited liability of the bank and its operating subsidiaries. We adapted this provision from § 159.10 and it is consistent with the new operating subsidiary rule for Federal savings associations. It clarifies that the requirement that the bank must control the operating subsidiary does not mean they should be treated as a single entity.

We received one comment on new § 5.34(e)(2)(iii). This commenter stated that the proposal did not provide sufficient analysis to explain why national banks should be subject to a

[76] If this requirement of control by the national bank is not met, the bank's investment may still be permissible as a noncontrolling investment under 12 CFR 5.36.

new policies and procedures requirements and does not believe that this is a clarifying change. However, we believe that this requirement is necessary so that the bank and subsidiary are not treated as a single entity even if the bank controls the subsidiary. We also note that this requirement and the requirement in the Federal savings association operating subsidiary rule (§ 5.38) is much simpler and less burdensome than the current savings association rule requirements for separate corporate identity in 12 CFR 159.10. We therefore decline to make the suggested changes.

Current § 5.34(e)(3) provides that a national bank's operating subsidiary conducts activities authorized under § 5.34 pursuant to the same authorization, terms and conditions that apply to the conduct of the parent national bank, except as otherwise provided under sections 1044 and 1045 of the Dodd-Frank Act. The final rule revises § 5.34(e)(3) to provide that a national bank's operating subsidiary conducts these activities unless otherwise specifically provided by regulation or published OCC policy, in addition to as provided by statute, including 1044 and 1045 of the Dodd-Frank Act. This change clarifies that there are other instances where different treatment of the operating subsidiary and the parent national bank may occur in addition to those regarding the application of state law addressed by the Dodd-Frank Act.

Current § 5.34(e)(5)(i) provides that national banks meeting certain requirements are not required to file a prior application but may give after-the-fact notice when establishing or acquiring an operating subsidiary or performing a new activity in an existing operating subsidiary. Current § 5.34(e)(5)(ii) requires a prior application and OCC approval in other instances and sets out the information that must be included in the filing. The final rule reverses the order of the application and notice provisions so that the application provision is first. This change simplifies and clarifies the opening language of each paragraph. It also makes the order

of these provisions the same as that of the similar provisions in the regulation for operating subsidiaries of Federal savings associations. The final rule also makes technical revisions in § 5.34(e)(5)(ii)(A)(3), as redesignated in the final rule (current § 5.34(e)(5)(i)(A)(3)), to account for instances in which the operating subsidiary is a limited liability company, and makes other clarifying and technical changes in redesignated § 5.34(e)(5)(i) through (v).

Current § 5.34(e)(5)(vi) provides that no application or notice is required for a national bank that is well managed and adequately capitalized or well capitalized to acquire or establish an operating subsidiary or to perform a new activity in an existing operating subsidiary, if the activities of the new subsidiary are limited to those previously reported to the OCC in connection with a prior operating subsidiary and certain other requirements are met. The final rule changes the requirement from adequately capitalized to well capitalized to be consistent with the well capitalized requirement to be eligible for the after-the-fact notice procedure.

The final rule also amends § 5.34(e)(5)(vii) to codify the OCC's position that when a national bank operating subsidiary wishes to act as a fiduciary, its national bank parent must have fiduciary powers and the operating subsidiary also must have its own fiduciary powers under the law applicable to the subsidiary. The operating subsidiary may not rely on the national bank's fiduciary powers. Further, this provision explicitly provides that when an operating subsidiary that exercises investment discretion on behalf of customers or provides investment advice for a fee is a registered investment adviser, it is not necessary for its national bank parent to have fiduciary powers. These provisions reflect OCC practice as set out in the Comptroller's Licensing Manual.

Approvals. The final rule adds a new § 5.34(e)(5)(viii) to provide that OCC approvals granted under § 5.34 expire within 12 months if a national bank has not established or acquired

the operating subsidiary or commenced the new activity in an existing operating subsidiary, unless the OCC shortens or extends the time period. One commenter stated that this 12-month expiration for OCC approvals is a new substantive requirement for both national banks and Federal savings associations. We disagree. This provision is included currently in operating subsidiary approval letters and, therefore, is not a new concept for national banks. We also note that this timing is similar to provisions in other sections of part 5 regarding the expiration of an OCC approval. Furthermore, setting a time limit on approvals is necessary to ensure that the approval reflects the current status of the applicant and that the application is not stale. For these reasons, we decline to make any changes to this provision.

National Bank and Federal Savings Association Investments in Service Companies (§ 5.35)

Twelve CFR 5.35 addresses national bank investments in bank service companies pursuant to the Bank Service Company Act, 12 U.S.C. 1861-1867. The Bank Service Company Act was amended in 2006 to permit Federal savings associations to invest in bank service companies.[77] The OTS did not adopt implementing regulations.

The authority of Federal savings associations to invest in bank service companies under the Bank Service Company Act is separate from the authority to invest in service corporations under section 5(c)(4)(B) of the HOLA.[78] Accordingly, a Federal savings association's investments in bank service companies are not included in the investment limits for service corporations in section 5(c)(4)(B). They instead are subject to the separate limits of the Bank Service Company Act, codified at 12 U.S.C. 1862. The OCC proposed to amend § 5.35 to make it applicable to Federal savings associations, to state explicitly certain authority of the OCC, to

[77] Pub. L. 109-351, section 602, 120 Stat. 1966, 1967 (2006).

[78] 12 U.S.C. 1464(c)(4)(B).

conform definitions to Dodd-Frank Act changes, and to make technical changes. The changes for Federal savings associations are not likely to be significant because Federal savings associations are already subject to the statute, and the filing procedures in § 5.35 follow the statute.

Specifically, the OCC proposed to amend the scope section in § 5.35(c) by including language, based on 12 CFR 159.1(a) to provide that the OCC may, for supervisory, legal, or safety and soundness reasons, limit at any time a national bank's or Federal savings association's investment in a bank service company or limit or refuse to permit any activities of any bank service company for which a national bank or Federal savings association is the principal investor. We did not receive any comments on this change and adopt it as proposed.

In addition, the OCC is adopting the proposed technical amendment to the definition of the term "depository institution" in § 5.35(d)(3) to conform it to 12 U.S.C. 1861(b)(4) as amended by section 357 of the Dodd-Frank Act. Section 357 of the Dodd-Frank Act also amended 12 U.S.C. 1861(b)(5) by striking the definition of "insured depository institution" and adding in its place a second definition of "depository institution" that refers to section 3 of the FDI Act. The OCC believes that the deletion of the term "insured depository institution" was inadvertent and not intended to effect a change because the statute continues to use this term throughout. Therefore, we have not changed the definition of "insured depository institution" in § 5.35(d)(4).

The OCC also proposed to change the filing and review process in § 5.35(f)(2). That section currently provides for an after-the-fact notice with no requirement for OCC approval before the bank makes the investment if specified eligibility conditions are met. We proposed to change it to a prior notice with OCC approval through an expedited review process, under which the notice is deemed approved on the 30th day after filing unless the OCC notifies the filer

otherwise. We received one comment on this change. This commenter stated that the prior notice would be more burdensome than an after-the-fact notice. However, this prior notice process follows the statutory provisions more closely. Furthermore, because there have been very few Bank Service Company Act filings, this change should not add any material burden to the industry. Therefore, we are adopting the amendments as proposed.

We also are moving some of the provisions in § 5.35(f)(2) regarding what must be included in the notice to paragraph (g) of § 5.35, the general provision covering the required information. We also proposed to make a number of technical changes in § 5.35(c), (d)(3), (d)(4), (d)(6), (e), (f)(1), (f)(2), (f)(3), (f)(5) and (i). We did not receive any comments on these changes and adopt them as proposed. We also are making a technical change to correct a cross-reference in § 5.35(f)(2)(ii)(B), which currently refers to § 5.38(d). It should refer to § 5.38(e)(5)(v).

Investment in National Bank or Federal Savings Association Premises (§§ 5.37, 7.1000, 7.3001)

Under 12 U.S.C. 29, a national bank may purchase and hold real property necessary to transact business and may hold real estate in exchange for debts previously contracted subject to certain divestiture requirements. Under 12 U.S.C. 371d, a national bank is required to obtain prior OCC approval to invest in bank premises, unless its aggregate investment and related indebtedness is less than or equal to either the bank's capital stock or 150 percent of the bank's capital and surplus (and the bank meets certain other criteria, as described below).

National banks are subject to several regulations that further delineate the parameters of their investment in and use of real property. Specifically, 12 CFR 7.1000 details the types of real estate that are necessary, pursuant to 12 U.S.C. 29, for a national bank's transaction of business, including premises owned and occupied by the bank, its branches, and its subsidiaries; property

intended to be used for future bank expansion; and other property to be used by bank customers and employees. Section 7.1000 cross-references 12 CFR 5.37, which contains the quantitative limitations based on a national bank's capital that are specified in 12 U.S.C. 371d. Section 5.37 also prescribes the OCC premises approval process. Twelve CFR 7.3001 sets forth the rules that apply when a national bank shares its space and employees with other entities. Finally, 12 CFR 34.84 sets forth specific requirements for property held for future bank expansion.

No statute specifically addresses a Federal savings association's investment in banking premises.[79] However, the OCC issued regulations governing a Federal savings association's investment in banking premises pursuant to the OCC's general supervisory and rulemaking authority under the HOLA. Specifically, 12 CFR 160.37 permits a Federal savings association to invest in real estate, whether improved or unimproved, to be used for office and related facilities of the association if such investment is made and maintained under a prudent program of property acquisition to meet the association's present needs for office and related facilities and the outstanding book value of these investments does not exceed the association's total capital. In addition, OCC regulations at 12 CFR part 159 recognize certain real estate-related activities as permissible for a Federal savings association service corporation, including real estate development and the acquisition of real estate for use by a stockholder of the service corporation. OCC guidance provides that a Federal savings association ordinarily must obtain prior OCC approval if such investments would exceed the amount of its total capital.[80] Currently, a Federal

[79] The OCC is using the term "banking premises" instead of "bank premises" in revised §§ 5.37, 7.1000, and 7.3001 to alleviate any confusion with respect to Federal savings associations.

[80] OTS Handbook, Section 252, Fixed Assets, April 1999, p. 2.

savings association seeking to exceed the total capital limitation would request a waiver under 12 CFR 100.2.

The OCC proposed numerous changes to these regulations, including applying the national bank regulations to Federal savings associations, rescinding 12 CFR 160.37, and making clarifying amendments. We did not receive any comments on these proposed changes and adopt them as proposed, except for the change in date for the grandfathering provisions, discussed below.

National bank ownership of property (12 CFR 7.1000). The final rule amends 12 CFR 7.1000 to make it applicable to Federal savings associations and to make other changes described below. While we do not believe that there are significant substantive differences between §§ 7.1000 and 160.37 and related OTS guidance, § 7.1000 provides additional detailed regulatory guidance that we believe, as a supervisory matter, is appropriate to apply to both national banks and Federal savings associations.

Revised § 7.1000(a) permits a Federal savings association to invest in real estate necessary to transact its business. Revised § 7.1000(a)(2) provides a non-exclusive list of permissible real estate investments for Federal savings associations. These investments are generally permitted for Federal savings associations under § 160.37, with the addition of lodging for customers, officers, or employees of the Federal savings association, its branches or consolidated subsidiaries in areas where suitable commercial lodging is not readily available, which is currently permissible for national banks.

Under § 7.1000(a)(3), a national bank is permitted to hold premises through any reasonable and prudent means, including fee ownership, leasehold estate, and interest in a cooperative. It also is permitted to hold such premises directly or through one or more

subsidiaries and to organize a premises subsidiary as a corporation, partnership, or similar entity, such as a limited liability company. Section 160.37 permits a Federal savings association to invest in real estate, whether improved or unimproved, to be used for office and related facilities of the association under certain conditions, though it does not address how a Federal savings association may hold such premises. By adding Federal savings associations to § 7.1000(a)(3), the OCC is making clear that a Federal savings association may hold its premises in any of the means set forth in that section. In addition, the OCC is adding a new paragraph to recognize a Federal savings association's separate authority under part 159, which is amended and redesignated as 12 CFR 5.59 in this final rule, to acquire and hold banking premises in a service corporation.

In paragraph (c)(1) of § 7.1000, the final rule deletes the reference to 12 U.S.C. 371d and replaces it with language to clarify that the quantitative limitations in § 5.37(d)(1)(i) and (d)(3)(i) govern when OCC approval is required to invest in banking premises. The final rule also divides § 7.1000(c)(2) into two separate paragraphs. Paragraph (c)(2)(i) clarifies that a national bank or Federal savings association must seek approval to invest in banking premises in accordance with § 5.37(d). New paragraph (c)(2)(ii) clarifies that a Federal savings association that invests in banking premises through a service corporation must comply with the quantitative limitations in § 5.37(d), and, to the extent applicable, § 5.59. As described below, the amendments to § 5.37(d) clarify which requirements in § 5.37(d) apply to service corporations.

Under redesignated § 7.1000(c)(3), a national bank must receive OCC approval to exercise an option to purchase banking premises or stock in a corporation holding banking premises if the price of the option and the bank's other investments in banking premises exceed the amount of the bank's capital stock. The final rule simplifies paragraph (c)(3) by removing the

unnecessary language explaining when approval is required and replacing it with a statement that the national bank or Federal savings association must comply with the requirements in § 5.37(d). The procedures in § 5.37(d) are discussed below. In addition, we are making other nonsubstantive, clarifying changes. Section 160.37 does not address an option to purchase banking premises or stock in a corporation holding banking premises; therefore, this is a new requirement for a Federal savings association.

The final rule deletes § 7.1000(d), Other real property, because the two examples provided are based on well-established precedent, and we believe it is unnecessary to include them in § 7.1000. Section 7.1000(d) was not intended to be a limitation on ownership of real property, and deleting it eliminates the need to add clarifying language. Furthermore, deleting § 7.1000(d) simplifies § 7.1000 by limiting it to real estate necessary for the transaction of business.

Current § 34.84 provides rules for a national bank's investment in future banking premises and is contained in the OCC's rules on "other real estate owned" (OREO). Specifically, this section provides that a national bank normally should use real estate acquired for future expansion within five years and, after holding such real estate for one year, state by resolution of the board of directors or an appropriate authorized bank official or a subcommittee of the board of directors, definite plans for the use of such real estate.[81] This resolution or other official action must be available for inspection by bank examiners. The final rule moves § 34.84 from part 34,

[81] National banks and Federal savings associations should be aware that if they decide not to use real estate acquired for future banking premises, the investment will be considered other real estate owned and subject to applicable OREO requirements. For savings associations, see Comptroller's Handbook, "Other Real Estate Owned" (Sept. 2013) ("OREO Handbook"), and for national banks, see 12 CFR part 34, subpart E and the OREO Handbook.

subpart E, Other real estate owned, to § 7.1000 as paragraph (d) because it relates to banking premises, not other real estate owned, and amends it to include Federal savings associations..

To minimize practical difficulties that may arise as a result of these changes, the proposed rule included a transition provision, § 7.1000(e), that grandfathered Federal savings associations' existing premises investments, provided the investment complies with the legal requirements in effect prior to the publication date of the proposal and continues to comply with those requirements. The final rule includes this grandfathering provision. However, we have changed the transition date to the date of publication of the final rule, as we believe this is the more appropriate date on which to grandfather such investments. We note that modifying, expanding, or improving such investments, with the exception of routine maintenance, requires prior approval of the appropriate OCC supervisory office. We believe it is appropriate to require prior approval in these circumstances to ensure safety and soundness concerns are satisfied and to apply consistent standards to national banks and Federal savings associations.

Sharing space and employees (§ 7.3001). The final rule amends 12 CFR 7.3001 to make it applicable to Federal savings associations. While § 7.3001 is more detailed than OTS guidance, as described below, we do not believe that there are substantive differences in the way in which national banks and savings associations share offices and employees. Section 7.3001 provides additional guidance on how to share offices and employees in a manner that protects customers and is consistent with safe and sound banking practices. The OCC believes that, as a supervisory matter, it is appropriate to apply similar specific safety and soundness restrictions to both national banks and Federal savings associations.

Although current § 7.3001 provides for the sharing of office space and employees, § 160.37 does not specifically provide for such sharing arrangements. However, through guidance,

a Federal savings association is authorized to share space in a manner similar to that provided in § 7.3001, and the safety and soundness requirements imposed are substantially similar, though not identical, to those imposed by § 7.3001(c). For example, both the guidance and § 7.3001(c) prohibit joint ventures, but the methods to determine what constitutes a joint venture are different. Under § 7.3001(c)(3), what constitutes a joint venture or partnership is determined by applicable state law. In addition, under revised § 7.3001(a), a Federal savings association is permitted to: (1) lease excess space on banking premises to one or more other businesses (including other banks, Federal or state savings institutions, or financial institutions); (2) share space jointly held with one or more other businesses; or (3) offer its services in space owned or leased to other businesses. Under revised § 7.3001(b), as part of such a sharing arrangement, a Federal savings association may, pursuant to a written agreement, agree that its employee may act as an agent for the other business, or an employee of the other business may act as an agent for the savings association. Under revised § 7.3001(c), a Federal savings association sharing office space is required to satisfy eight requirements intended to ensure that the practice of sharing space was conducted in a safe and sound manner and also provides customer protections. This treatment is substantially similar to that in OCC guidance for Federal savings associations.[82]

To minimize practical difficulties that may arise as a result of these changes, the proposed rule added a transition provision, § 7.3001(e), that grandfathers existing sharing arrangements, provided such sharing arrangements comply with the legal requirements in effect prior to the publication date of this proposal and continue to comply with those requirements. The final rule includes this grandfathering provision. However, we have changed the transition date to the date of publication of the final rule, as we believe this is the more appropriate date on

[82] OTS Handbook, Section 252, Fixed Assets, p. 3.

which to grandfather such arrangements. We note that the savings association may not amend or renew the agreement, or extend the agreement beyond its current term, without the prior approval of the appropriate OCC supervisory office. We believe it is appropriate to require prior approval in such circumstances to ensure customers are protected and safety and soundness concerns are satisfied, and to apply consistent standards to national banks and Federal savings associations.

Investment in banking premises (§ 5.37). The proposed rule amends § 5.37 to make it applicable to Federal savings associations and to make other changes as described below. The OCC believes that, for safety and soundness purposes, it is prudent to apply the procedures and quantitative investment limitations in § 5.37 to both national banks and Federal savings associations. We received no comments on these amendments and adopt them as proposed, with one technical amendment, discussed below.

Current § 5.37(d)(1)(i) requires a national bank to submit an application to the appropriate supervisory office to make an investment in bank premises, or to make loans to or upon the security of the stock of such a corporation, if the aggregate of all such investments and loans, together with the indebtedness incurred by any such corporation that is an affiliate of the national bank, will exceed the amount of its capital stock. Section 5.37(c) defines "bank premises" as including (but not limited to): (1) premises that are owned and occupied (or to be occupied, if under construction) by the bank, its branches, or its consolidated subsidiaries; (2) capitalized leases and leasehold improvements, vaults, and fixed machinery and equipment; (3) remodeling costs to existing premises; (4) real estate acquired and intended, in good faith, for use in future expansion, or (5) parking facilities that are used by customers or employees of the bank, its branches, and its consolidated subsidiaries. In contrast, § 160.37 does not contain a detailed

definition and states, in general, that real estate may be used for office and related facilities for the association's current and future use.

Current § 5.37(d)(1)(ii) requires the application to make an investment in banking premises to include a description of the bank's present investment in banking premises, the investment in the premises that the bank intends to make, the business reason for the investment, and the amount by which the national bank's aggregate investment will exceed the amount of its capital stock. Current § 5.37(d)(2) provides information regarding the approval process, including that an application is deemed approved on the 30th day after the filing is received by the OCC, unless the OCC notifies the national bank prior to that date that the filing presents a significant supervisory or compliance concern, or raises a significant legal or policy issue. The final rule makes these provisions applicable to a Federal savings association, and makes other nonsubstantive, clarifying changes.

Current § 5.37(d)(3) provides an after-the-fact notice process if a national bank satisfies certain requirements. Specifically, a national bank may make an aggregate investment in banking premises up to 150 percent of its capital and surplus with after-the-fact notice to the OCC instead of the OCC's prior approval, provided that the national bank has a 1 or 2 CAMELS rating, is well capitalized as defined in 12 CFR part 6, and will continue to be well capitalized after it makes the investment or loan.

The final rule makes these provisions applicable to Federal savings associations. However, a Federal savings association may not be eligible for after-the-fact notice if 12 U.S.C. 1828(m)(1) applies to the transaction. Twelve U.S.C. 1828(m)(1) requires a Federal savings association to file a 30-day prior notice when it establishes or acquires a subsidiary or when it conducts a new activity in a subsidiary. Thus, a Federal savings association would not be eligible

for the after-the-fact notice process described in § 5.37(d)(3)(i) if it proposes to establish or acquire a subsidiary to make an investment in banking premises, or if investing in banking premises would be a new activity for such a subsidiary. In those circumstances, the Federal savings association is required to comply with the provisions of § 5.38 in the case of an operating subsidiary or § 5.59 in the case of a service corporation. Accordingly, the final rule reorganizes current § 5.37(d)(3) by redesignating it as § 5.37(d)(3)(i), General rule, and adding a new paragraph (d)(3)(ii), Exception, to describe the circumstances under which a Federal savings association is not eligible for the after-the-fact notice process and to identify the applicable requirements.

Furthermore, the final rule provides that Federal savings associations' investments in banking premises through a service corporation are not subject to the application and notice requirements of § 5.37(d); instead, a Federal savings association must comply with the requirements in proposed § 5.59. However, the institution must include the amount of the investment when calculating the quantitative limitations in paragraph (d). Therefore, the final rule redesignates current § 5.37(d)(4), Exceptions to rules of general applicability, as paragraph (d)(5), and adds a new paragraph (d)(4) to clarify the treatment of an investment in banking premises through a service corporation.

As indicated above, pursuant to 12 U.S.C. 29 and 371d, current § 5.37 provides that the quantitative limitations on a national bank's investment in banking premises are expressed as a percentage of "capital stock" or "capital and surplus." Under § 160.37, the sole quantitative limit on a Federal savings association's investment in banking premises is based on "total capital."[83]

[83] As mentioned previously in this preamble, the OCC issued a final rule on October 11, 2013 that, among other things, amends the OCC's risk-based and leverage capital rules and integrates the OCC's national bank and

The final rule applies the quantitative investment limitations currently applicable to national banks to Federal savings associations, with the exception of Federal mutual savings associations, as discussed more fully below. To avoid confusion, the final rule also adds the definitions for the terms "capital stock" and "capital and surplus" in paragraph (c). Because the vast majority of national banks and Federal savings associations have a CAMELS rating of 1 or 2,[84] we believe the relevant limit for a Federal savings association generally will be "capital and surplus," which is not materially different from "total capital." In addition, for a Federal savings association that satisfies the criteria in § 5.37(d)(3)(i), the quantitative limitation will be 150 percent of capital and surplus, which would be a greater amount than 100 percent of "total capital." Thus, we expect that the amount that most Federal savings associations can invest in banking premises without OCC approval will be increased, thereby reducing burden on those Federal savings associations. For a Federal savings association that does not have a CAMELS rating of 1 or 2 or is not well capitalized the relevant limitation instead is "capital stock," which is a significantly lower threshold than "total capital." While we are aware that this new lower threshold likely would increase the burden on low-rated Federal savings associations, we believe that additional scrutiny of investments in banking premises by such Federal savings associations is warranted for safety and soundness purposes.

Federal savings association capital rules. 78 FR 62018 (Oct. 11, 2013). This capital final rule had a two-tier effective date, however, with the rule applicable for all banks and savings associations on January 1, 2015. Because this licensing final rule is issued after the January 1, 2015 effective date, we have removed references to the former Federal savings association capital rule, 12 CFR part 167, and related provisions of 12 CFR 165 (prompt corrective action) originally included in the proposed rule, as they are no longer applicable,

[84] According to the OCC's 2014 Annual Report, in the fiscal year 2014, 87 percent of national banks and Federal savings associations had a CAMELS rating of 1 or 2. Office of the Comptroller of the Currency, Annual Report, Fiscal Year 2014, at 70, available at http://www.occ.gov/publications/publications-by-type/annual-reports/2014/ar-2014-full.pdf.

In the case of a Federal mutual savings association, which by definition does not issue stock, a limit based on capital stock will not work. However, we believe it is important, wherever possible, to apply consistent standards to national banks and Federal savings associations, both from a safety and soundness perspective and an administrative perspective. Accordingly, because a Federal mutual savings association's equity capital consists primarily of retained earnings, we will use retained earnings as a proxy for capital stock for purposes of the quantitative limitations on investments in banking premises by Federal mutual savings associations. This limitation based on retained earnings is not a significant change for a Federal mutual savings association because, generally, "total capital" of a Federal mutual savings association mostly consists of retained earnings. Moreover, a Federal mutual savings association that is CAMELS 1- or 2-rated and well capitalized will have a higher limit of 150 percent of retained earnings.

The proposed rule added a transition provision, § 5.37(e), to grandfather existing banking premises investments. However, as indicated above, § 7.1000(e), which contains the substantive authority for national banks and Federal savings associations to invest in banking premises, contains the identical transition provision. Section 5.37(e) is therefore unnecessary and the final rule does not include it.

Operating Subsidiaries of Federal Savings Associations (New § 5.38)

Twelve CFR part 159 addresses subordinate organizations of Federal savings associations. This part covers both operating subsidiaries and service corporations of Federal savings associations. The OCC proposed to create a new § 5.38 to address only operating subsidiaries of Federal savings associations and to remove those provisions of part 159 that

address Federal savings association operating subsidiaries.[85] The OCC is adopting new § 5.38 with the changes discussed below.

In order to make the regulations applicable to Federal savings associations more consistent with those that apply to national banks, new § 5.38 is based on current OCC regulations at 12 CFR 5.34. As a result, many of the provisions in new § 5.38 and § 5.34, as revised by this final rule, are nearly identical. Other requirements in new § 5.38 are similar to those in part 159. However, there are some differences between new § 5.38 and provisions in part 159 and § 5.34. These differences are described below.

New § 5.38(b) requires a Federal savings association, when required under section 18(m) of the FDI Act,[86] to file an application to acquire or establish any operating subsidiary or to commence a new activity in an existing operating subsidiary. Under §§ 159.1(a) and 159.11, when required under section 18(m) of the FDI Act, a Federal savings association must give 30 days' notice[87] to the OCC prior to establishing or acquiring an operating subsidiary or commencing a new activity in an operating subsidiary.[88] The final rule changes this prior notice requirement in the current rule to an application in order to provide the OCC with an appropriate opportunity to review the proposed transaction. We did not receive any comments on this

[85] As stated elsewhere in this rulemaking, the final rule includes a new § 5.59 that addresses Federal savings association service corporations. The OCC is separating the regulations for Federal savings association operating subsidiaries and service corporations in order to better organize our rules and to have consistent parallel provisions for operating subsidiaries of national banks and Federal savings associations. As a result, all of part 159 is removed.

[86] 12 U.S.C. 1828(m).

[87] Under these provisions in part 159, the OCC treats the notice as an application that is eligible for expedited treatment.

[88] See 12 U.S.C. 1828(m)(1) and (4).

change. We have made a technical correction to this provision in the final rule, however, by adding back in the reference to section 18(m) of the FDI Act to the text of § 5.38(b).

Section 159.3(a)(1) also provides that any finance subsidiary that existed on January 1, 1997, is deemed to be an operating subsidiary without further action by the savings association. The OCC is not including this provision in § 5.38 as it is not needed. This omission is not intended to be a change in substance.

Paragraph (c) of new § 5.38 addresses the scope of this section. This paragraph mirrors paragraph (c) of § 5.34, including the additional language currently contained in § 159.1(a) added to § 5.34(c) by this rulemaking, that permits the OCC to limit a Federal savings association's investment in an operating subsidiary or limit or refuse to permit any activities of an operating subsidiary for supervisory, legal, or safety and soundness reasons. The OCC did not receive any comments on this provision.

Paragraph (d) of new § 5.38 sets out definitions for "well capitalized" and "well managed," which the OCC will use to determine if an application is eligible for expedited review by the OCC. These definitions are the same as those in § 5.34(d), and the OCC uses these terms as criteria to permit national banks to make an after-the-fact notice filing pursuant to § 5.34(e)(5). They are used similarly in § 5.38 to determine if an application by a Federal savings association is eligible for expedited review. The OCC did not receive any comments on this provision.

Like §§ 159.3(e)(1) and 5.34(e)(1)(i), paragraph (e)(1)(i) of new § 5.38 provides that a Federal savings association may conduct in an operating subsidiary activities that are permissible for the savings association to engage in directly. Section 5.38(e)(1) provides that before beginning business, an operating subsidiary must comply with other laws applicable to it,

including applicable licensing or registration requirements. This requirement is not new for Federal savings associations. The final rule adds this language to clarify that compliance with § 5.38 and approval of an operating subsidiary by the OCC are not the only requirements that must be met. As indicated above, the final rule amends § 5.34(e) to also include this provision for national banks. The OCC did not receive any comments on § 5.38(e)(1).

Pursuant to § 159.3(c)(1), a Federal savings association must own, directly or indirectly, more than 50 percent of the voting shares of an operating subsidiary and no one else may exercise effective operating control. New § 5.38(e)(2) describes what entities are "qualifying subsidiaries" for purposes of § 5.38. We have revised this provision in the final rule to mirror revised § 5.34(e)(2). Unlike § 159.3(c)(1), the rule includes as a qualifying subsidiary one in which the savings association owns less than 50 percent of the voting shares. Specifically, under the final rule, a qualifying subsidiary is one in which: (1) the savings association has the ability to control the management and operations of the subsidiary and no other person or entity exercises effective operating control over the subsidiary or has the ability to influence the subsidiary's operations to an extent equal to or greater than the savings association; and (2) the savings association owns and controls more than 50 percent of the voting (or similar type of controlling) interest of the operating subsidiary, or the parent savings association otherwise controls the operating subsidiary and no other party controls a greater percentage of the voting (or similar type of controlling) interest of the operating subsidiary than the Federal savings association. In addition, as is currently the case under part 159, the operating subsidiary must be consolidated with the savings association under generally accepted accounting principles (GAAP). Section 5.38(e)(2)(iii), adapted from § 159.10, expressly requires the savings association to have reasonable policies and procedures to preserve the limited liability of the

savings association and its operating subsidiaries. Furthermore, it clarifies that the requirement that the savings association must control the operating subsidiary does not mean they should be treated as a single entity. We note that § 5.38 does not contain the detailed requirements for this corporate separateness that are in §159.10.

We received one comment relating to § 5.38(e)(2) that requested additional clarification on how Federal savings associations could "otherwise [control] the operating subsidiary." Because this is the same standard that is applied to national banks, Federal savings associations can look to the applications of this provision with respect to national banks to better understand how this standard operates, and the OCC staff is available to assist with any questions. We do not believe a change in this provision is necessary and adopt it as proposed.

We also are making a clarifying change to § 5.38(e)(2). Section 159.3(e)(1) explicitly provides that a Federal savings association may hold another insured depository institution as an operating subsidiary. While this proposition remained the case under the proposed rule, it was not explicitly set out in the regulatory text. Upon further review, we believe the regulation should explicitly indicate this permissibility, even though we expect these transactions to be rare, and have added new paragraph (e)(2)(ii) to § 5.38 to state this.

Paragraph (e)(3) of new § 5.38 mirrors proposed § 5.34(e)(3). Similar to § 159.3(h)(1), paragraph (e)(3) generally provides that an operating subsidiary of a Federal savings association conducts activities pursuant to the same authorization, terms, and conditions that apply to the parent savings association, unless otherwise specifically provided by statute, regulation or published OCC policy. It also includes reference to the provisions in the Dodd-Frank Act regarding the application of state law, the subject of which is currently addressed in § 159.3(n)(1), and language to clarify that regulations or published OCC policy also may provide

other instances in which different treatment of the operating subsidiary and the parent Federal savings association may occur in addition to those regarding the application of state law addressed by the Dodd-Frank Act. In addition, this paragraph provides that, subject to certain statutory limitations, if the OCC determines that an operating subsidiary is in violation of law, regulation, or written condition, or in an unsafe or unsound manner or otherwise threatens the safety or soundness of the bank, the OCC will direct the savings association or operating subsidiary to take appropriate remedial action, which may include requiring the savings association to divest or liquidate the operating subsidiary, or discontinue specified activities. This provision is similar to § 159.3(q)(1). The OCC did not receive any comments on this provision.

Twelve U.S.C. 1467a(m)(5) governs consolidation of the assets of a subsidiary with those of the parent savings association for purposes of calculating portfolio assets and the qualified thrift lender test. New § 5.38(e)(4) addresses consolidation of figures and provides that the savings association and its operating subsidiaries shall be combined for purposes of applying statutory or regulatory limitations when the combination is needed to effect the intent of the statute or regulation. Section 5.38(e)(4) is consistent with § 159.3(i)(1), (j)(1), (k)(1), and (m)(1). The OCC did not receive any comments on this provision.

Section § 159.11 provides that when required by 12 U.S.C. 1828(m), Federal savings associations must file a notice at least 30 days prior to establishing or acquiring an operating subsidiary or conducting a new activity in an existing operating subsidiary. The OCC processes this notice in a manner similar to the OCC's expedited review for applications and notices of

national banks.[89] Paragraph (e)(5) of new § 5.38 sets out the detailed procedures a Federal savings association must follow when filing applications required under § 5.38.[90] Paragraph (e)(5)(i)(B) of § 5.38 describes the contents of the application and mirrors current § § 5.34(e)(5)(i)(B), which is redesignated as § 5.34(e)(5)(ii)(B) in this final rule. Paragraph (e)(5)(ii)(A) of § 5.38 also mirrors § 5.34 and provides for expedited review of applications to establish or acquire an operating subsidiary, or to perform a new activity in an existing operating subsidiary. These applications are deemed approved by the OCC as of the 30th day after the filing is received, unless the OCC notifies the savings association otherwise during the 30-day period.[91] In order to be eligible for expedited review, § 5.38(e)(5)(ii)(B) provides that the savings association must be "well capitalized" and "well managed," the activities to be performed by the operating subsidiary must be listed in § 5.38(e)(5)(v), and the operating subsidiary must be a corporation, limited liability company, or limited partnership. In addition, the savings association must clearly demonstrate control over the operating subsidiary, i.e., the savings association: (1) must have the ability to control the management and operations of the operating subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management; (2) must hold more than 50 percent of the voting, or equivalent, interests in the operating subsidiary, and, in the case of a limited partnership or limited liability company, the savings association or an operating

[89] If the OCC determines that the notice presents supervisory concerns or raises significant issues of law or policy, a Federal savings association must apply for approval under standard treatment processing procedures in part 116.

[90] Applications filed pursuant to § 5.38 also serve to satisfy the requirement for notice under 12 U.S.C. 1828(m).

[91] This differs from the national bank regulation. Under § 5.34(e)(5)(ii), as redesignated in this rulemaking, national banks may provide after-the-fact notice in certain circumstances. After-the-fact notice is not available to Federal savings associations due to a statutory requirement for prior notice. See 12 U.S.C. 1828(m).

subsidiary thereof must be the sole general partner of the limited partnership or the sole managing member of the limited liability company; and (3) must be required to consolidate its financial statements with those of the operating subsidiary under GAAP. The OCC did not receive any comments on these provisions.

The § 5.38 expedited review process operates much like the process in § 159.11. As indicated above, under § 159.11 all Federal savings associations that wish to establish or obtain an interest in an operating subsidiary file a notice with the OCC when required under 12 U.S.C. 1828(m). No further action is required unless the OCC notifies the savings association within 30 days that the notice presents supervisory concerns or raises significant issues of law or policy, in which case the savings association must receive the OCC's approval under standard treatment processing procedures under part 116. Under § 159.11, all filings begin and are processed in this manner. Under the § 5.38 expedited review process, only filings that meet the eligibility requirements can begin as an expedited review application. However, we do not believe this change will be significant for savings associations. A filing that does not meet the eligibility test under the final rule has a higher likelihood of presenting supervisory concerns or raising significant issues of law or policy that would require an application under part 159. The OCC did not receive any comments on this provision.

Paragraph (e)(5)(iii) of new § 5.38 provides that the rules of general applicability at 12 CFR 5.8 (requiring public notice), 5.10 (addressing public comments received), and 5.11 (addressing requests for hearings or other meetings) do not apply to § 5.38, but the OCC may determine that any of these rules apply if the OCC concludes that the application presents significant or novel policy, supervisory, or legal issues.

Paragraph (e)(5)(v) of § 5.38 sets out a list of activities that are eligible for expedited review. This list is based on the list of activities eligible for notice for national banks in § 5.34(e)(5)(v), but has been adapted for Federal savings associations by listing only those activities that have been approved for operating subsidiaries of Federal savings associations in the past.. The OCC did not receive any comments on this provision.

Section 159.3(p)(1) provides that a Federal savings association must consult with the appropriate OCC licensing office prior to redesignating a service corporation as an operating subsidiary. It also requires the Federal savings association to make available for examination adequate internal records demonstrating that the redesignated operating subsidiary meets all of the requirements for an operating subsidiary and that the board of directors has approved the redesignation. Paragraph (e)(5)(vi) of § 5.38 requires a Federal savings association to provide 30 days' prior notice to the OCC when the savings association wants to redesignate a service corporation as an operating subsidiary. The OCC did not receive any comments on this provision.

Paragraph (e)(5)(vii) of new § 5.38 mirrors § 5.34(e)(5)(vii) and provides that when a Federal savings association operating subsidiary wishes to act as a fiduciary, its savings association parent must have fiduciary powers and the operating subsidiary also must have its own fiduciary powers under the law applicable to the subsidiary. The operating subsidiary may not rely on the savings association's fiduciary powers. Further, this provision provides that when an operating subsidiary that exercises investment discretion on behalf of customers or provides investment advice for a fee is a registered investment adviser, it is not necessary for its savings association parent to have fiduciary powers. These provisions reflect OCC practice for national

banks as set out in the Comptroller's Licensing Manual. The OCC did not receive any comments on this provision.

Paragraph (e)(5)(viii) of new § 5.38 provides that an OCC approval granted under § 5.38 expires within 12 months if a Federal savings association has not established or acquired the operating subsidiary or commenced the new activity in an existing operating subsidiary, unless the OCC shortens, or extends the time period. The final rule also adds this provision to § 5.34 for national banks. As previously indicated, this provision is similar to other provisions in part 5 regarding the expiration of an OCC approval. A commenter noted that this change would be a new requirement for Federal savings associations. The OCC does not believe this change is an entirely new requirement for Federal savings associations, because in a number of cases, the OTS imposed the requirement as a condition of approval of the formation of the operating subsidiary. Moreover, the OCC finds that setting a time limit for OCC approval is necessary to ensure that the approval reflects the current status of the applicant. Therefore, we are adopting the amendment as proposed.

Paragraph (e)(6) of new § 5.38 contains provisions regarding grandfathered Federal savings association operating subsidiaries. It is modeled on § 5.34(e)(6) and provides that, notwithstanding the requirements for a qualifying operating subsidiary in § 5.38(e)(2) and unless otherwise notified by the OCC with respect to a particular operating subsidiary, an operating subsidiary that a Federal savings association lawfully acquired or established before [INSERT DATE OF FEDERAL REGISTER PUBLICATION OF THIS FINAL RULE] the date of Federal Register publication of this final rule, may continue to operate as a Federal savings association operating subsidiary, provided that the savings association and the operating subsidiary were, and continue to be, conducting authorized activities in compliance with the standards and

requirements applicable when the operating subsidiary was established or acquired. The OCC did not receive any comments on this provision. However, we note that we have changed the grandfather date included in the proposed rule, June 10, 2014, the date of publication of the proposal, to the date of publication of the final rule, as we believe this is the more appropriate date on which to grandfather such existing operating subsidiaries.

Paragraph (e)(7) of new § 5.38 addresses the issuance of securities by an operating subsidiary. It is based on portions of § 159.12(a) and (c). The OCC also did not receive any comments on this provision.

The proposed rule included a new requirement for Federal savings associations to file an annual report with the OCC on operating subsidiaries that do business directly with consumers in the United States and that are not functionally regulated. This proposal mirrored the requirement for national banks at § 5.34(e)(7); there is no similar provision in part 159. We received one comment on this proposed report. This commenter stated that this reporting requirement would impose a new compliance burden without sufficient analysis or justification. The OCC has reconsidered this proposed report in light of this comment and no longer believes it is necessary. Federal savings associations have fewer operating subsidiaries than national banks, and the OCC is able to determine operating subsidiary ownership by means that are less burdensome than an annual report, such as through the examination process. However, the OCC will continue to monitor this area to determine if such a report becomes necessary in the future.

Finally, a chart in § 159.3 provides a detailed side-by-side comparison of operating subsidiaries and service corporations. The final rule includes some of this information from this chart in various provisions of § 5.38, such as the specific items that are necessary to set out qualifying requirements and licensing requirements. Furthermore, § 5.38(e)(4), Consolidation of

figures, covers provisions included in the chart at § 159.3(i)(1), (k)(1), (l)(1), and (m)(1).[92] Other provisions of the chart are not necessary to include in a regulation as they merely repeat applicable law and are in the chart for purposes of the comparison with service corporations. These provisions include § 159.3(b)(1), (d)(1), (f)(1), (g)(1), and (j)(1). While the OCC is removing the chart from its regulations, we are considering including a similar chart in the Comptroller's Licensing Manual as a reference.

Change in Location of Main Office/Home Office (§ 5.40)

Twelve CFR 5.40 addresses changes in location of a national bank's main office. Twelve CFR 145.91, 145.93 and 145.95 address changes in location of a Federal savings association's home office.[93] While these rules address a common subject there are a number of differences between them. We proposed to make the procedures for national banks and Federal savings associations more consistent and to consolidate our regulations by amending 12 CFR 5.40 to apply to Federal savings associations and to remove 12 CFR 145.91, 145.93 and 145.95.[94] We did not receive any comments on the proposed changes, and adopt the amendments as proposed, with one clarifying change. As described below, as a result of these changes, Federal savings associations are subject to certain additional notices and applications to assist the OCC in monitoring these institutions' activities. Although these procedures are different from those that savings associations currently follow when taking certain actions with respect to their home

[92] Part 32, lending limits, currently provides the information that had been included in § 159.3(k)(1). See 78 FR 37930 (June 25, 2013).

[93] The terms "main office" and "home office" are functionally the same. However, both terms are used in our regulations in order to be consistent with the relevant statutes that govern national banks and Federal savings associations, respectively.

[94] Sections 145.93 and 145.95 also address branch offices. The preamble discusses these provisions with respect to branch offices, above.

offices, we expect those institutions that qualify for treatment as highly rated savings associations under the current regulation will also qualify for expedited treatment under the amended regulation and that this will result in only minimal additional requirements.

Pursuant to § 145.93(a), a Federal savings association must file an application or notice with the OCC and receive approval or non-objection prior to changing the permanent location of its home office or prior to establishing a new home office. However, § 145.93(b) provides that an application or notice is not required for a Federal savings association to: (i) establish a drive-in or pedestrian office within 500 feet of a public entrance to its existing home office; (ii) make a short-distance relocation of its home office; or (iii) redesignate an existing branch office as a home office when redesignating the existing home office as a branch office. In addition, § 145.93(b) permits certain highly rated Federal savings associations to change the permanent location of their home office or establish a new home office if the associations meet certain requirements without filing a notice or application. Section 145.95 contains processing procedures that apply to the aforementioned transactions.

The final rule reorganizes § 5.40 slightly and applies it to Federal savings associations. It therefore discontinues the exceptions to filing applications or notices under § 145.93(b) related to main office locations, and replaces the applicable processing procedures contained in § 145.95 with those contained in 12 CFR part 5.

Section 5.40(b) sets out the licensing requirements for national banks to relocate their main office, and § 5.40(c) sets out the scope of the rule. Section 5.40(d)(1) provides that national banks may relocate their main office to an authorized branch location within the same city, town, or village limits by giving prior notice to the OCC, and § 5.40(d)(2) provides that national banks may relocate their main office to any other location by filing an application with the OCC.

Section 5.40(d)(3) requires national banks to obtain OCC approval pursuant to the standards in § 5.30 in order to establish a branch at the site of a former main office. Section 5.40(d)(4) provides that an application submitted by an eligible national bank to move its main office to a location other than an authorized branch location will be approved by the OCC as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC notifies the bank prior to that time that the filing is not eligible for expedited review, or the expedited review period is extended under § 5.13(a)(2). Section 5.40(d)(5) provides for exceptions to rules of general applicability in part 5 for relocations to an authorized branch location within the same city, town, or village limits. Finally, § 5.40(e) provides that an OCC approval of a main office relocation shall expire if the national bank has not opened its main office at the relocated site within 18 months of the date of the approval.

The final rule redesignates the scope section as § 5.40(b) and combines former paragraphs (b) and (d), which address licensing requirements and procedures, into a redesignated § 5.40(c). The final rule also applies these newly redesignated provisions to Federal savings associations. Redesignated § 5.40(c)(1) requires national banks and Federal savings associations to give prior notice to the OCC when relocating a main office or home office, as applicable, to an authorized branch location within city, town, or village limits. Redesignated § 5.40(c)(2)(i) requires national banks to submit an application to the appropriate OCC licensing office in order to relocate a main office to any location other than an authorized branch location in the city, town, or village in which the main office of the bank is located or to any other location within 30

miles of the limits of such city, town, or village, as provided by 12 U.S.C. 30.[95] As in the current rule, if a national bank is relocating its main office outside the limits of its city, town, or village, the national bank also must obtain the approval of shareholders owning two-thirds of the voting stock of the bank and amend its articles of association. This shareholder vote is required by statute.[96]

Redesignated § 5.40(c)(2)(ii) requires a Federal savings association to submit an application to the appropriate OCC licensing office and obtain prior OCC approval to relocate its home office to any location other than an authorized branch location within the city, town, or village in which the home office of the savings association is located. As with a national bank, a Federal savings association relocating the home office outside the limits of its city, town, or village is required to amend its charter. The final rule adds clarifying language to indicate that the savings association must obtain shareholder approval for such relocation of its main office if so required by its charter. We note that, unlike national banks, this shareholder approval is not required by statute.

Redesignated § 5.40(c)(3) requires a national bank or Federal savings association to follow the provisions of § 5.30 or § 5.31, respectively, in order to establish a branch at the site of a former main office or home office. Redesignated § 5.40(c)(4) provides expedited review for applications submitted under paragraph (c)(2) (relocations of a main office or home office to any location other than an authorized branch location) for eligible Federal savings associations as well as eligible national banks. The final rule also revises the expedited review time for short-

[95] There is no similar statutory provision for Federal savings associations with respect to moving the office to a location within 30 miles of the home office.

[96] 12 U.S.C. 30.

distance relocations of a main office or home office so that they are deemed approved 15 days after the close of the comment period or 30 days after the date the notice is filed, whichever is later. This change reflects the shorter 15-day comment period for short-distance relocations.

Redesignated § 5.40(c)(5) provides exceptions to the OCC's rules of general applicability in part 5 of the OCC's regulations for relocations of a main office or home office to an authorized branch location within city, town, or village limits under paragraph (c)(1) and applies these exceptions to Federal savings associations. Redesignated § 5.40(d) requires Federal savings associations, like national banks, to open a relocated home office within 18 months from the date of OCC approval, unless the OCC grants an extension. Under § 145.95(c), Federal savings associations currently must open or relocate a home office for which they have received approval or non-objection from the OCC within 12 months.

Corporate Title (§ 5.42)

Sections 5.42 and 143.1 set forth standards and procedures for when a national bank or Federal savings association seeks to change its corporate title. Under § 5.42(c), a national bank may change its corporate title without prior notice to the OCC if the new title includes the word "national" and complies with other OCC guidance and Federal laws, including laws regarding false advertising and misuse of names. In addition, if the national bank's articles of association specify the corporate title, § 5.42(d)(2) requires the bank to amend the articles in accordance with 12 U.S.C. 21a.

Pursuant to § 143.1(b), a Federal savings association must provide the OCC with prior notice of a change in corporate title. If the OCC does not object within 30 days, the Federal savings association may change its title by amending its charter in accordance with the Federal mutual savings association or Federal stock association charter amendment regulatory

procedures in §§ 5.21 or 5.22, respectively. There is no specific statute addressing Federal savings association charter amendments. In addition, § 143.1(a) prohibits a Federal savings association from adopting a title that misrepresents the nature of the institution or the services it offers.

The OCC proposed to amend § 5.42 to include Federal savings associations. The OCC did not receive any comments on § 5.42, and we adopt the amendments as proposed, with one clarifying change. The result of the final rule is to eliminate the advance notice requirement currently applicable to Federal savings association corporate title changes. Instead, Federal savings associations must promptly provide a notice to the appropriate OCC licensing office subsequent to any change in its corporate title. The OCC believes that an after-the-fact notice will provide the OCC with adequate information for regulatory purposes and will reduce burden on Federal savings associations without affecting safety and soundness.

The proposed rule did not incorporate a provision in § 143.1(a) that prohibits a Federal savings association from adopting a title that misrepresents the nature of the institution or the services it offers. The preamble to the proposed rule stated that this statement is implicit in the current national bank rule as well as the proposed rule for both national banks and Federal savings associations and therefore not necessary in the revised rule. However, to emphasize this prohibition, we have amended the final rule to include a statement that the new title must continue to be consistent with § 5.20(f)(2)(i)(F). This provision, added by this final rule, states that, in approving an application to establish a national bank or Federal savings association, the OCC must consider whether the proposed bank or savings association does not have a title that misrepresents the nature of the institution or the services it offers.

The OCC also is making a number of conforming edits. Specifically, the OCC is adding to § 5.42 a cross-reference to §§ 5.21(g) or 5.22(g), the regulatory charter amendment procedures that a Federal mutual savings association or Federal stock association must follow when amending its charter to reflect a corporate title change. This cross-reference simply transfers these requirements from the current Federal savings association rule to the integrated rule. In addition, the OCC is removing the word "Federal" in § 5.42(c)(1) to clarify that the new title must comply with all applicable laws, whether Federal or state.

Increases in Permanent Capital by a Federal Stock Savings Association (new § 5.45)

Twelve CFR 5.46 sets out the OCC's rules for national bank changes in permanent capital. These rules implement statutory provisions that establish the processes and requirements for a national bank to increase or decrease its permanent capital (i.e., capital stock and capital surplus), including 12 U.S.C. 51a, 51b, 51b-1, 52, 56, 57, 59, and 60. The statutes require OCC approval for all increases and decreases in permanent capital at a national bank.

The OCC has established a streamlined approval process for most increases in permanent capital by national banks. However, in certain cases, the OCC requires a full application and prior approval. These involve situations in which the OCC has supervisory concerns or the capital contribution is not in cash, thus raising issues of properly valuing the capital increase.

These statutes do not apply to Federal savings associations, and there are not comparable provisions in the HOLA requiring a savings association to receive prior approval for increases to permanent capital. Accordingly, we did not propose to add Federal savings associations to § 5.46. However, we proposed to add a new § 5.45 to require a Federal stock savings association to apply to the OCC and obtain prior approval in the same circumstances in which a national bank would be required to file a full application under § 5.46. Those circumstances are: (1) when the

savings association is required to receive OCC approval pursuant to letter, order, directive, written agreement or otherwise, (2) when the savings association is selling common or preferred stock for consideration other than cash, or (3) when the savings association is receiving a material noncash contribution to capital surplus. We did not receive any comments on new § 5.45 and adopt it as proposed, with one technical correction to § 5.45(g)(5) to reference Federal savings associations.

New § 5.45 applies only to Federal stock savings associations. Federal mutual savings associations generally do not raise additional capital, other than through retained earnings, by methods comparable to Federal stock savings associations and national banks. The OCC will review any proposed capital increases at Federal mutual savings associations on a case-by-case basis.

Changes in Permanent Capital by a National Bank (§ 5.46)

As indicated above, 12 CFR 5.46 implements statutory provisions that establish the processes and requirements for a national bank to increase or decrease[97] its permanent capital (i.e., capital stock and capital surplus). We proposed clarifying amendments to § 5.46 regarding increases in capital. We did not receive any comments on these changes and adopt them as proposed. Specifically, the final rule revises paragraph (g)(1) to describe more fully those increases not requiring an application and prior approval and when such increases are considered approved by the OCC. Portions of this provision are currently in paragraph (i)(3) which principally deals with the bank's notification to the OCC that the increase has occurred and the

[97] Reductions in capital for Federal savings associations are currently included in the regulations governing capital distributions by Federal savings associations, 12 CFR part 163, subpart E (which will become new § 5.55 in this rulemaking). The current rule and § 5.55 treat a reduction in capital by a Federal savings association that is comparable to a reduction in capital that would be subject to § 5.46 for a national bank (i.e., a reduction other than a dividend from undivided profits) in a similar manner, requiring an application to the OCC.

certification of the increase by the OCC. In the revised rule, the discussion of the approval process is included in paragraph (g)(1), and paragraph (i)(3) covers only the bank's notice of increase and OCC certification. The final rule also revises paragraph (i)(3) to make it easier to follow by dividing it into provisions covering the bank's notice of increase and OCC certification. In addition, the final rule describes more fully the certification process and clarifying that the effective date of a capital increase is the date the increase occurred, not the date on which the OCC issues its certification. No changes in substance are intended by these clarifications.

The final rule also makes a small number of technical changes, including revising the section's title to indicate that it applies only to national banks.

Voluntary Liquidation (§ 5.48)

Twelve U.S.C. 181 and 182 establish liquidation standards and procedures for national banks, including requirements for public notice of liquidation plans.[98] Twelve CFR 5.48 implements these statutes and provides that a national bank: (1) may liquidate in accordance with 12 U.S.C. 181; (2) must notify the OCC when it is considering voluntary liquidation; (3) must provide the public notice required by 12 U.S.C. 182, as well as notice to the OCC, after its shareholders have voted to voluntarily liquidate; and (4) must file reports of both condition and progress with the OCC. In addition, § 5.48(f) contains provisions for expedited voluntary

[98] Twelve U.S.C. 181 sets forth the liquidation standards and procedures with respect to shareholder approval, liquidating agents, progress reports, and OCC examination of a liquidating bank. It requires, inter alia, that two-thirds of a national bank's shareholders vote to liquidate in order for a liquidation to proceed. Twelve U.S.C. 182 requires, inter alia, that a liquidating national bank's board of directors publish for two months a notice of liquidation in every newspaper published where the bank is located (or nearby, if no paper is published in that city or town). The notice must state that the bank is closing up its affairs and notify creditors to present their claims for payment.

liquidations in connection with certain acquisitions and § 5.48(g) addresses a national bank as the acquirer of a liquidating national bank.

There are no statutory requirements similar to 12 U.S.C. 181 and 182 that apply to Federal savings associations. However, § 146.4 contains standards and procedures for a Federal savings association to dissolve voluntarily. Under these rules, a Federal savings association's board of directors may propose a dissolution plan and submit the plan to the OCC for approval. The OCC may approve the plan, make recommendations concerning the plan, or disapprove the plan. Once approved by both the board of directors and the OCC, the Federal savings association must submit the plan to the savings association's members or shareholders for a vote. If approved by a majority of the members or voting shares, the plan becomes effective. After dissolution, the savings association must provide a certificate evidencing such dissolution to the OCC, after which the OCC will cancel the savings association's charter.[99]

The OCC proposed to amend § 5.48 to incorporate certain provisions from § 146.4, to make § 5.48 applicable to both Federal savings associations and national banks, and to rescind § 146.4. The OCC did not receive any comments on these proposed changes and adopts them as proposed. These changes provide the OCC with additional methods to ensure the safety and soundness of national banks and Federal savings associations. These changes also streamline and improve the process for an OCC-regulated institution to liquidate and thus reduce regulatory burden for the institution.

The amendments result in changes to the liquidation procedures for both types of institutions. Specifically, under § 5.48(b), a Federal savings association must provide preliminary

[99] These rules do not apply to transactions such as mergers or consolidations, which are currently governed by 12 CFR 163.22, which is replaced by 12 CFR 5.33 by this final rule.

notice to the OCC when it is considering voluntary liquidation and again when its liquidation plan is definite. These requirements currently apply only to national banks. The OCC has found that these advance notices are helpful to the agency in ensuring that the liquidations are planned and executed in a safe and sound manner and in anticipating any issues that may arise as liquidation commences. Also under § 5.48(b), neither a national bank nor a Federal savings association may commence liquidation until the OCC has notified it that the agency does not object to the liquidation plan. Although this requirement is included only in the current Federal savings association regulation, it is consistent with the OCC's current supervisory practice for national banks. The OCC has found that it can identify and communicate supervisory concerns in a timely manner if it reviews liquidation plans prior to the commencement of liquidation and believes that it is appropriate to include this requirement in the final rule.

Section 5.48(d) of the final rule specifies the factors the OCC will consider when reviewing a proposed liquidation plan. Current § 5.48 does not provide any factors and § 146.4 states only that the OCC will approve the plan if it believes dissolution is advisable and the plan is best for all concerned. However, the OCC believes that the additional specificity provided by the final rule assists filers in the preparation of liquidation plans. Specifically, § 5.48(d)(1) in the final rule states that in reviewing a liquidation plan, the OCC will consider the purpose of the liquidation, its impact on the liquidating institution's safety and soundness, and its impact on the institution's depositors, other creditors, and customers. These factors are similar to those that the OCC currently considers when reviewing the merger of a national bank with a nonbank affiliate and substantial changes in the composition of a national bank's assets.[100] Furthermore, the OCC

[100] See 12 CFR 5.33(g) and 5.53.

currently uses similar considerations in reviewing voluntary dissolutions of Federal savings associations and bulk transfers by Federal savings associations.[101] These factors provide the OCC with a clear understanding of a plan's potential effect and help to ensure that liquidations are carried out in a safe and sound manner.

Section 5.48(d)(2) states that the OCC also will review a national bank's liquidation plan for compliance with 12 U.S.C. 181 and 182. These statutory requirements do not apply to Federal savings associations and the OCC does not believe it is necessary to extend them to these institutions by regulation. Finally, because of the unique structure of mutual savings associations, revised § 5.48(d)(3) states that the OCC will assess the advisability and effect of liquidation, as well as any alternatives to such action, when a mutual savings association plans to liquidate. As stated above, the OCC believes it must consider these factors in assessing a plan and that it is appropriate to provide affected parties with notice that the OCC will consider these factors.

Sections 5.48(e)(1) and (e)(2) describe the requirements to provide notice of consideration of a plan, to submit a plan, and to receive OCC non-objection before proceeding with a plan. As amended, § 5.48(e)(3) provides that a national bank or Federal savings association's board of directors and its shareholders (or, in the case of a Federal mutual savings association, directors and members) must vote to approve a voluntary liquidation plan. While this requirement is included in § 146.4, only shareholders are required to vote on a liquidation plan under § 5.48(e). The OCC believes that it is prudent and appropriate for a national bank's board of directors also to vote to liquidate because of its direct role in governing the operation of the institution. We also believe that the addition of this requirement reflects existing practices of boards of directors in voluntary liquidations.

[101] See 12 CFR 146.4(b) and 163.22(c).

Currently, only a national bank is required to notify the OCC of a vote to liquidate. The OCC believes that each institution that it regulates should inform the OCC of such a vote so that the OCC knows the status of the liquidation process. Therefore, the final rule amends § 5.48 (e)(3)(A) to state that a national bank or Federal savings association must file a notice with the OCC once the specified parties vote to liquidate. In addition, revised § 5.48(e)(3)(A) requires the bank or savings association to provide notice to depositors, other known creditors, and known claimants. Currently, § 146.4 has no specific notice requirement and, as noted above, § 5.48(e)(1) simply directs a bank to publish notice in accordance with 12 U.S.C. 182. The OCC believes that the public will be best served when notice to depositors, creditors, and claimants is provided and, therefore, the OCC has included this notice in the final rule. Section 5.48(e)(3)(B) makes clear, however, that the statutory vote and notice requirements of 12 U.S.C. 181 and 182 are applicable only to national banks.

The final rule also extends to Federal savings associations the § 5.48(e)(4) and (e)(5) requirements to submit reports of condition and progress to the OCC. The OCC finds these reports useful in determining whether a national bank is following its plan of liquidation and conducting the liquidation in a safe and sound manner. The OCC believes that it is useful to have this same information for a liquidating Federal savings association. In addition, the OCC is requiring the liquidating agent or committee to submit to the OCC a report at the start of liquidation showing the bank's current balance sheet.

Revised § 5.48(e)(6) requires a national bank and Federal savings association to submit a final report of the liquidation to the OCC. This requirement currently exists only for Federal savings associations. However, this report allows the agency to confirm that the institution accomplished the liquidation in accordance with the liquidation plan. Furthermore, this

requirement is consistent with the OCC's current supervisory practice. Revised § 5.48(e)(6) also specifically requires both national banks and Federal savings associations to return the charter certificate to the OCC.

Sections 5.48(f) and 146.4(b) contain substantively similar provisions for expedited liquidations, and the OCC is consolidating the two provisions by applying § 5.48(f) to Federal stock savings associations. The result of the § 146.4(b) provision that excepts from the voluntary liquidation requirements the transfer of all of a Federal savings association's assets and liabilities to a bank in a business combination transaction remains in effect under § 5.48(f). Consistent with § 146.4(b), however, the final rule does not extend paragraph (f) to Federal mutual savings associations because of the unique ownership structure of those savings associations. The final rule also eliminates § 5.48(g), concerning a national bank as an acquirer of a liquidating national bank, because it does not impose requirements beyond those stated in current law. Finally, the OCC is making other technical changes to clarify § 5.48 where necessary.

Change in Control (§ 5.50)

Twelve CFR 5.50, Change in bank control; Reporting of stock loans, and 12 CFR part 174, Acquisition of control of Federal savings associations, set forth the policy and establish the process for acquisitions of control of national banks and Federal savings associations, respectively. These rules provide the framework for prospective acquirers when they seek to acquire control of a national bank or Federal savings association. Specifically, § 5.50 and part 174 describe the application process and the factors the OCC considers in reviewing the qualifications of the prospective acquirer. The section also addresses the factors that prospective acquirers should consider when exploring possible acquisitions.

While both § 5.50 and part 174 implement the Change in Bank Control Act[102] and many of the substantive requirements are the same, part 174 includes certain substantive requirements that are not included in § 5.50. For example, the rules for Federal savings associations contain many of the same thresholds and control concepts included in § 5.50, but part 174 includes rebuttable control presumptions and rebuttable presumptions of concerted action that are absent in § 5.50.

We proposed to amend 12 CFR 5.50 to make it applicable to both national banks and Federal savings associations and to rescind 12 CFR part 174. As discussed below, we are adopting these amendments as proposed. The amendments to § 5.50 make uniform the treatment of ownership interests held in all national banks and Federal savings associations. The amendments also give guidance to investors contemplating purchasing shares in a national bank or Federal savings association by providing information about what transactions are covered by the requirements and when a notice is necessary. In addition, the amendments clarify the OCC's supervisory expectations for these transactions.

Specifically, the final rule amends § 5.50 to include a number of the definitions and substantive provisions found in part 174. In some instances, these amendments codify substantive differences, as described below.

The final rule also amends the definition section in § 5.50 to add a number of definitions from part 174. These additional terms include "controlling shareholder," "management official," "company," and several definitions that are necessary because we have added Federal savings associations to the rule. The final rule also replaces the definition of "acquisition" with that of "acquire" from part 174, which contains a more detailed description of transactions that are be

[102] 12 U.S.C. 1817(j).

covered by the rule. Specifically, the final rule defines "acquire" as obtaining ownership, control, power to vote, or sole power of disposition of stock, directly or indirectly or through one or more transactions or subsidiaries, through purchase, assignment, transfer, pledge, exchange, succession, or other disposition of voting stock. The final rule also includes specific examples. Finally, the final rule retains and applies to Federal savings associations the current definition of "voting securities," which replaces the part 174 definition of "voting stock." The change will affect the standard for convertible securities. Currently, part 174 includes as voting stock any security that, upon transfer or otherwise, is convertible into voting stock or exercisable to acquire voting stock where the holder of the convertible security has the preponderant economic risk in the underlying voting stock. Section 5.50, by contrast, defines voting securities to include securities that are immediately convertible into voting securities at the option of the owner or holder. The OCC believes the immediately convertible standard is simpler and easier to apply than the preponderant economic risk standard and provides an appropriate standard for the treatment of securities that are convertible into, or exchangeable for, voting securities.

One commenter requested that the Federal banking agencies make the definitions of "acting in concert" and "immediate family" uniform. However, this change is outside the scope of our licensing integration and would need to be undertaken on an interagency basis. We will consider this change when reviewing our rules for any possible joint rulemakings in response to other EGRPRA-related amendments.

The amendments to § 5.50 add several presumptions of concerted action. These additional presumptions provide guidance about how and when parties are presumed to be acting in concert for purposes of § 5.50. Currently, an acquirer that proposes to rebut control of a national bank cannot have a representative on the board of directors. The amended rule allows

acquirers to rebut a presumption of control in cases where the acquirer will have a representative on the board of directors of the relevant national bank or Federal savings association. This amendment provides greater flexibility for acquirers; in addition, these changes help make the OCC's proposed change in control regulations consistent with the Federal Reserve System's regulations. Additionally, the final rule establishes specific limitations in the rebuttal of control context on the total equity invested, where an acquirer proposes to acquire more than fifteen percent of the national bank's or Federal savings association's voting stock. The final rule also removes certain of the rebuttable presumptions of control with respect to Federal savings associations that are currently set forth in § 174.4(b) and (c), and certain of the rebuttable presumptions of concerted action currently set forth in § 174.4(d).

The final rule does not include the detailed part 174 procedures for rebuttal of control and concerted action, retaining instead the procedures in § 5.50(f)(2)(vi) and applying them to Federal savings associations. The OCC believes that rebuttals are processed in a timely manner under § 5.50, and that the processing procedures established in part 174 are unnecessarily detailed. The final rule also excludes certain other provisions that are included in part 174. For instance, amended § 5.50 retains the current prior notice exemption provisions for acquisition of control as a result of testate or intestate succession. Thus, both national banks and Federal savings associations must file a notice and pay the appropriate filing fee within 90 calendar days after the transaction occurs. Previously, persons who acquired control of a Federal savings association as a result of testate or intestate succession needed only to file a notification of acquisition to the OCC within 60 days of the acquisition and provide information requested by the OCC. The OCC believes this change is appropriate because it enables the OCC to review

acquisitions of control through testate or intestate succession under the standards set forth in § 5.50. We did not receive any comments on these changes.

Likewise, amended § 5.50 does not include the presumptive disqualifiers from part 174 − a list of factors, which, if present, may show a lack of integrity or lack of financial capability to proceed with a proposed transaction. While the OCC believes that the presumptive disqualifiers provide helpful guidance regarding circumstances in which the OCC might consider a change of control notice to be objectionable under the standards for disapproval, the OCC does not consider it necessary to include these detailed provisions in the regulation. The OCC intends to amend the Change in Bank Control Act booklet of the Comptroller's Licensing Manual to address the situations described in the presumptive disqualifiers to the extent it considers appropriate. The amended regulation retains the standards for disapproval set forth in § 5.50(e)(5) and (6).

One commenter recommended that the OCC amend § 5.50 to include a process by which institutions can obtain a binding interpretation of what constitutes a change in control so that institutions will know when a filing is necessary. However, the OCC does not believe a rule change is necessary to provide this information. Institutions can, and often have, asked the OCC for a legal opinion or interpretation of the statute and regulation regarding whether a change in control filing is required based on the facts and circumstances presented. The OCC will continue to provide this information on a case-by-case basis.

Revised § 5.50 also does not include the requirement at § 174.5(a) that acquirers of beneficial ownership exceeding 10 percent of any class of stock of a Federal savings association that do not file a control notice or control rebuttal file a certification of ownership. The OCC

believes that the regulatory burden of these filings exceeds the benefits derived from them. We did not receive any comments on this change.

One comment letter, as well as a commenter at the Dallas EGRPRA outreach meeting, noted that the change in control application process allows the regulator to keep the application review period open indefinitely by stating that the filing is not yet informationally complete. These commenters noted that this creates uncertainty, which has a cost to the parties and the affected institutions. One of these commenters requested that there be a definitive cutoff period. However, such a change should be made on an interagency basis. Therefore, we will consider this comment when we review our rules for any possible joint rulemakings in response to other EGRPRA-related amendments.

We received comments at the Los Angeles EGRPRA outreach meeting requesting that we should approve change of control applications within 30 days, rather than the 60-day period that is currently used. We do not agree that this statutory period should be reduced as 60 days is necessary for the OCC to complete our review of the filing.

Finally, the final rule eliminates Appendix A to 174 – Rebuttal of Control Agreement. Our rules contain no similar model agreement for national banks, and we do not believe this model is necessary for Federal savings associations.

Change in Directors & Senior Executive Officers (§ 5.51)

Twelve CFR 5.51, Changes in directors and senior executive officers, and 12 CFR part 163, subpart H, Notice of change of director or senior executive officer (§§ 163.550 through 163.590), implement 12 U.S.C. 1831i, which requires certain national banks and Federal savings associations to notify the OCC of a change in a director or senior executive officer. In order to make the treatment of national banks and Federal savings associations more consistent, we

proposed to amend § 5.51 by adding language to make it applicable to both national banks and Federal savings associations, making various clarifying changes to the rule, and rescinding 12 CFR part 163, subpart H.

The final rule adopts these amendments as proposed. The resulting changes for both national banks and Federal savings associations, and the comments that we received in response to the proposal, are described below.

Definitions. The definition in § 5.51(c)(1) of a "director" for a national bank is not as broad as the definition of the same term in § 163.555 for a Federal savings association. Specifically, the definition in the bank rule includes an advisory director who is authorized to vote on any matters before, or provides more than general advice to, the board of directors. The savings association rule includes an advisory director who votes or provides such advice to a committee of the board in addition to the board of directors. The final rule amends § 5.51(c)(1)(ii) to include this broader definition. As a result, an advisory director of a national bank who may vote on matters before, or provides more than general advice to, any committee of the board of directors is now subject to the requirements of § 5.51. We did not receive any comments on this change.

Section 5.51(c)(2) defines the term "national bank." To provide parallel treatment, the final rule redesignates § 5.51(c)(2) as § 5.51(c)(3) and adds a definition for the term "Federal savings association" at § 5.51(c)(2).

"Senior executive officer" is defined in § 5.51(c)(3) for a national bank and in § 163.555 for a Federal savings association. In addition to minor variances in wording, the definitions have two primary differences. First, the definition in § 163.555 includes an individual serving as president of the institution, while § 5.51(c)(3) does not. To eliminate any ambiguity, the final

rule adds "president" to the definition of senior executive officer and redesignates § 5.51(c)(3) as § 5.51(c)(4). Second, the definition in § 163.555 specifies that a "senior executive officer" also includes any other person identified by the OCC or the OTS in writing as an individual who exercises significant influence over, or participates in, major policymaking decisions, whether or not hired as an employee, while § 5.51(c)(3) does not specify that the OCC provide notice in writing. The final rule amends redesignated § 5.51(c)(4) to clarify that the notification must be in writing.

We received one comment on this definition, which requested that the Federal banking agencies adopt uniform definitions of "director and senior officers." This change is outside the scope of our licensing integration rulemaking and would need to be undertaken on an interagency basis. We will consider this change when reviewing our rules for any possible joint rulemakings in response to other EGRPRA-related amendments.

Section 5.51(c)(4) defines the term "technically complete notice" for a national bank to mean a notice that includes all information required by § 5.51(e)(2), and includes information that may be requested by the OCC after the original submission of the notice. While § 163.555 does not include a specific definition of this term for a Federal savings association, the term "technically complete notice" as defined in the bank rule is generally consistent with the content requirements in § 163.570 and the procedures in § 163.575 governing review of a notice for completeness. The final rule amends this definition to delete the phrase "original submission of the notice" and replace it with "notice" to allow for subsequent OCC requests for additional information. We did not receive any comments on this change.

Redesignated § 5.51(c)(6) defines the term "technically complete notice date" to mean the date on which the OCC has received a technically complete notice for a national bank or

Federal savings association. A Federal savings association should be aware of this definition because it triggers the 90-day time period for OCC review and decision discussed below. We did not receive any comments on this change.

"Troubled condition" is defined in § 5.51(c)(6) for a national bank and in § 163.555 for a Federal savings association. The definitions are substantially similar, and we believe the definition of troubled condition for a national bank encompasses all of the actions included in the definition for a Federal savings association. However, § 5.51(c)(6) provides that a national bank may be designated in troubled condition based on information obtained as a result of an examination, while § 163.555 provides that a Federal savings association may be designated in troubled condition based on information available to the OCC. The language in § 163.555 is broader and thus provides the OCC with greater ability to ensure the safety and soundness of the institutions we supervise. Accordingly, the final rule amends § 5.51(c)(6) by redesignating it § 5.51(c)(7) and by deleting the phrase "as a result of an examination" and replacing it with the phrase "based on information pertaining to such national bank or Federal savings association." We did not receive any comments on this change.

Prior Notice. Sections 5.51(d) and (e)(6)(ii) prescribe when a national bank must provide prior notice to the OCC, and §§ 163.560, 163.585(a)(2), and 163.590(b) are the corresponding provisions for a Federal savings association. The description of circumstances requiring prior notice are similar in most respects, but there are differences in the timeframe for prior notice and the treatment of an individual seeking election to the board of directors who has not been nominated by management. Under § 5.51(d), a national bank must provide 90 days prior notice before adding or replacing any director or senior executive officer, or changing the position of a current senior executive officer, if the bank is not in compliance with minimum capital

requirements, is otherwise in a troubled condition, or the OCC determines, under section 38 of the FDI Act,[103] that prior notice is appropriate. Section 163.560 requires 30 days prior notice for a Federal savings association if similar prerequisites are met. The OCC may extend this review period under § 163.585(a)(2) for an additional period not to exceed 60 days. Furthermore, in lieu of following the procedures under § 163.590(b), this 30-day notice requirement applies to an individual seeking election to the board of directors who has not been nominated by management.

The final rule applies the national bank standards to Federal savings associations requiring them to provide 90 days prior notice of a new director or senior executive officer if certain prerequisites are met. We believe this longer prior notice is appropriate for both banks and savings associations and conforms with the review of these notices under current OCC practice pursuant to the notice period extension. In addition, under the revised rule, only a Federal savings association may file the notice with the OCC; an individual seeking election to the board of directors of a Federal savings association who has not been nominated by management no longer is allowed to do so. We believe that conducting the necessary review only after an individual has been elected to the board of directors is a more judicious use of OCC resources. The final rule also requires that if the OCC determines that prior notice is required based on review of an agency plan under section 38 of the FDI Act, such determination must be in writing.

We received one comment on the required 90-day notice, which requested that the Federal banking agencies adopt a uniform 30-day prior notice requirement. However, we

[103] 12 U.S.C. 1831o.

disagree with this comment. The OCC frequently needs 90 days to make its determination. Therefore, we are adopting the provisions as proposed.

Exceptions to rules of general procedure. For a national bank, under § 5.51(e)(8), notices are not subject to public notice and comment, are not publicly available, and are excepted from certain other generally applicable application processing provisions of part 5. Under part 163, subpart H, and the application processing regulations applicable to Federal savings associations, notices pertaining to Federal savings associations are treated similarly. The final rule amends § 5.51(e)(8) to include Federal savings associations and to clarify that the procedures in § 5.13(c) regarding required information and abandonment of a filing apply to the extent provided for in amended § 5.51(e)(3)(iii) and (e)(7). We did not receive any comments on these amendments.

Content of Notice. Current § 5.51(e)(2) and 163.570 provide, respectively, the requirements governing the content of a notice for a national bank and a Federal savings association. Although § 5.51(e)(2) lists the specific items required and § 163.570 refers to 12 U.S.C. 1817(j)(6)(A) and the Interagency Biographical and Financial Report (IBFR), these requirements are essentially the same, except that § 5.51(e)(2) currently does not require the financial portion of the IBFR for a national bank. Because the financial section of the IBFR provides information that is useful and relevant to the disapproval standards and may not be available to the OCC in the information currently required to be provided, the final rule revises § 5.51(e)(2) to require the submission of the financial portion of the IBFR, except when the OCC determines in writing that this information is not required.

The final rule also adds language to § 5.51(e)(2) to permit the OCC to require additional information and to require or accept other information in place of the information required by this paragraph. This language, which provides valuable flexibility to the OCC, is currently

included in § 163.570(a)(3) and (b). In addition, the final rule adds language to § 5.51(e)(2) to clarify how to calculate the three-year exception for providing fingerprints.

We did not receive any comments on these changes.

Request for additional information. The final rule amends § 5.51(e)(3), redesignated as § 5.51(e)(3)(i), to remove the qualification that the OCC's request for information be in writing "where feasible" and instead requires that the OCC's request must always be in writing and that the OCC must provide an explanation of why the information is needed. In addition, the final rule adds a new § 5.51(e)(3)(ii) to provide that a national bank or Federal savings association that cannot provide the requested information within the time specified by the OCC may request that the OCC suspend processing of the notice and that the OCC, in its discretion, may either grant or deny the request in writing, and if granted, specify the time period during which the information must be provided. This provision is similar to § 163.575(b). The final rule also adds new § 5.51(e)(3)(iii), which provides that if a national bank or Federal savings association fails to provide the requested information within the time specified in § 5.51(e)(3)(i) or in the OCC's grant of the suspension request pursuant to § 5.51(e)(3)(ii), the OCC may either deem the filing abandoned under § 5.13(c) or review the notice based on the information provided. This provision is included in § 163.575(b). Based on our supervisory experience, it is appropriate to apply these specific consequence for failing to provide such additional information to national banks in addition to Federal savings associations. We did not receive any comments on these changes.

Notice of disapproval/notice of intent not to disapprove. Sections 5.51(e)(4) and (5) describe the requirements governing a notice of disapproval and a notice of intent not to disapprove for a national bank, and §§ 163.580 and 163.585 are the equivalent provisions for a

Federal savings association. Although there are minor differences in wording, they are substantively the same. Accordingly, the final rule amends § 5.51(e)(4) and (5) to include Federal savings associations. In addition, the final rule amends § 5.51(e)(4) and (5) to clarify that the notice of disapproval and the notice of intent not to disapprove must be in writing.

The final rule also clarifies in § 5.51(e)(5) that the OCC will provide the notice of intent not to disapprove to the individual in addition to the institution. This change clarifies an ambiguity and makes this provision consistent with other provisions in § 5.51.

Finally, the final rule revises § 5.51(e)(5) to require that an individual must satisfy all applicable legal requirements to begin service as a director or senior executive officer after receiving a notice of intent not to disapprove.

We did not receive any comments on these changes.

Waiver. Section 5.51(e)(6) prescribes the waiver procedure that allows an individual to serve as a director or senior executive officer of a national bank prior to filing a notice. Section 163.590 prescribes corresponding procedures for a Federal savings association. Although these provisions are similar in terms of standards for granting a waiver and requiring that a notice is filed within a specified time period after the waiver has been granted, the savings association rule does not detail the length of service of such an interim position. The final rule applies § 5.51(e)(6) to savings associations, reorganizes and renumbers § 5.51(e)(6), and makes the changes described below. We did not receive comments on any of these changes.

First, under redesignated § 5.51(e)(6)(i)(B), the final rule clarifies that the OCC's finding in support of the waiver must be in writing, which is the OCC's current practice and which is included in the savings association rule.

Second, § 5.51(e)(6) provides that the OCC may waive the prior notice requirement if delay could harm the national bank or the public interest, or if other extraordinary circumstances justify waiving the requirement. Under § 163.590(a), the OCC may grant a waiver if delay would threaten the safety and soundness of the savings association, would not be in the public interest, or if there are other extraordinary circumstances. The final rule revises § 5.51(e)(6) to incorporate the safety and soundness standard and modifies it slightly from what is included in the savings association rule. Specifically, as amended, the OCC may grant a waiver if delay could adversely affect the safety and soundness of the national bank or Federal savings association, would not be in the public interest, or other extraordinary circumstances justify the waiver.

Third, both § 5.51(e)(6) and § 163.590 provide that if the OCC grants a waiver, the national bank must file the required notice within the time period specified in the waiver. The final rule amends redesignated § 5.51(e)(6)(i)(C) to clarify that such notices must be technically complete within this specified time period.

Fourth, the final rule amends redesignated § 5.51(e)(6)(i)(D) by changing the alternative outcomes that may occur after a waiver is granted and the proposed individual has assumed the position on an interim basis. Section 163.590 does not include similar provisions. Under the current bank rule, if a proposed director or senior executive officer who is serving under a waiver receives notice of disapproval, that person could continue to serve pending resolution of an appeal. We believe it is not in the best interest of the national bank or Federal savings association, and would be unsafe or unsound, to allow a disapproved individual to continue to serve pending an appeal. Therefore, amended § 5.51(e)(6)(i)(D)(2) requires an individual who is serving on an interim basis and receives a notice of disapproval to resign immediately from the

board. This person may assume the position on a permanent basis only if the notice of disapproval is reversed on appeal and all other applicable legal requirements are satisfied.

Section 5.51(e)(6) also provides that if the required notice is not filed within the time period specified in the waiver, the proposed individual must resign his or her position. Thereafter, the individual may assume the position on a permanent basis only after the national bank receives a notice of intent not to disapprove, the review period elapses, or a notice of disapproval has been overturned on appeal. Section 163.590 does not include a similar provision. The rule also provides that a waiver does not affect the OCC's authority to issue a notice of disapproval within 30 days of the expiration of such waiver. The final rule clarifies in § 5.51(e)(6)(i)(E) that the individual may assume the position under these circumstances only after a technically complete notice has been filed and all other applicable requirements are satisfied. Furthermore, the final rule specifies in § 5.51(e)(6)(i)(D)(3) that the review period elapses when the OCC fails to act within 90 calendar days after submission of a technically complete notice and the individual satisfies all other legal requirements. As a matter of practice, the OCC has taken the position that waiver of prior notice does not affect the general 90-day review period and this amendment codifies this position in our rule.

The final rule also clarifies in § 5.51(e)(6)(i)(D)(1) that following receipt of a notice of intent not to disapprove the individual may assume the position on a permanent basis if all other applicable legal requirements are satisfied.

Section 5.51(e)(6)(ii) prescribes the requirements for an automatic waiver of the prior notice requirement for a national bank, and § 163.590(b) is the corresponding provision for a Federal savings association. Specifically, § 5.51(e)(6)(ii) provides that if a new director not proposed by management is elected at a shareholder meeting, a waiver of the prior notice

requirement is granted automatically and the elected individual may begin service as a director. However, the national bank must file the required notice as soon as practical and not later than seven days from the date the individual is notified of the election. This provision differs from § 163.590(b), which requires the individual, and not the institution, to file the notice. The final rule applies § 5.51(e)(6)(ii) to Federal savings associations.

Commencement of Service. For a national bank, § 5.51(e)(7) prescribes when a proposed individual may assume the office. Section 163.585 is the corresponding provision for a Federal savings association. Under § 5.51(e)(7), an individual may begin service at the end of the OCC's review period unless the OCC issues a notice of disapproval or the OCC deems the notice to be abandoned because the bank does not provide additional requested information. Under § 163.585, an individual may begin service at the end of the 30-day review period (or, if extended, the 90-day review period) unless the OCC issues a notice of disapproval, or when the OCC notifies the bank in writing of its intent not to disapprove.

The final rule adds new § 5.51(e)(7)(i) to clarify that an individual may assume the office on a permanent basis prior to expiration of the review period only if the OCC notifies the national bank or Federal savings association in writing that the OCC does not disapprove the proposed director or senior executive officer. As indicated above, this provision is included in § 163.585(b). The final rule also adds conforming language in § 5.51(e)(7)(i), redesignated as § 5.51(e)(7)(ii)(A), to provide that the OCC's notice of disapproval must be in writing. We note that redesignated § 5.51(e)(7)(ii)(B) specifically prohibits individuals from beginning service at a Federal savings association, in addition to at a national bank, if the OCC deems the application abandoned. While § 163.575 applies the concept of abandonment to a Federal savings association when a notice is not complete, § 163.585 does not specifically prohibit individuals

from serving if the OCC deems the application abandoned. We did not receive any comments on this change.

Appeal. Section 5.51(f) prescribes the applicable procedures for a national bank or a proposed individual to appeal a notice of disapproval. There is no equivalent rule in part 163, subpart H for a Federal savings association. Accordingly, under § 5.51(f) as amended by this final rule, this appeal process is available to both a Federal savings association and the proposed individual.

We received one comment related to the appeal of notices of disapproval. That commenter requested that all of the Federal banking agencies' rules include a procedure for the appeal of the denial of a notice for a change in a director or senior executive officer. However, this change is unnecessary for the OCC rules because, as indicated above, the OCC's current national bank rule already includes an appeals process and the OCC in this final rule applies that process to Federal savings associations.

Technical changes. The final rule makes minor technical changes throughout § 5.51. For example, § 5.51 uses the terms "individual" and "person" interchangeably and uses the terms "lapse," "end," and "expire" interchangeably. To promote consistency and conform to the language in 12 U.S.C. 1831i, the final rule replaces the word "person" with "individual" and uses the word "expire" or "expiration." To promote consistency and avoid confusion, the final rule adds the word "calendar" before the word "days." Finally, in the definition of "national bank" in § 5.51(c)(2), the final rule deletes the reference to § 5.3(j) because it is obsolete. We did not receive any comments on these changes.

Change in Address (§ 5.52)

Twelve CFR 5.52 requires a national bank to submit a written notice to the OCC if its main office or post office box address changes. Twelve CFR 145.91(b) requires a Federal savings association to notify the appropriate OCC licensing office if it changes the permanent address of its home office, with certain exceptions. The rules are substantially similar. In order to consolidate these rules and make them consistent, the OCC proposed amending § 5.52 to make it applicable to both national banks and Federal savings associations and to rescind § 145.91(b). The OCC did not receive any comments on the proposed changes and adopt the amendments as proposed. As previously discussed in this preamble with respect to § 5.40, the OCC uses the term "main office" when discussing a national bank and "home office" when discussing a Federal savings association.

As noted above, the current national bank and Federal savings association notice requirements are subject to certain exceptions. Specifically, § 5.52(b) currently provides that a national bank is not required to provide notice of a main office or post office box address change if the change results from a transaction approved under part 5. Section 145.91(b) provides that a Federal savings association is not required to provide a change of address notice if the association submitted an application or notice to relocate or establish a new home or branch office pursuant to §§ 145.93 and 145.95. The OCC is making these provisions consistent by providing in the final rule that neither a national bank nor a Federal savings association is required to file a notice if it submitted a notice under § 5.40(b), which addresses a relocation of a main office or home office. In addition, a Federal savings association is not required to file a notice for a transaction approved under part 5, consistent with the current treatment for national banks.

We note that under current Federal savings association rules, highly rated savings associations are exempt from the §§ 145.93 and 145.95 provisions requiring an application or notice for the relocation or establishment of a new home or branch office, and therefore must file a change in address notice under 145.91. As a result of the integration of §§ 145.93 and 145.95 into § 5.40 with respect to a relocation of a home office and the concurrent removal of the exemption for highly rated savings associations, all savings associations file an application or notice for the relocation of a home office pursuant to § 5.40 and therefore are exempt from the change in address notice under § 5.52.

Finally, § 145.91(a) provides that all operations of a Federal savings association are subject to direction from the home office. There is no equivalent provision for national banks. The OCC believes this provision to be unnecessary and has not included it in revised § 5.52.

Change in Asset Composition (§ 5.53)

Twelve CFR 5.53 sets out the OCC's rules addressing changes in asset composition for national banks. It requires a national bank to apply to the OCC and obtain prior written approval before changing the composition of all, or substantially all, of its assets (1) through sales or other dispositions, or, (2) having sold or disposed of all or substantially all of its assets, through subsequent purchases or other acquisitions or other expansions of its operations. It contains exceptions for changes in asset composition that occur in connection with an enforcement action, a liquidation under 12 CFR 5.48, or a bank's ordinary and ongoing business of originating and securitizing loans.

Twelve CFR 163.22(c) and (h)(2) set out the OCC's rules addressing changes in asset composition, as well as several other types of changes in business, for Federal savings associations. Section 163.22(c) requires a Federal savings association to file either an expedited

treatment notice (which is a form of application) or a standard treatment application, as specified in § 163.22(h)(2), for transactions described in § 163.22(c). Section 163.22(c) includes: (1) purchases or sales or other transfers of assets in bulk not made in the ordinary course of business, unless the transaction is a combination with, or the assumption of deposits from, another insured depository institution and is subject to the Bank Merger Act, (2) assumptions or sales or other transfers of savings account liabilities, deposit accounts, or other liabilities in bulk not made in the ordinary course of business, unless the transaction is a combination with, or the assumption of deposits from, another insured depository institution and is subject to the Bank Merger Act, and (3) combinations with a depository institution other than an insured depository institution.[104]

The OCC proposed to combine these rules in an expanded § 5.53 by including some additional requirements for approval of asset transfers based on § 163.22(c).[105] We also proposed to make clarifications in some of the existing provisions of § 5.53 and to revise the rule's layout to make it easier to follow. Finally, as a result of these changes and others in this rulemaking, we proposed to remove 12 CFR 163.22(c) and (h)(2).[106] The OCC did not receive any comments on the proposed changes, and adopt the amendments as proposed, with one technical correction that is described below.

Specifically, the final rule revises § 5.53(b), the scope section, to make it a single sentence and moves the extended description of covered transactions and exceptions into a new definition section. In § 5.53(c)(1)(i) of the definition section, the final rule amends an existing

[104] Transfers and combinations with insured depository institutions that are subject to the Bank Merger Act are covered by other parts of § 163.22.

[105] We are addressing the provisions in § 163.22(c) regarding combinations and transfers of deposits and other liabilities in revised 12 CFR 5.33 on business combinations, discussed elsewhere in the preamble.

[106] Other provisions of this rulemaking remove the remaining provisions of § 163.22.

provision to clarify that a sale of all or substantially all assets in a series of transactions is covered, not only the sale of assets in a single transaction to one purchaser.

The final rule adds two provisions in the definition that will bring some of the asset transfers that are covered by § 163.22(c) within the scope of § 5.53. Section 163.22(c) includes all purchases or sales or other transfers of assets in bulk not made in the ordinary course of business, unless the transaction is a combination with, or the assumption of deposits from, another insured depository institution and is subject to the Bank Merger Act. The final rule adds some, but not all, such transfers to § 5.53. The existing national bank rule at § 5.53(b) and (c)(1)(ii) (which this rulemaking includes at § 5.53(c)(1)(ii)) includes asset purchases only after a prior asset sale. The final rule adds: (1) any other asset purchases or other expansions of business that are part of a plan to increase the size of the bank or savings association by more than 25 percent in one year; and (2) any other material increase or decrease in the size of the national bank or Federal savings association or a material alteration in the composition of the types of assets or liabilities of the national bank or Federal savings association (including the entry or exit of business lines), on a case-by-case basis, as determined by the OCC.

The amended rule advises banks and savings associations that are contemplating transactions that may constitute a material change to consult the appropriate OCC supervisory office and sets out factors the OCC will use in determining whether an application is required. The intent of this provision is to establish a mechanism for requiring prior approval of significant changes when the OCC considers it necessary for supervisory reasons without establishing specific application criteria in the rule that would require banks and savings associations to file applications in other cases.

The net effect of these changes on national banks is to require applications for approval in more situations than under current § 5.53, but these additional situations likely already would involve discussions between the bank and its supervisory office. The net effect of these changes on Federal savings associations will be fewer situations in which applications for approval are required than are now required under current § 163.22(c).

Section 5.53 has three exceptions to the requirement to file an application. An application under § 5.53 is not required if the bank is making the asset change in response to direction from the OCC (e.g., in an enforcement action), if the asset change is part of a voluntary liquidation under 12 U.S.C. 181 and 182 and 12 CFR 5.48 that will be completed within one year, or if the asset change occurs as a result of a bank's ordinary and ongoing business of originating and securitizing loans. The final rule amends § 5.53 to provide that the exception for asset changes that are part of a voluntary liquidation applies only if the OCC has notified the bank or savings association that it has no objection to the liquidation plan. We note that the final rule amends § 5.48, Voluntary liquidation, to require this non-objection. We also note that the proposed rule required OCC "approval" of the liquidation plan as the prerequisite for this exception, and this final rule makes the terminology consistent with § 5.48. The final rule also adds an exception for changes in assets that are subject to OCC approval under another application to the OCC. In such cases, an additional application under § 5.53 is not required. Under the current rule, this exception is only implied.

Section 5.53 currently does not have a provision granting expedited review of applications by eligible banks. Section 163.22(c) covers a broader range of transactions than § 5.53, and § 163.22(c) and (h)(2) provided for expedited treatment of bulk transfer filings if all the participating Federal savings associations meet the conditions for expedited treatment. The

OCC believes the transactions covered under § 5.53 will always be significant enough that expedited review is not appropriate. Therefore, the final rule does not include expedited review in § 5.53.

Finally, the final rule revises the approval requirement provision in § 5.53(d)(1) to eliminate language that is now covered by the term "substantial asset change" and revises the manner in which the review factors are set out in § 5.53(d)(2)(i) to be the same as the similar factors in 12 CFR 5.33.

Capital Distributions by Federal Savings Associations (new § 5.55)

Subpart E of part 163, Capital distributions, sets forth the procedures and standards for all capital distributions made by a Federal savings association. Section 5.46, Changes in permanent capital, and subpart E of part 5, Payment of dividends, describe the procedures and standards relating to a transaction resulting in a change in a national bank's permanent capital and declaration and payment of national bank dividends, respectively. Although part 163, subpart E and § 5.46 and subpart E of part 5 cover similar transactions, they are structured differently and apply in different ways to Federal savings associations and national banks. Therefore, the OCC did not propose to integrate these rules. However, in order to include all OCC licensing-related rules in part 5, we proposed to move the provisions contained in subpart E of part 163 to part 5 as new 12 CFR 5.55, update the cross-references in §§ 192.510(c)(1) and 192.520(c) to reflect the new § 5.55, and to make other conforming changes.

In addition, we proposed including in new § 5.55 filing procedures based on provisions in part 5 regarding eligible savings associations and expedited review. These part 5 procedures result in filing requirements similar to those in subpart E of part 163. However, as described in the discussion of the part 5, subpart A, definition of "eligible bank or eligible savings

association" elsewhere in this preamble, because the eligibility requirements in part 5 and in the current Federal savings association rules are not identical, the part 5 eligibility requirements for expedited review could affect which savings associations qualify for the expedited process. We also proposed clarifying the provisions regarding the filing of a notice with the OCC and Federal Reserve Board in proposed § 5.55(e)(2)(iii), (2)(iv) and (4) to more precisely describe the requirements.

We proposed no further substantive changes to the capital distributions rule for Federal savings associations.

The OCC did not receive any comments on proposed § 5.55. Therefore, we adopt these amendments as proposed.

Subordinated Debt (New § 5.56)

The OCC currently has separate rules for subordinated debt issued by national banks and Federal savings associations (12 CFR 5.47 and 12 CFR 163.81, respectively). Because of the differences and complexity of these rules, we did not propose to integrate them in this rulemaking at this time. However, in order to include all OCC licensing-related rules in part 5, we proposed to move § 163.81 to part 5 as new 12 CFR 5.56 and update the cross-reference in § 193.101(c) to reflect the new § 5.56.

In addition, we proposed to include in new § 5.56 filing procedures based on provisions in part 5 regarding eligible savings associations and expedited review that would result in filing requirements similar to those in § 163.81. However, as described in the discussion of the part 5, subpart A, definition of "eligible bank or eligible savings association" elsewhere in this preamble, because the eligibility requirements in part 5 and in the current Federal savings

association rules are not identical, the part 5 eligibility requirements for expedited review could affect which savings associations qualify for the expedited process.

We did not propose any other substantive changes to rules on subordinated debt for Federal savings associations.

The OCC did not receive any comments on proposed § 5.56, and we adopt it as proposed, with the following technical amendments. First, the final rule replaces the term "non-objection," a carryover from § 163.81, with the term "approval" in § 5.56, which is the term used in part 5.

Second, because the effective date for the Basel III revisions to our capital rules took effect on a staggered basis, the proposed rule contained provisions specifically applicable to non-advanced approaches Federal savings associations, which did not need to comply with the revised capital rules until January 1, 2015. However, as this final rule is effective after this date, these specific provisions are no longer necessary, and the final rule removes them.

Pass-through investments by Federal savings associations (new § 5.58)

National banks and Federal savings associations may make, directly or through an operating subsidiary, non-controlling investments (the national bank term) or pass-through investments (the Federal savings association term) in entities pursuant to their respective authority under 12 U.S.C. 24(Seventh) (national banks) and 12 U.S.C. 1464(c) (Federal savings associations) and other statutes. Twelve CFR 5.36 describes the procedures for making these non-controlling investments for national banks. Twelve CFR 160.32(a) addresses the authority of Federal savings associations to make pass-through investments, while § 160.32(b) and (c) describe the procedures for making pass-through investments for Federal savings associations.

With respect to Federal savings associations, § 160.32(a) codifies the authority of Federal savings associations to make pass-through investments in certain entities that hold only assets

and engage only in activities permissible for Federal savings associations. When making the pass-through investment, a Federal savings association must comply with all the statutes and regulations that would apply if it were engaging in the activity directly. For example, a Federal savings association must aggregate a proportionate share of its pass-through investment in an entity with the assets the Federal savings association holds directly in calculating its investment limits.[107]

Section 160.32(b) provides that a Federal savings association may make certain qualifying pass-through investments without prior notice to the OCC (a "no-notice procedure") in any entity that is a limited partnership, an open-ended mutual fund, a closed-end investment trust, a limited liability company, or an entity in which the Federal savings association is investing primarily to use the company's services. To qualify for this no-notice procedure, the investment must satisfy the conditions set forth in § 160.32(b): (1) the investment is not more than 15 percent of the association's total capital, (2) the book value of the association's aggregate pass-through investments does not exceed 50 percent of the association's total capital, (3) the investment does not give the association direct or indirect control of the company, and (4) the association's liability is limited to the amount of the investment. Section 160.32(c) requires a Federal savings association to provide the OCC with 30 days advance written notice prior to making any pass-through investment that does not meet these no-notice standards. The notice is a form of application and may become a standard application if the OCC notifies the filer that the investment presents supervisory, legal, or safety and soundness concerns. Section 160.32 does not specify the content of the notice or application, as does § 5.36.

[107] See 12 CFR 160.32(a) (noting, as an example, aggregation for purposes of the non-residential real estate loan limits under section 5(c) of the HOLA).

The OCC proposed to add a new § 5.58 to part 5 to make its filing requirements for non-controlling and pass-through investments consistent. New § 5.58 is based on § 5.36 and subjects Federal savings association pass-through investments to filing requirements very similar to those applicable to national banks. The OCC also proposed amending § 160.32(b) to become a cross-reference referring Federal savings associations to the new rule and removing § 160.32(c). We retained § 160.32(a) without change.

We did not propose to add Federal savings associations to § 5.36 at this time because of differences in the respective statutory authorities, the regulations implementing them, and their interpretation.

The OCC did not receive any comments on new § 5.58 and the amendments to § 160.32, and we adopt these provisions as proposed, with one technical amendment that corrects the cross-reference in § 160.32. New § 5.58 is described below.

The scope section at § 5.58(b) refers to the authority of Federal savings associations to make equity investments, including pass-through investments, under 12 U.S.C. 1464 and other statutes. It also reflects that the authority to make a pass-through investment subject to §§ 5.58(b) and 160.32(a) is in addition to authorities to make investments subject to §§ 5.35, Bank service company investments; 5.37, Investment in bank premises; 5.38, Operating subsidiaries; and 5.59, Service corporations.

Paragraph (c) of § 5.58 requires a Federal savings association to file a notice or application for a pass-through investment when required by § 5.58. Section 5.58(d) contains definitions used in the section. The definitions are like those in § 5.36(c).

Paragraph (e) of § 5.58 mirrors § 5.36(e) and provides that a well capitalized, well managed Federal savings association may make certain pass-through investments, directly or

through its operating subsidiary, in certain entities[108] by filing a written notice with the OCC no later than 10 days after making the investment. This after-the-fact notice procedure is available if the activity conducted by the enterprise is on the list of activities eligible for a notice filing for operating subsidiaries under revised § 5.38, or if it is substantially the same as an activity that has been previously approved for a Federal savings association (or its operating subsidiary) in published OCC precedent, including published former OTS precedent, and is conducted on the same terms and conditions that apply to the activity approved in that precedent. This notice must contain the information enumerated in § 5.58(e), including: (1) a description of the structure of the investment and the types of activities conducted by the enterprise in which the bank is investing, (2) how the activity comports with the activities listed in § 5.38 or OCC precedent, (3) a certification that the savings association is well managed and well capitalized at the time of the investment, (4) how the savings association will prevent the enterprise from engaging in impermissible activities, (5) a description of how the investment is convenient and useful to the savings association and not a passive investment, (6) a certification that the savings association's loss exposure is limited and that it does not have unlimited liability for the obligations of the enterprise, and (7) a certification that the enterprise agrees to be subject to OCC supervision and examination as permitted under certain Federal statutes.

If a Federal savings association is not well capitalized and well managed or if the activity conducted by the enterprise does not qualify for the after-the-fact notice procedure, the savings association is required to apply to the OCC and receive prior approval for the non-controlling

[108] Under new § 5.58(d)(1), a Federal savings association may invest in an "enterprise" that is a corporation, limited liability company, partnership, trust, or similar business entity.

investment under § 5.58(f), which mirrors § 5.36(f). The application must satisfy the other conditions enumerated in proposed § 5.58(e).

Section 5.58(g)(1), based on § 5.36(g)(1), provides for an expedited notice procedure for pass-through investments in entities holding assets in satisfaction of debts previously contracted. Under § 5.58(g)(2), based on § 5.36(g)(2), a Federal savings association is not required to file a notice or application under § 5.58 when acquiring a non-controlling investment in shares of a company through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted.

The requirement for Federal savings associations to follow filing requirements for pass-through investments similar to the filing requirements for national bank non-controlling investments does not affect the authority of Federal savings associations to make pass-through investments in entities that engage only in activities permissible for Federal savings associations. In addition, § 5.36 permits national banks to make non-controlling investments greater than 25 percent of the company's equity. Under § 5.58, Federal savings associations are permitted to do the same. Such an investment, however, constitutes "control" under the definition used in 12 U.S.C. 1828(m) that is applicable to Federal savings associations, which makes the enterprise a subsidiary of the association for purposes of section 1828(m) and triggers a filing with the OCC pursuant to section 1828(m).[109] Accordingly, § 5.58(f)(2) provides that, in all cases in which a Federal savings association proposes to invest in an enterprise that would be a subsidiary of the Federal savings association for purposes of section 1828(m) and would not be an operating

[109] A "non-controlling" investment is not defined in § 5.36. It is generally understood to mean an investment other than one that would constitute "control" under the OCC's operating subsidiary regulation, § 5.34, which is a different standard than the one applicable for section 1828(m). Because of this general understanding, national banks' non-controlling investments have not, in general, exceeded 50 percent of an enterprise's equity.

subsidiary or service corporation, the Federal savings association must submit an application for approval to the OCC, similar to the application required under § 5.58(f)(1) for investments that do not qualify for the notice procedure.

Section 5.58 also changes the filing requirements for Federal savings associations' non-controlling investments. Some pass-through investments could meet the requirements for the after-the-fact notice procedure, and the Federal savings association would need to file only the after-the-fact notice, not an application required under § 160.32(c). However, some non-controlling investments that currently may qualify for the no-notice procedure under current § 160.32(b) will require a filing under § 5.58. In this regard, we understand the no-notice procedure under current § 160.32(b) was primarily used for investments in investment companies that held assets permissible for a Federal savings association to hold directly. Section 5.58(h) continues the no-notice procedure for such investments by Federal savings associations.[110] In addition, some investments that may have qualified for the no-notice procedure may be eligible for the after-the-fact notice of § 5.58(e). Thus, the OCC believes there should not be a substantial impact of this change on Federal savings associations, since the final rule continues the most common exception to the application requirement in § 160.32, and other pass-through investments may qualify for after-the-fact filing.

Service Corporations of Federal Savings Associations (New § 5.59)

[110] Currently, national banks similarly are not required to file under § 5.36 for such investments. The rule contains exceptions to the § 5.36 filing requirements when the bank is required to make the investment under another regulation implementing a specific statutory authority. One of those exceptions is for investments made under 12 CFR part 1. Investments by national banks in pooled investment vehicles are covered by 12 CFR 1.3(h). Thus, a national bank is not required to file under § 5.36 for such investments. Section 5.58(h) will provide the same exception to the filing requirement for Federal savings associations.

Section 5(c)(4)(B) of the HOLA[111] authorizes Federal savings associations to invest in service corporations. There is no similar authority for national banks. OCC rules addressing service corporations of Federal savings associations (as well as operating subsidiaries of Federal savings associations) are currently set forth at 12 CFR part 159 (Subordinate organizations). The OCC proposed to remove these provisions of part 159 and create a new § 5.59 based on part 159 that would address only Federal savings association service corporations.[112] This new part sets forth the characteristics of Federal savings association service corporations, the requirements applicable to such service corporations, and the filing requirements that apply to a Federal savings association's establishment or acquisition of a service corporation or its commencement of new activities in an existing service corporation.

The OCC received one comment on new § 5.59, relating to the proposed annual reporting requirement. The OCC is amending its proposal to reflect this comment, and adopting the remaining provisions of § 5.59 as proposed. Revised § 5.59 and this comment are described below.

The current service corporation regulation provides that, when required by section 18(m) of the FDI Act, a Federal savings association must file a notice under 12 CFR part 116 at least 30 days before establishing or acquiring a subsidiary or engaging in a new activity in a subsidiary.[113] The regulation defines a "subsidiary" as a subordinate organization directly or

[111] 12 U.S.C. 1464(c)(4)(B).

[112] As noted elsewhere in this preamble, the final rule includes a new § 5.38 that addresses Federal savings association operating subsidiaries. As a result, all of part 159 will be removed.

[113] 12 CFR 159.11.

indirectly controlled by a Federal savings association.[114] Accordingly, under the current regulation, a Federal savings association is not required to file a service corporation application if the association proposes to make a non-controlling investment in a service corporation.

New § 5.59 amends the service corporation regulation to require that a Federal savings association file with the OCC before acquiring or establishing any service corporation, including one that it would not control. The OCC believes that this requirement is more consistent with the underlying statute, 12 U.S.C. 1828(m), and also is more prudent from a regulatory standpoint, because it enables the OCC to review the proposed establishment or acquisition of all service corporations, not merely ones the Federal savings association controls.[115] This ability to review is particularly important because service corporations may engage in a broader range of activities than Federal savings associations, and because Federal savings associations may make sizable investments in service corporations (the aggregate statutory limit for all service corporation investments is two percent of assets or three percent, provided that any amount in excess of two percent consists of community development investments). The OCC believes that the amendment will not materially increase the regulatory burden on Federal savings associations because, in most cases, the notice process is not lengthy and information requirements are not extensive**.**

As a result of this amendment, some Federal savings associations may currently have non-controlling investments in service corporations, for which the Federal savings association did not submit a filing under 12 U.S.C. 1828(m), but for which, if the Federal savings association

[114] 12 CFR 159.2.

[115] The OCC is retaining the requirement that, with respect to an existing service corporation that proposes to engage in new activities, a Federal savings association files with the OCC only if the association controls the service corporation. This requirement is consistent with 12 U.S.C. 1828(m).

made the service corporation investment now, an application would be required. The OCC does not believe that an application should be required in order for a Federal savings association to retain such investments, many of which may have occurred several years ago, and did not intend this result in the proposed rule. Accordingly, the final rule includes new paragraph (e)(10), which provides that where a Federal savings association made a non-controlling investment in a service corporation before [INSERT DATE OF FEDERAL REGISTER PUBLICATION OF THIS FINAL RULE], the date of Federal Register publication of this final rule, but did not submit a filing under 12 U.S.C. 1828(m), the Federal savings association is not required to file a service corporation application with respect to such investment, provided that the Federal savings association does not acquire additional stock or similar interests in the service corporation and the service corporation does not engage in any activities in which it was not engaged as of [INSERT DATE OF FEDERAL REGISTER PUBLICATION OF THIS FINAL RULE]. We note that we have changed the original date included in the proposed rule, June 10, 2014, the date of publication of the proposal, to the date of publication of the final rule, as we believe this is the more appropriate date on which to grandfather such existing investments.

The current service corporation regulation uses the definition of "control" in 12 CFR part 174. Instead, the final rule states, in § 5.59(d)(1) that "control" has the meaning set forth in 12 U.S.C. 1841, the Bank Holding Company Act (BHC Act), and the Federal Reserve Board's regulations thereunder, at 12 CFR part 225. The term "control" as it relates to the filing requirement, is set forth in section 18(m)(1) of the FDI Act. The FDI Act defines control by cross-referencing the definition of the term in the BHC Act, at 12 U.S.C. 1841.[116] Accordingly,

[116] 12 U.S.C. 1813(w)(5).

the OCC believes that the appropriate definition of control is the BHC Act definition. The OCC does not believe that this definitional change will have a significant impact on Federal savings associations.[117]

Section 5.59(e)(5) explicitly states that service corporations may be organized in any organizational form that provides the same protections as the corporate form of organization, including limited liability. This provision is consistent with the OTS's intent in promulgating 12 CFR part 559, the predecessor to part 159,[118] and is consistent with OTS precedent. In amending the service corporation regulation to provide explicitly that service corporations were not required to be in the corporate form, the OTS stated that it was following its standard practice of interpreting the HOLA in a manner that does not elevate form over substance and that the HOLA authorization to invest in service corporations should be read "to permit any organizational form that provides the same basic protections as the corporate form of organization."[119]

The current service corporation regulation provides that state law applies to a service corporation regardless of whether state law applies to the parent Federal savings association.[120] The OCC previously has amended its regulations to reflect the preemption provisions of the

[117] The primary differences between the definition of control in part 174 and the definition of control in the BHC Act at 12 U.S.C. 1841(a)(2) and the Federal Reserve Board's implementing regulations (BHC definition) are: (i) part 174 includes certain rebuttable control presumptions that are not in the BHC definition; and (ii) part 174 includes certain presumptions of concerted action that are not in the BHC regulations.

[118] See 61 FR 66561, at 66564 (Dec. 18, 1996). The OTS noted that it would review any proposal to organize an LLC or limited partnership as a first-tier service corporation in the notice process to ascertain whether liability will in fact be limited and whether any other safety and soundness concerns are present.

[119] Id.

[120] 12 CFR 159.3(n)(2).

Dodd-Frank Act.[121] Accordingly, this rulemaking does not include this statement in § 5.59. This result does not effect a substantive change from the current regulations.

Twelve CFR 163.161, Management and financial policies, includes a requirement that service corporations must be well managed and operate safely and soundly. That section also provides that service corporations must pursue financial policies that are safe and consistent with the purposes of savings associations and that service corporations must maintain sufficient liquidity to ensure their safe and sound operation. These requirements addressing service corporations are more appropriately included in the service corporation regulations, and the final rule includes them at § 5.59(e)(7).

Section 5.59(e)(8) retains the current rule's provisions regarding separate corporate identity, with one exception. Specifically, § 5.59(e)(8) does not include the provision in § 159.10(a)(3) that requires adequate financing as a separate unit in light of normal obligations reasonably foreseeable for a business of the service corporation's size and character because the OCC believes that this provision may be unnecessarily burdensome. For a service corporation that the Federal savings association does not control, the savings association may not have the power to ensure that it is adequately financed at all times and such lack of control may help demonstrate the service corporation's separate corporate identity. Where the savings association controls the service corporation, the savings association may find it an ineffective use of resources to finance the entity far in advance; the proposed change helps provide a savings association with flexibility as to when it provides financing to the service corporation and reduces uncertainty regarding what the agency may consider adequate financing.

[121] 76 FR 43549 at 43552, 43558, and 43565-66 (July 21, 2011).

Section 5.59(f) retains the list of preapproved activities currently in § 159.4, with minor changes. Section 159.4(h) addresses both community development and charitable activities. Section 5.59(f) divides this paragraph into two separate provisions, one addressing community development (paragraph (f)(8)), and the other addressing charitable activities (paragraph (f)(9)). In addition, the final rule simplifies the community development provision by deleting the current list of examples of preapproved community development activities (which generally fall within the scope of the 12 CFR 24.3 description of public welfare investments) and by revising the provision to include a reference to community and economic development or public welfare investments that are permissible under part 24. We note that the final rule makes technical edits to this provision as proposed to more accurately describe the types of investments considered community development investments by specifically referencing economic development and public welfare investments and to clarify that investments in rural business companies are permissible if those companies are licensed by the U.S. Department of Agriculture.

Section 5.59(g) is based on § 159.5, which specifies the limitations for a Federal savings association's investments in service corporations. As in the current rule, § 5.59(g)(1) provides that a Federal savings association may invest up to three percent of assets in service corporations, and that any investment that would cause a savings association's investment in service corporations to exceed two percent of assets must serve primarily community, inner city, or community development purposes. The current rule specifies several types of investments as serving primarily community, inner city, or community development purposes. As in the proposed rule, the final rule deletes these examples, all of which are within the scope of § 24.6, and instead provides that such investments must be consistent with § 24.6. The final rule makes technical edits to this provision as proposed to more accurately describe the types of investments

permissible above two percent of assets by adding investments with economic development or public welfare purposes.

Section 5.59(g)(2) specifies the limitations for a Federal savings association's loans to service corporations. As permitted by the HOLA, and as proposed, the final rule clarifies that these loans may be made to any service corporation, both consolidated and nonconsolidated, provided that loans to service corporations that are not GAAP-consolidated meet the lending limits in 12 CFR part 32. Section 159.5(b) does not specifically address consolidated service corporations.

Section 5.59(h)(1)(ii) includes an information requirement for service corporations with respect to insurance activities that is similar to the requirement for operating subsidiaries. This provision, which is intended to help the OCC carry out its statutory responsibilities,[122] requires a Federal savings association to list for each state the lines of business for which the service corporation holds, or will hold, an insurance license, and each state in which the service corporation holds a resident license or charter.

Section 5.59(h)(2) revises the circumstances under which a Federal savings association receives expedited review for a service corporation filing. Currently, the criteria for expedited review are set forth in 12 CFR part 116. Pursuant to this rulemaking, a service corporation filing is eligible for expedited review if the savings association is "well capitalized" and "well managed," and the service corporation engages only in one or more of the preapproved activities listed in § 5.59(f).

[122] Section 307(c) of the Gramm-Leach-Bliley Act, Pub. L. 106-102, 113 Stat. 1338, 1416, codified at 15 U.S.C. 6716, requires the OCC to consult with the appropriate state insurance regulator, and take such regulator's views into account, before making any determination relating to the initial affiliation of, or the continuing affiliation of, a depository institution with a company engaged in insurance activities.

The proposed rule included a new requirement for Federal savings associations to file an annual report listing, for each service corporation subsidiary that is not functionally regulated and does business with consumers in the United States, certain information including the name and principal place of business of the service corporation, the lines of business in which the service corporation subsidiary engages directly with consumers, and the nature of the parent savings association's interest in the service corporation subsidiary. This proposal was mirrored on the requirement for national banks at § 5.34(e)(7); there is no similar provision in part 159. We received one comment on this proposed report. As with the proposed report for operating subsidiaries of Federal savings associations, in proposed § 5.38, this commenter stated that this reporting requirement would impose a new compliance burden without sufficient analysis or justification. As we have done with the reporting requirement in § 5.38, the OCC has reconsidered this proposed report in light of this comment and no longer believes it is necessary. Fewer Federal savings association service corporations exist than national bank operating subsidiaries, and the OCC is able to determine service corporation ownership by means that are less burdensome than an annual report, such as through the examination process. However, the OCC will continue to monitor this area to determine if such a report becomes necessary in the future.

C. Conforming and Technical Amendments

As indicated above, the OCC proposed to make conforming and technical changes to parts 5, 7, and 34 and in various provisions of parts 100 through 199 to reflect the movement of the licensing rules for savings association rules to part 5, to adjust section titles, and to conform cross-references. The OCC did not receive any comments on these proposed changes, and we adopt the amendments as proposed with the exception of the changes proposed to § 5.47.

Because the OCC's interim final rule amending § 5.47, issued subsequent to the Licensing proposed rule, includes these technical amendments, we have removed them from the final rule as no longer necessary.[123]

Specifically, the final rule amends § 162.4, Audit of savings associations, to replace the cross-reference to the part 116 definition of composite ratings with a reference to the Uniform Financial Institutions Rating System, as referred to in other OCC rules. The final rule also amends part 192, Conversions from mutual to stock form, to replace references to part 116; part 152, Federal savings associations incorporation, organization and conversion; subpart E, Capital distributions, and subpart H, Notice of change in directors or senior executive officers, of part 163; and part 174, Change in control, with the appropriate cross-references in amended part 5. In addition, the final rule amends § 160.35, Adjustments to home loans, by replacing the reference to the standard treatment processing procedures of part 116 with a statement that Federal savings associations must apply for and receive the OCC's prior written approval. Furthermore, the final rule conforms the cross-references to part 159, Subordinate Organizations, and § 163.81, (subordinated debt) to proposed §§ 5.59 and 5.56, respectively.

Part 32, Lending limits, also references the expedited and standard application processing procedures of part 116 at § 32.3(d), Loans by savings associations to develop domestic residential housing units. The OCC proposed to replace this reference with a new paragraph that sets forth the application procedures for Federal savings associations for this activity. These procedures are based on those in § 32.7(b) with the addition of an expedited review process. With respect to state savings associations, the OCC proposed to replace the citation to the FDIC application processing rule with a more general reference to the rules and procedures established

[123] 79 FR 75417 (Dec. 18, 2014).

by the appropriate Federal banking agency. The OCC did not receive any comments on these proposed changes to part 32, and adopt them as proposed.

The OCC also proposed to amend §§ 5.39, Financial subsidiaries[124] and 5.64 (dividends), which are not being integrated in this rulemaking, to clarify and make consistent the OCC office to which a national bank or Federal savings association must file a notice or application. We received no comments on these changes and adopt them as proposed. Specifically, the final rule directs such filings to the institution's appropriate OCC licensing office or appropriate OCC supervisory office, as noted, instead of the appropriate district office.

Furthermore, the OCC proposed to amend §§ 100.1, Certain regulations superseded, and 100.2, Waiver authority, so that these provisions continue to apply to rules pertaining to savings associations that would be included in parts other than parts 100 through 199 of Title I of Chapter 12 of the Code of Federal Regulations as a result of this rulemaking. The OCC received no comments on these amendments and adopt them as proposed.

Finally, the final rule makes additional technical amendments to our rules not included in the proposed rule. Specifically, the final rule corrects inaccurate cross-references in paragraphs (d)(2) and (g)(1) of § 5.36 and in § 32.2(g)(1)(iv). The final rule also updates the OCC's telephone number in § 4.18(b) and footnote 2 to part 7. Furthermore, the final rule makes a technical amendment to the definition of "service corporation" in §161.45 that replaces the current definition with a cross-reference to the definition included in § 5.59(d)(4), as added by this final rule.

[124] We received one comment letter regarding § 5.39, which asked that the OCC provide greater clarity on how to convert a financial subsidiary back to an operating subsidiary, as neither § 5.24, Conversion, nor § 5.39, Financial subsidiaries, address this type of transaction. We agree that it may be helpful to provide this information and will consider including these procedures in either a future rulemaking issued in response to other EGRPRA comments, or a more general explanation in Comptroller's Licensing Manual.

IV. Summary of Substantive Changes for National Banks and Federal Savings Associations

A. Substantive Changes for National Banks

The following is a summary of the substantive changes, listed by rule, contained in this final rule for national banks. This summary is provided for reader reference only; it does not take the place of the actual regulatory text of the final rule.

Rules of General Applicability (12 CFR part 5, subpart A)

- To qualify for expedited review as an "eligible bank," a national bank will be required to have a consumer compliance rating of 1 or 2 under the Uniform Interagency Consumer Compliance Rating System. Currently, a bank's consumer compliance rating is not a factor in the requirements for eligibility; however, § 5.13(a)(2) currently permits the OCC to remove a filing from expedited review if it raises certain issues, including any compliance concerns.
- A national bank will be required to publish its public notice of a filing in English and, if the OCC determines necessary, also in other languages. Currently, the rules do not specify the language in which the notice must be published.
- In addition to what is currently required, a public notice related to a national bank filing will be required to state: (1) the name of the institution that is the subject of the filing, (2) that the public portion of the filing is available on request, and (3) the address of the applicant.
- The OCC, at its discretion, can require an applicant to publish a new public notice if: (1) the applicant submits either a revised filing or new or additional information related to a filing, (2) there is a major issue of law or a change in circumstances arises after a filing,

or (3) the agency determines that a new public notice is appropriate. (Although this is not specifically permitted under current rules, this has been the practice of the OCC.)

- When computing time for national bank filings, the day of the filing will no longer be included and the time period will no longer end on a Saturday, Sunday, or Federal holiday but will end on the next day that is not a Saturday, Sunday or Federal holiday.

Articles of Association, Bylaws, Charters and Chartering Procedures (12 CFR 5.20, 5.21, 5.22)

- National banks will be prohibited by regulation from adopting a title that misrepresents the nature of the institution or the services it offers. This reflects current practice.
- National banks will be required to sell all securities of a particular class in an initial offering at the same price.
- In the event the organization of a national bank is not completed, the organizers will be required to return all cash collected on subscriptions.
- The OCC charter approval may include a condition that the OCC will review proposed directors and officers for more than two years after the bank commences business. The regulation currently says two years, but a longer time is sometimes imposed in practice.
- Expedited OCC review will be available for an application to establish a full-service national bank filed by a bank holding company or savings and loan holding company only when the lead depository institution is an eligible national bank or eligible Federal savings association. Currently, the lead depository institution can be an eligible state institution.

Conversions (12 CFR 5.24, 5.25)

- Conversion to a National Bank Charter:

- An institution seeking to convert to a national bank charter will be required by regulation to obtain all necessary regulatory and shareholder approvals. (OCC policy currently requires these approvals.)
- The application must:
  - Identify bank service company investments and other equity investments, in addition to subsidiaries. (This requirement reflects current practice.)
  - Include a business plan if the converting institution has been operating for less than three years, plans to make significant changes to its business after the conversion, or at the request of the OCC. (The OCC currently requests this information on a case-by-case basis.)
  - Include information about enforcement actions and other supervisory criticisms and the applicant's analysis of whether conversion is permissible under 12 U.S.C. 35, especially the provisions added to section 35 by section 612 of the Dodd-Frank Act.
- The OCC may permit a converted national bank to retain nonconforming activities of a state bank or stock state savings association and nonconforming assets or activities of a Federal stock savings association for a transition period after conversion. (This regulatory change reflects current OCC practice.) The regulation now provides that the OCC may only permit the retention of nonconforming assets of a converting state bank, subject to requirements in 12 U.S.C. 35.
- Expedited OCC review will be available only for conversion applications by Federal savings associations because they are institutions the OCC already regulates.

Expedited review will no longer be available for state-chartered institutions. The time for expedited review is extended from 30 to 60 days.

- Conversions from a National Bank to a Federal Savings Association
    - A national bank converting to a Federal savings association no longer is required to file a notice with the OCC as well as a separate application. Information included in this former notice instead will be included in the conversion-in application pursuant to § 5.23.
- Conversions from a National Bank to a State-Chartered Institution:
    - As required by section 612 of the Dodd-Frank Act, a national bank must include a copy of its conversion application filed with the state regulator to which it is applying for approval to convert in its notice to the OCC to convert, and it must send a copy of the application to the Federal banking agency that will become its appropriate Federal banking agency after the conversion.
    - It must also include a showing of its compliance with applicable requirements for converting.

Fiduciary Powers Applications (12 CFR 5.26)

- When reviewing an application to exercise fiduciary powers, the OCC will by regulation consider the bank's financial condition and capital adequacy, the character and ability of proposed trust management, the adequacy of any proposed business plan, and the needs of the community served. (Some of these factors are statutory and all reflect current OCC practice.)

- A national bank that has not conducted previously approved fiduciary powers for 18 consecutive months will be required to provide a notice to the OCC 60 days in advance of commencing the activities.
- A national bank that has received approval from the OCC to exercise limited fiduciary powers and desires to exercise full fiduciary powers will be required to apply to the OCC. (This requirement reflects current OCC practice.)

Branching (12 CFR 5.30 and branching-related sections in part 7)

- A drive-in or pedestrian facility located within 500 feet of a branch will always be an extension of the branch, not a separate branch. Currently, this result depends on a case-by-case analysis.
- Under the expedited approval process, short-distance relocations of branches will be deemed approved 15 days after the close of the comment period or 30 days after the date the notice is filed, whichever is later. Currently, short-distance relocations are deemed approved 15 days after the close of the comment period or 45 days after the date the notice is filed, whichever is later.

Expedited procedures for certain reorganizations (12 CFR 5.32)

- A national bank will not be required to comply with the public notice, public availability, and hearing requirements of part 5, subpart A (12 CFR 5.8, 5.9, and 5.11) for an application to reorganize to become a subsidiary of a bank holding company or a company that will, upon consummation of such reorganization, become a bank holding company unless the OCC concludes that an application presents significant and novel policy, supervisory, or other legal issues. Currently, such applications are subject to these subpart A requirements.

Business Combinations (12 CFR 5.33)

- An application to the OCC will be required for the assumption of deposit liabilities or other liabilities from a credit union or any other institution that is not FDIC-insured that will become deposits at the assuming national bank.
- In the application for a business combination, national banks will be required to identify a financial subsidiary investment, bank service company investment, service corporation investment, and other equity investment in addition to the current requirement to identify subsidiaries and provide an analysis of the permissibility for the national bank to hold the subsidiary or investment. This regulatory change reflects current practice.
- If the applicant intends to exercise fiduciary powers after the combination and requires OCC approval for such powers, the applicant will be required to include in the business combination application the information required in § 5.26 for a request for fiduciary powers. This regulatory change reflects current practice.
- Filings in which a national bank is the target company and will not be the resulting institution will no longer be exempt from §§ 5.2 and 5.5. Section 5.2, Rules of general applicability, provides that the OCC may adopt different procedures for particular filings, in exceptional circumstances or for unusual transactions, and that the OCC permits electronic filing. Section 5.5 provides that an applicant must pay the applicable filing fee, if any.
- If there are dissenting shareholders in a merger or consolidation between a national bank and Federal savings association, the OCC will conduct an appraisal of dissenters' shares of stock according to the statutory dissenters' appraisal processes that apply to mergers

between national banks and state banks. Under the current rule, the OCC may conduct such an appraisal if all the parties agree.

- The OCC will have the authority to apportion costs for the dissenters' rights process for transactions to which 12 U.S.C. 214a or 215 and 215a are not applicable. (These statutes require the bank to bear all costs.) Under the current rule, in transactions that are not subject to those statutes, the parties must agree how costs are to be divided. Under the final rule, if the OCC regulates the institutions and the transaction is not subject to the statutes, then the OCC will have the authority to apportion costs as the OCC determines.
- A national bank's consolidation or merger agreement will be required to address the effect upon, and the terms of the assumption of, any liquidation account of any participating institution by the resulting institution. Although not currently in § 5.33, a resulting national bank in such transactions is required to establish and maintain a liquidation account, as discussed in the Comptroller's Licensing Manual.
- The national bank applicant in a consolidation or merger will be required to submit information showing that all steps needed to complete the transaction have been met and to notify the OCC of the planned consummation date. The OCC will then issue a certification letter documenting that the consolidation or merger occurred and specifying the effective date. This process reflects current OCC practice for national banks.
- The OCC's approval of a transaction under § 5.33 will expire in six months instead of 12 months; the OCC could extend this six-month period.
- A national bank that will not be the resulting bank in a merger or consolidation with another national bank will be required to file a notice to the OCC under § 5.33(k). (This notice is discussed in the next item.)

- When a national bank is consolidating or merging with a Federal savings association or a state chartered institution or credit union and the national bank is not the resulting institution, it will be required to include more information in the notice than currently required in § 5.33. This additional information includes a short description of the transaction or a copy of the filing made by the acquiring institution to its regulators for approval of the transaction and information showing the target national bank or Federal savings association has complied with the requirements to engage in the transaction (e.g., board and shareholder approval). (The bank should already have compiled this information.)
- If a consolidation or merger of a national bank in which the national bank is not the resulting institution has not occurred within six months after the OCC's receipt of the notice of the transaction, the bank will be required to submit a new notice with the OCC.

Operating Subsidiaries (12 CFR 5.34)

- Before beginning business, an operating subsidiary will be required to comply with other laws applicable to it, including applicable licensing or registration requirements. This change codifies current OCC policy.
- The final rule makes the following changes regarding a national bank's control of an operating subsidiary:
    - Where a national bank has the ability to control the management and operations of an operating subsidiary, no other person or entity can exercise effective operating control over the subsidiary or have the ability to influence the subsidiary's operations to an extent equal to or greater than that of the bank. This change codifies current OCC policy.

    - Where a bank owns less than 50 percent of an operating subsidiary (but still controls it), no other party could own a greater percentage than the bank. This change codifies current OCC policy.
- A national bank must have reasonable policies and procedures to preserve the limited liability of the bank and its operating subsidiaries.
- Adequately capitalized banks will no longer be exempt from the application or notice requirements when acquiring or establishing an operating subsidiary or performing a new activity in an existing operating subsidiary when the activities of the new subsidiary are limited to those previously reported to the OCC in connection with a prior operating subsidiary and certain other requirements are met.
- If a national bank operating subsidiary wishes to act as a fiduciary, its national bank parent will be required to have fiduciary powers and the operating subsidiary also must have its own fiduciary powers under the law applicable to the subsidiary. The operating subsidiary no longer may rely on the national bank's fiduciary powers, except when the subsidiary exercises investment discretion on behalf of customers or provides investment advice for a fee as a registered investment adviser. This change codifies longstanding OCC practice.
- OCC approvals granted under § 5.34 expire within 12 months if a national bank has not established or acquired the operating subsidiary or commenced the new activity in an existing operating subsidiary, unless the OCC shortens or extends the time period.

<u>Investment in Bank Service Companies (12 CFR 5.35)</u>

- To invest in a bank service company, a national bank will be required to file a prior notice for OCC approval through an expedited review process, under which the notice

will be deemed approved on the 30th day after filing unless the OCC notifies otherwise. Under the current rule, a national bank files an after-the-fact notice with no requirement for OCC approval before the bank makes the investment, if specified eligibility conditions are met.

Other Equity Investments (12 CFR 5.36)

- No substantive changes.

Banking Premises (12 CFR 5.37, 7.1000, 7.3001)

- No substantive changes.

Main Office and Home Office Relocations (12 CFR 5.40)

- Under the expedited approval process, short-distance relocations of main offices will be deemed approved 15 days after the close of the comment period or 30 days after the date the notice is filed, whichever is later. Currently, short-distance relocations are deemed approved 15 days after the close of the comment period or 45 days after the date the notice is filed, whichever is later.

Change in Corporate Title (12 CFR 5.42)

- No substantive changes.

Changes in Permanent Capital (12 CFR 5.46)

- No substantive changes.

Voluntary Liquidation (12 CFR 5.48)

- The following provisions in the final rule codify existing OCC or national bank practice:
    - A national bank may not commence liquidation until the OCC has notified it that the agency does not object to the liquidation plan.

- A national bank's board of directors, in addition to its shareholders, must vote to approve a voluntary liquidation plan.
- A national bank must provide notice of the liquidation to depositors, other known creditors, and known claimants in addition to the current requirement to publish notice in accordance with 12 U.S.C. 182.
- The national bank's liquidating agent or committee must submit to the OCC a report at the start of liquidation showing the bank's current balance sheet and a final report of the liquidation.

Change in Control (12 CFR 5.50)

- The final rule adds several presumptions of concerted action. These additional presumptions provide clarity and guidance about how and when parties are presumed to be acting in concert for purposes of § 5.50.
- Acquirers will be permitted to rebut a presumption of control in cases where the acquirer will have a representative on the board of directors of the national bank to be acquired. Currently, an acquirer that proposes to rebut control of a national bank cannot have a representative on the board.
- The final rule establishes specific limitations, in the rebuttal of control context, on the total equity invested, where an acquirer proposes to acquire more than fifteen percent of the national bank's voting stock.

Changes in Directors and Senior Executive Officers (12 CFR 5.51)

- An advisory director of a national bank who may vote on matters before, or provides more than general advice to, any committee of the board of directors, in addition to the board itself, will be subject to the requirements of § 5.51.

- The notice of a change in directors or senior executive officers for a national bank will need to include financial information on the individual, except when the OCC determines in writing that such information is not required.
- If the OCC requests additional information regarding the notice, a national bank that cannot provide the requested information within the time specified by the OCC may request additional time to provide the information.
- An individual who is serving on an interim basis pursuant to an OCC-granted waiver and receives a notice of disapproval will be required to resign immediately from the board, and will be able to assume the position on a permanent basis only if the notice of disapproval is reversed on appeal and all other applicable legal requirements are satisfied. Currently, the individual may continue on the board pending resolution of an appeal.

Change in Address (12 CFR 5.52)

- A national bank will not be required to file a notice of a change in the permanent address of its home office if it submitted a notice under § 5.40(b), Relocation of a main office to a branch location in the same city, town or village.

Change in Asset Composition (12 CFR 5.53)

- With regard to a change in asset composition, the national bank rule requires approval of only the sale of all or substantially all of a bank's assets, and the subsequent purchase of assets or expansion of operations after such a sale. Under the final rule, the following additional transactions require approval under § 5.53:
    - Any other asset purchases or other expansions of business that are part of a plan to increase the size of the bank by more than 25 percent in one year.

- As determined by the OCC on a case-by-case basis, any other material increase or decrease in the size of the bank or a material alteration in the composition of the types of its assets or liabilities (including the entry or exit of business lines). The OCC will consider the size and nature of the transaction and the condition of the institutions in determining whether to require an application and believes the additional situations in which the OCC will require an application likely already involve discussions between the bank and its appropriate supervisory office.

- The OCC will need to approve a bank's plan of voluntary liquidation in order for asset changes that are part of such liquidation to be exempt from the approval requirements of § 5.53. (The OCC also is amending the regulation governing liquidations, § 5.48, to require OCC approval of the plan of liquidation.)
- Asset changes that are subject to OCC approval under another application to the OCC will specifically be exempt from the approval requirements of § 5.53. This exception is now only implied.

B. Substantive Changes for Federal Savings Associations

The following is a summary of the substantive changes contained in this final rule, listed by revised rule, for Federal savings associations. This summary is provided for reader reference only; it does not take the place of the actual regulatory text of the final rule.

Rules of General Applicability (12 CFR part 5, subpart A)

- As a result of removing 12 CFR part 116 and applying 12 CFR part 5, subpart A, Federal savings associations will need to follow different procedural and processing provisions. While many of the underlying processes are similar, minor variations and different

terminology is sometimes used. Federal savings associations will need to adjust to these variations and differences.

- Adequately capitalized Federal savings associations will no longer qualify for expedited treatment; only well capitalized institutions will be eligible.
- A Federal savings association will no longer have to publish a public notice within the seven days before a filing date but may publish as soon as practicable before or after filing, unless otherwise required.
- In addition to what is currently required, a public notice related to a Federal savings association filing will have to state that a filing is being made and the date of the filing.
- A Federal savings association can publish a single public notice for multiple transactions or a single notice that will comply with the notice requirement of both the OCC and another Federal agency, if accepted by the OCC. (Although this is not specifically permitted under current rules, this has been an accepted practice for Federal savings association filings.)
- Federal savings associations will obtain from the OCC the public comments made in response to a filing's public notice. Currently, the commenter is required to send comments directly to the institution.

<u>Articles of Association, Bylaws, Charters and Chartering Procedures (12 CFR 5.20, 5.21, 5.22)</u>

- All Federal savings associations:
    - The majority of a de novo savings association's board of directors will no longer be required to be representative of the state in which the association is located.

- A savings association's board of directors no longer will be required to annually elect a chairman of the board from among its members and designate the chairman of the board, when present, to preside over meetings.
- An application to charter a Federal savings association will be subject to the same two-part approval process used for de novo national bank charters, whereby the OCC first issues a preliminary approval, followed by a final approval and charter issuance if the applicant completes all of the steps required by the preliminary approval and the Comptroller's Licensing Manual. Under the current Federal savings association rule, there is one approval before the OCC issues the charter but the approval is subject to the institution completing various post-approval organizational steps and other requirements before it can commence business, as specified in 12 CFR 143.4, 143.5, 143.6, and 152.1(c) through 152.1(i).
- Expedited OCC review will be available for an application to establish a full-service Federal savings association filed by a bank holding company or savings and loan holding company when the lead depository institution is an eligible national bank or eligible Federal savings association. The current regulations for chartering a de novo Federal savings association do not have a comparable expedited review process.
- The OCC's preliminary approval of an application for a new Federal savings association will expire if the savings association has not raised the required capital within 12 months or has not commenced business within 18 months. Under current rules, a Federal savings association's charter becomes void if organization is not completed within six months after approval.

- In the de novo chartering approval process, the OCC will no longer be required to consider the criteria in §§ 143.2(g)(1) and 152.1(b)(1) as to whether the Federal savings association will provide credit for housing in a safe and sound manner and the approval considerations set forth in § 143.3 regarding the composition of board or directors.

- Federal Stock Savings Associations:
  - A Federal stock savings associations no longer will be required to cause a true copy of its charter and bylaws to be available to accountholders at all times in each office of the savings association, or to deliver to any accountholders a copy of such charter and bylaws or amendments upon request.
  - The requirements for adopting and filing Federal stock savings association bylaws will no longer include the requirements that the adoption of bylaws be by the board of directors at its first organizational meeting.
  - Shareholder meetings no longer will be required to be held in the state in which the association has its principal place of business.
  - Staggered terms for certain directors will no longer be specified.
  - Stock certificates of a Federal savings association will no longer be required to be signed by the chief executive officer or by any other officer of the association authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. Furthermore, each certificate for shares of capital will not be required to be consecutively numbered or otherwise identified.
- Federal Mutual Savings Associations:

- Federal mutual savings association bylaws no longer will be required to provide some of the language or requirements specified in current § 144.5(b) regarding aspects of: the location of and notices for the annual meeting of members; reporting requirements at the annual meeting; record dates; proxy voting; annual meeting governance; duties of officers and agents of the association; director election and resignation; executive committees; director, officer and employee compensation and removal; and age limits for directors.

Conversions (12 CFR 5.23, 5.25)

- Conversions to a Federal Savings Association Charter:
  - The applicant will no longer be required to publish a public notice of the application, and the application will no longer be available for public inspection, unless specifically required by the OCC.
  - An applicant that does not meet the qualified thrift lender test will be required to include in its application a plan for achieving compliance and a request for an exception. This is agency practice but is not expressly mentioned in the regulation.
  - Many details of the application process will no longer be included in the regulations. Instead, this information will be found in the Comptroller's Licensing Manual and other OCC guidance.
  - The applicant will be required to include in its conversion application information about enforcement actions and other supervisory criticisms and its analysis of whether conversion is permissible under 12 U.S.C. 35, especially the provisions added to section 35 by section 612 of the Dodd-Frank Act.
- Conversions from a Federal Savings Association to a National Bank

- A Federal savings association converting from its charter to a national bank no longer must file a notice to convert out as well as a separate application. Instead, information formerly included in this notice will be included in the conversion-in application pursuant to § 5.24.

Conversions from a Federal Savings Association to a State Chartered Institution

- As required by section 612 of the Dodd-Frank Act, a Federal savings association must include a copy of its conversion application filed with the state regulator to which it is applying for approval to convert in its notice to the OCC, and it must file a copy of its conversion application with the Federal banking agency that will become its appropriate Federal banking agency after the conversion.
- The application must also include a showing of its compliance with applicable requirements for converting.

Fiduciary Powers Applications (12 CFR 5.26 and part 150, subpart A)

- The time period that triggers the need to re-notify the agency before beginning to exercise previously approved fiduciary powers that have not been exercised is shortened from 5 years to 18 months.
- The trigger for requiring a new application for a Federal savings association will be whether the original approval for fiduciary activities is for limited or full fiduciary powers. Under the current rule, the trigger for a new application is whether the activity is "materially different" from what had been approved.
- Eligible Federal savings associations will receive expedited review of applications for fiduciary powers.

Branching (12 CFR 5.31)

- Only well capitalized Federal savings associations could be "eligible savings associations" as defined in part 5, and therefore exempt from the branch application requirement. Currently both well and adequately capitalized Federal savings associations are eligible for expedited treatment and therefore can be exempt from this requirement.
- A Federal savings association must obtain OCC approval in order to establish a branch at the site of a former home office unless the branch establishment meets one of the exceptions in § 5.31. Under the current rule, no notice or application is required in all cases of home office and branch office re-designations.
- Highly rated Federal savings associations not required to file a branch application must file a notice with the OCC within 10 days after the opening of the branch. This is a new requirement for Federal savings associations.
- The OCC's approval of a branch expires after 18 months, unless the OCC grants an extension. Under the current rule, OCC approval expires after 12 months.
- A state and Federal savings association must file an application with the OCC to establish or move a branch in the District of Columbia or move its principal office in the District of Columbia, pursuant to statutory requirements.

Business Combinations (12 CFR 5.33)

- A Federal savings association may acquire all or substantially all of the assets, or to assume all or substantially all of the liabilities, of nonbank affiliates, or any other company that is not a depository institution, in addition to credit unions. Currently, such acquisitions are limited to banks, savings associations, and credit unions.
- In the factors the OCC considers in reviewing a business combination, the factor covering the fairness of the transaction, equitable treatment, and disclosure is replaced by a factor

assessing the effect of the transaction on the association's shareholders (or members in the case of a mutual savings association), depositors, other creditors, and customers.

- In the application for a business combination, Federal savings associations must identify a financial subsidiary investment, bank service company investment, service corporation investment, and other equity investment in addition to the current requirement to identify subsidiaries and provide an analysis of the permissibility for the Federal savings association to hold the subsidiary or investment. This requirement reflects current practice.
- If the applicant intends to exercise fiduciary powers after the combination and requires OCC approval for such powers, the applicant must include in the business combination application the information required in § 5.26 for a request for fiduciary powers. This requirement reflects current practice.
- The OCC's approval of a transaction expires in six months; the OCC could extend this six-month period. Under current OCC practice, transactions not involving an interim association must be consummated in 120 days.
- A Federal savings association must publish an initial public notice and two other public notices during the standard 30-day public comment period. Currently, § 163.22(e)(1)(i) requires an initial publication and then publication on a weekly basis during the public comment period.
- The statutory provisions governing national bank dissenters' rights in 12 U.S.C. 215 and 215a apply to transactions in which a Federal savings association is merging or consolidating into a national bank, rather than the regulatory dissenters' rights provision

in 12 CFR 152.14, with one exception – the final rule includes authority for the OCC to apportion costs for the dissenters' rights process.

- In consolidation or merger of a state bank, state savings association, state trust company or a credit union into a Federal savings association, the institution must follow the procedures and dissenters' rights process set out for such transactions in the law of the state or other jurisdiction under which it is organized.
- For consolidations or mergers of a Federal stock savings association into a another Federal savings association, the plan of merger or consolidation must provide the manner of disposing of the shares of the resulting Federal savings association not taken by dissenting shareholders. Under § 152.14(c)(11), such shares have the status of authorized and unissued shares of the resulting association. The plan of merger or consolidation could still provide such status for these shares, but under the final rule such status no longer is mandatory.
- A consolidation or merger of a stock Federal savings association into an uninsured bank, savings association, or trust company or into a credit union, or a consolidation or merger of a mutual Federal savings association into an uninsured bank, savings association, or trust company, requires only a notice to the OCC, not application and approval as required under § 163.22(c).
- Federal savings association applications for business reorganizations (defined in § 5.33(d)(3)) and streamlined applications (described in § 5.33(j)) that meet the requirements are eligible for expedited review, under which an application is deemed approved as of the later of the 45th day after the application was filed or the 15th day after the close of the comment period, unless the OCC notifies the applicant that the

application is not eligible for expedited review or the expedited review process is extended. This process replaces the automatic approval provision in § 163.22(f), under which an application is deemed to be approved automatically 30 days after the OCC sends the applicant a written notice that the application is complete.

  - The size-based limit for expedited review of a business reorganization or streamlined application included in the final rule is less restrictive than the criteria for automatic approval under the current savings association rule, 12 CFR 163.22(f), which provides that an application does not qualify for the automatic approval process if the acquiring institution has assets of $1 billion or more and proposes to acquire assets of $1 billion or more. To qualify for expedited review under the final rule, business reorganizations are not limited by size and instead are limited based on the relative size of the acquiring institution and the assets to be acquired but do not have a fixed maximum dollar amount limit on the size.
  - The expedited procedures in the final rule do not include competitive impact thresholds as a disqualifier, as in the current savings association rule.
  - However, as in the current savings association rule, an applicant does not qualify for a streamlined business combination application if the transaction is part of a mutual to stock conversion under 12 CFR part 192.

- Federal savings associations will no longer be required by regulation to meet the requirements for Federal Home Loan Bank membership, as membership in a Federal Home Loan Bank is no longer mandatory.
- The approval of a board of directors of a business combination involving a Federal stock savings association is reduced from two-thirds to a majority of the directors.

- For a Federal stock savings association, the execution and filing of Articles of Combination as the method of documenting shareholder approval of the combination, consummation of the combination, and its effective date is replaced by a letter to the OCC followed by a certification issued by the OCC.
- A Federal savings association will not be required to include all terms regarding the combination in a combination agreement nor include the specific provisions in the agreement that are required by the current savings association rule.
- If a consolidation or merger of a Federal savings association in which the savings association is not the resulting institution has not occurred within six months after the OCC's receipt of the notice of the transaction, the savings association must submit a new notice to the OCC. The current rule requires a new notice after 12 months.

Investment in Bank Service Companies (12 CFR 5.35)

- No substantive changes. There are no regulations addressing Federal savings association investment in bank service companies, and the new rule closely implements the statute.

Banking Premises (12 CFR 5.37, 7.1000, 7.3001)

- For Federal stock savings associations, the quantitative limitations on investment in banking premises will be based on the association's capital stock or, if a 1 or 2 CAMELS rated, well capitalized association, 150 percent of capital and surplus. Currently, the sole quantitative limit on a Federal savings association's investment in banking premises is total capital. Because 150 percent of capital and surplus will be a greater amount than 100 percent of total capital, we expect that under the final rule, the amount that a savings association can invest in banking premises without OCC approval will be increased. For Federal savings associations that do not have a CAMELS rating of 1 or 2 and are not well

capitalized, the relevant limitation will be capital stock, which is a significantly lower threshold than total capital.

- For Federal mutual savings associations, the quantitative investment limit in banking premises will be based on the amount of retained earnings, instead of total capital.
- A Federal savings association will be required to follow the specific application requirements contained in § 5.37.
- The rulemaking will grandfather Federal savings associations' existing premises investments and arrangements for sharing office space and employees, provided the investment complies with the legal requirements in effect prior to the effective date of the final rule, and continues to comply with those requirements.
- The rule will specifically permit Federal savings associations to invest in lodging for customers, officers, or employees of the savings association, its branches, or consolidated subsidiaries in areas where suitable commercial lodging is not readily available.
- A Federal savings association will need to obtain OCC approval or provide after-the-fact notice to exercise an option to purchase banking premises or stock in a corporation that holds banking premises.
- A Federal savings association will be permitted by regulation to hold banking premises through an operating subsidiary and to hold premises by any reasonable and prudent means.
- A Federal savings association normally will need to use real estate acquired for future expansion within five years and, after holding such real estate for one year; will be required to state, by resolution of the board of directors or an appropriate authorized association official or a subcommittee of the board of directors, definite plans for use of

such real estate. Currently, OCC guidance provides a Federal savings association with a one to three year timeframe for the use of real estate acquired for future premises.

Operating Subsidiaries (new 12 CFR 5.38)

- Before beginning business, an operating subsidiary of a Federal savings association will be required to comply with other laws applicable to it, including applicable licensing or registration requirements. This change will codify current OCC policy.
- Under the amended rule, an entity can be an operating subsidiary if a Federal savings association owns less than 50 percent of the voting shares of the entity, provided no other party owns a greater percentage than the savings association, the savings association otherwise controls the subsidiary, and no other person or entity can exercise effective operating control over the subsidiary or have the ability to influence the subsidiary's operations to an extent equal to or greater than that of the savings association. Currently, for an entity to be an operating subsidiary, a savings association must own, directly or indirectly, more than 50 percent of the voting shares of the subsidiary.
- A Federal savings association will be required to have reasonable policies and procedures to preserve the limited liability of the savings association and its operating subsidiaries. The detailed requirements for separate corporate identities for subsidiaries in 12 CFR 159.10 are removed.
- A Federal savings association will need to file an application and receive prior OCC approval to acquire or establish an operating subsidiary or to commence a new activity in an existing operating subsidiary. The current rule in § 159.11 requires filing a notice at least 30 days prior to establishing or acquiring a subsidiary or engaging in new activities in a subsidiary; this notice is treated like an application under § 159.1(b).

- Some applications will qualify for the expedited review of applications process. This expedited review is similar to the current rule's notice process: applications will be deemed approved by the OCC as of the 30th day after the filing is received, unless the OCC notifies the Federal savings association otherwise during the 30-day period.
    - For the application to qualify, the Federal savings association must be "well capitalized" and "well managed," the activities to be performed by the operating subsidiary must be listed in § 5.38(e)(5)(v) (activities that have been approved for operating subsidiaries of Federal savings associations in the past), the operating subsidiary must be a corporation, limited liability company, or limited partnership, and the savings association must clearly demonstrate control over the operating subsidiary (it must meet a standard for control that is more stringent than the general standard for operating subsidiaries).
    - Under the current rule, all filings start as 30-day prior notices. They become standard treatment applications if the OCC notifies the applicant that the notice presents supervisory concerns or raises significant issues of law or policy.
    - While there is overlap between an application failing to meet the criteria to qualify for expedited review (and so requiring standard processing) and raising issues that would cause a filing to present supervisory concerns, or raises significant issues of law or policy (and so requiring standard processing), there may be instances in which a filing would have had to be processed under standard procedures under one test but not the other.
- For a Federal savings association operating subsidiary to act as a fiduciary, its savings association parent will be required to have fiduciary powers and the operating subsidiary

also must have its own fiduciary powers under the law applicable to the subsidiary. The operating subsidiary no longer will be able to rely on the savings association's fiduciary powers, except when the subsidiary exercises investment discretion on behalf of customers or provides investment advice for a fee as a registered investment adviser. This change will codify OCC and OTS practice.

- OCC approvals granted under § 5.38 will expire within 12 months if a Federal savings association has not established or acquired the operating subsidiary or commenced the new activity in an existing operating subsidiary, unless the OCC shortens or extends this time period.

Main Office and Home Office Relocations (12 CFR 5.40)

- Under the current rule, no notice or application is required if the relocation is a short-distance relocation, if the Federal savings association redesignates an existing branch office as a home office when redesignating the existing home office as a branch office, or if the savings association is highly rated and certain other requirements are met. If the relocation does not meet the above exceptions, a notice is required for savings associations that qualify for expedited treatment and OCC approval is required for all other savings associations. Under the final rule, all Federal savings associations will be required to:
    - Submit prior notice to the OCC for home office relocations to a branch site in the same city, town, or village of the current home office; and
    - Obtain prior OCC approval for home office relocations to a branch location other than a branch site in the same city, town, or village of the current home office. An application submitted by an eligible Federal savings association will be deemed

approved by the OCC as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC (or in the case of a short-distance relocation, the 30th day after the filing is received by the OCC), whichever is later, unless the OCC notifies the bank or savings association prior to that time that the filing is not eligible for expedited review, or the expedited review period is extended.

- Obtain OCC approval pursuant to § 5.31 (branching) in order to establish a branch at the site of a former home office unless the branch establishment meets one of the exceptions in § 5.31. Under the current rule, no notice or application is required in all cases of home office and branch office re-designations.
- Open a relocated home office within 18 months from the date of OCC approval, unless the OCC grants an extension. Under the current rule, this office must be opened within 12 months of OCC approval or non-objection.

Change in Corporate Title (12 CFR 5.42)

- Federal savings associations will be required to submit an after-the-fact notice to the OCC instead of a 30-day prior notice for a change in corporate title.

Increases in Permanent Capital (new 12 CFR 5.45)

- Federal stock savings associations will be required to apply to the OCC and obtain prior approval for increases in capital in the following circumstances: (1) when the savings association is required to receive OCC approval pursuant to letter, order, directive, written agreement or otherwise, (2) when the savings association is selling common or preferred stock for consideration other than cash, or (3) when the savings association is

receiving a material noncash contribution to capital surplus. Currently, savings associations are not required to apply for increases in capital.

Voluntary Liquidation (12 CFR 5.48)

- The Federal savings association's liquidating agent or committee will be required to submit to the OCC:
  - At the start of liquidation, a report showing the association's current balance sheet;
  - Quarterly Consolidated Reports of Condition and Income (Call Reports); and
  - Annual reports on the progress of the liquidation.
- The following provisions in the final rule codify existing OCC practice:
  - A Federal savings association will be required to provide notice of the liquidation to depositors, other known creditors, and known claimants.
  - A Federal savings association will be required to publish public notice of its plan to liquidate if so directed by the OCC.

Change in Control (12 CFR 5.50)

- The current definition of "voting securities" in § 5.50 replaces the part 174 definition of "voting stock." This will affect the standard for convertible securities. Currently, part 174 includes as voting stock any security that, upon transfer or otherwise, is convertible into voting stock or exercisable to acquire voting stock where the holder of the convertible security has the preponderant economic risk in the underlying voting stock. Section 5.50, by contrast, defines voting securities to include securities that are immediately convertible into voting securities at the option of the owner or holder.
- The final rule excludes part 174 procedures for rebuttal of control and concerted action, applying instead the provisions in § 5.50(f)(2)(vi).

- Persons who acquire control of a Federal savings association as a result of testate or intestate succession will need to file a notice and pay the appropriate filing fee within 90 calendar days after the transaction occurs. Currently, such persons need only file a notification of acquisition to the OCC within 60 days of the acquisition and provide information requested by the OCC.
- The final rule excludes the presumptive disqualifiers from part 174 − a list of factors, which, if present, may show a lack of integrity or lack of financial capability to proceed with a proposed transaction.
- The regulatory changes have the effect of eliminating most of the rebuttable presumptions of control with respect to Federal savings associations that are currently set forth in 12 CFR 174.4(b) and (c). The regulatory changes also remove certain of the rebuttable presumptions of concerted action currently set forth in § 174.4(d).
- Acquirers of beneficial ownership exceeding 10 percent of any class of stock of a Federal savings association that do not file a control notice or control rebuttal will not be required to file a certification of ownership.

Changes in Directors and Senior Executive Officers (12 CFR 5.51)

- A Federal savings association will be required to provide 90 days prior notice of a new director or senior executive officer if the association is not in compliance with minimum capital requirements, is otherwise in a troubled condition, or the OCC determines, under section 38 of the FDI Act (12 U.S.C. 1831o), that prior notice is appropriate. Currently, such an association is required to provide 30 days prior notice, which the OCC may extend for an additional 60 days.

- Only a Federal savings association will be permitted to file the notice with the OCC; an individual seeking election to the board of directors who has not been nominated by management will no longer be allowed to do so.
- A Federal savings association or a proposed individual will be able to appeal an OCC notice of disapproval. The current rule does not provide an appeal process, although the OCC has permitted appeals by Federal savings associations in practice.

Change in Address (12 CFR 5.52)

- A Federal savings association no longer will be required to provide notice of a home office or post office box address change if the change results from any transaction approved under 12 CFR part 5. The current rule provides this exception only in cases of an application to relocate or establish a new home or branch office.
- All Federal savings associations no longer will be required to provide notice of a home office or post office box address change if they have filed a notice for the relocation or establishment of a new home or branch office pursuant to § 5.40 (main office and home office relocations). Under current rules, highly rated savings associations are required to file a change in address notice because they are exempt from the relocation notice requirement.
- Federal savings associations no longer will be subject to the requirement that all operations be directed from the home office.

Change in Asset Composition (12 CFR 5.53)

- The Federal savings association rule now requires approval of all purchases or sales or other transfers of assets in bulk not made in the ordinary course of business, unless the transaction is subject to the Bank Merger Act (in which case other parts of the rule

apply). Under the final rule, Federal savings associations will be required to obtain OCC approval only for the following (unless one of the exceptions applies):

- The sale or other disposition of all, or substantially all, of the savings association's assets in a transaction or a series of transactions.
- After having sold or disposed of all, or substantially all, of its assets, subsequent purchases or other acquisitions or other expansions of the savings association's operations.
- Any other asset purchases or other expansions of business that are part of a plan to increase the size of the savings association by more than 25 percent in one year.
- As determined by the OCC on a case-by-case basis, any other material increase or decrease in the size of the savings association or a material alteration in the composition of the types of its assets or liabilities (including the entry or exit of business lines). The OCC will consider the size and nature of the transaction and the condition of the institutions in determining whether to require an application and believes the additional situations in which the OCC will require an application likely already would involve discussions with the bank's appropriate supervisory office.

- When an application is required, it will have standard processing. Currently, an application can qualify for expedited treatment if all participating Federal savings associations meet the conditions for expedited treatment.

Capital Distributions (new 12 CFR 5.55)

- The expedited review process in part 5 will apply to Federal savings associations seeking expedited review of filings for capital distributions instead of the expedited treatment process in part 116. Because the eligibility requirements for expedited review differ from

the requirements for expedited treatment, this change could affect which savings associations qualify for the expedited process.

- Under the current savings association rule, both well and adequately capitalized institutions are eligible for expedited treatment. Under the new rule, only savings associations that are well capitalized will qualify for expedited review.
- Under the current savings association rule, the institution must not have been notified that it is in troubled condition, while under the new rule an eligible savings association must not be subject to an enforcement action. (Although different, these supervisory condition tests generally should overlap.)
- Under the current rule, a savings association that has not been assigned a CAMELS rating, a CRA rating, and a compliance rating is not eligible for expedited treatment. This requirement is not a factor in the requirements for eligible bank or eligible savings association status in part 5.

Subordinated Debt and Mandatorily Redeemable Preferred Stock (new 12 CFR 5.56)

- The expedited review process in part 5 will apply to Federal savings associations seeking expedited review of filings to issue subordinated debt instead of the expedited treatment process in part 116. Because the eligibility requirements for expedited review differ from the requirements for expedited treatment, this change could affect which savings associations qualify for the expedited process, as described above for the capital distributions rule.

Pass-Through Investments (new 12 CFR 5.58)

- Federal savings associations are allowed to make pass-through investments greater than 25 percent of the company's equity, but because this investment would make the

company a subsidiary under law applicable to the Federal savings associations, the association will be required to submit an application for approval as a subsidiary.

- Federal savings associations may be subject to different filing requirements:
  - Some pass-through investments that currently may qualify for the no-notice procedure under current § 160.32(b) will require a filing under § 5.58. (However, pass-through investments in investment companies that hold assets permissible for a Federal savings association to hold directly will continue not to require a filing.)
  - For pass-through investments that meet the requirements for the after-the-fact notice procedure, the Federal savings association will need to file only the after-the-fact notice. This treatment applies both to investments that would have required a prior application under § 160.32(c) and investments that would have qualified for the no-notice procedure under current § 160.32(b).
- Federal savings associations are subject to the notice content requirements of § 5.58. Section 160.32 does not specify the content of the notice or application.

Service Corporations (new 12 CFR 5.59)

- The corporate separateness requirements are amended to eliminate the requirement that a Federal savings association's service corporation be adequately financed as a separate unit in light of normal obligations reasonably foreseeable for a business of the service corporation's size and character in order to maintain the requisite corporate separateness.
- Consistent with 12 U.S.C. 1828(m), a Federal savings association will be required to file an application with the OCC before investing in any service corporation, including one that it would not control. Currently, the service corporation regulation requires a Federal

savings association to file with the OCC only if it directly or indirectly controls the service corporation.

- Applications to establish or acquire a service corporation will be required to list for each state the lines of business for which the service corporation holds, or will hold, an insurance license, and the state where the service corporation holds a resident license or charter.

V. Administrative Law Matters

Notice and Comment

Pursuant to the Administrative Procedure Act (APA), at 5 U.S.C. 553(b)(B), notice and comment are required prior to the issuance of a final rule unless an agency, for good cause, finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' This final rule includes amendments not originally include in the proposed rule published on June 10, 2014, that: (1) update OCC telephone or fax numbers in parts 4, 7, and 24, (2) replace a form in appendix 1 to part 24 with an identical form updated to include a new OCC phone number and revision date, and (3) corrects a number of inaccurate cross-references. These amendments are purely technical in nature and for this reason, the OCC has good cause to conclude that advance notice and comment under the APA are not necessary prior to their issuance.

Effective Date

The APA requires that a substantive rule must be published not less than 30 days before its effective date, unless, among other things, the rule grants or recognizes an exemption or

relieves a restriction.[125] Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that regulations imposing additional reporting, disclosure, or other requirements on insured depository institutions take effect on the first day of the calendar quarter after publication of the final rule, unless, among other things, the agency determines for good cause that the regulations should become effective before such time.[126] The July 1, 2015 effective date of this final rule meets both the APA and RCDRIA effective date requirements, as it will take effect at least 30 days after its publication date of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and on the first day of the calendar quarter following publication, July 1, 2015.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA),[127] an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describe the impact of the rule on small entities, unless the head of an agency certifies that the rule will not have "a significant economic impact on a substantial number of small entities." The OCC currently supervises approximately 1,109 small entities — 339 Federal savings associations, 751 national banks, and 19 trust companies (collectively, small banks).[128] Because some of the final rule's provisions could

[125] 5 U.S.C. 553(d)(1).

[126] 12 U.S.C. 4802.

[127] Pub. L. 96–354, 94 Stat. 1164 (1980), codified at 5 U.S.C. 601 - 612.

[128] We base our estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify a bank we supervise as a small entity. We use December 31, 2014, to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See footnote 8 of the U.S. Small Business Administration's Table of Size Standards.

impact any national bank and other provisions could impact any Federal savings association, the final rule could impact a substantial number of OCC-supervised small institutions.

We estimate that the monetized direct cost per bank will range from a low of approximately $7.6 thousand per bank to a high of approximately $15.4 thousand per bank. Using the upper bound average direct cost per small entity, we believe the compliance costs will have a significant economic impact on no more than 19 small entities (of which eight are small Federal savings associations), which is not a substantial number.[129] The OCC classifies the economic impact of total costs on a small entity as significant if the total monetized costs in a single year are greater than 5 percent of total salaries and benefits or greater than 2.5 percent of total non-interest expense. We believe 19 is not a substantial number of small entities because it represents approximately 1.7 percent of OCC-supervised small entities.

Although we believe that investments in premises may impact a small entity's competitiveness and profitability, our estimate of monetized direct costs does not include costs or benefits that may be associated with the OCC's implementation of the reduction in the quantitative limit for a Federal savings association's investments in premises. We exclude these costs and benefits for a variety reasons including the uncertainty surrounding the number of Federal savings associations that may submit applications to invest in premises, uncertainty about how the OCC will respond to any applications that may be submitted, and uncertainty of how investments in premises, if constrained, may impact small entities. However, because the OCC will require some Federal savings associations to obtain approval, we assume that

[129] The OCC classifies the economic impact of total costs on a bank as significant if the total monetized costs in a single year are greater than 5 percent of total salaries and benefits or greater than 2.5 percent of total non-interest expense. We believe 19 is not a substantial number of small banks because it represents approximately 1.7 percent of OCC-supervised small entities.

investments in premises may be constrained for some small Federal savings associations. Specifically, we assume that investments may be constrained for 18 small Federal savings associations with a positive return on assets (ROA) that are currently eligible to file an after-the-fact notice for investments in premises and will not be able to do so under the final rule.[130] However, based on the recent behavior of these Federal savings associations, it is unlikely that all 18 would seek to increase their investments in premises in any one year. For purposes of this analysis we assume that the amendments to § 5.37 and constrained investments will have a significant economic impact on no more than seven additional Federal savings associations in any one year.[131] To test if a substantial number of small entities could be impacted by the final rule, we assume that requests made by these seven small Federal savings associations to make additional investments in premises will be declined. Based on the assumptions outlined in the above paragraphs, we conclude that the final rule in total could have a significant economic impact on no more than 26 small institutions of the 1,109 small entities supervised by the OCC (approximately 2.3 percent of small entities) which is not a substantial number.

Based on the information set forth above, and pursuant to section 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

[130] We assume that all small entities seek to maximize ROA and net income. Thus, we assume that those small Federal savings associations that currently have a negative ROA are not likely to seek approval to increase their investment in premises.

[131] Our assumption is based on the current number of Federal savings associations that are likely to have their ability to invest in premises impacted by the final rule (i.e., the Federal savings association exceeds the new limit and its limit for investment in premises was reduced) and also meet the following three conditions: (i) the amount reported on line 6 of schedule RC increased during either of the last two years; (ii) it has a positive ROA; and, (iii) it reported having at least one office in addition to the Federal savings association's main office as of June 2014.

The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[132] Under this analysis, the OCC considered whether the final rule includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation) ($152 million in 2014). Under Title II of the UMRA, indirect costs, foregone revenues and opportunity costs are not included when determining if a mandate meets or exceeds UMRA's cost threshold. The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

The OCC's estimated UMRA cost is approximately $17 thousand.[133] Therefore, the OCC finds that the final rule does not trigger the UMRA cost threshold. Accordingly, this final rule is not subject to section 202 of the Unfunded Mandates Act.

Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) of 1995,[134] the OCC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. The OCC submitted the information collection requirements imposed by the proposed rule to OMB at the time of publication as an amendment to its Licensing Regulations PRA

[132] Pub. L. 104-4, 109 Stat. 48 (1995), codified at 2 U.S.C. 1501 et seq.

[133] The OCC finds that the requirement for Federal savings associations (that are otherwise exempt from the branch application requirement) to file an after-the-fact notice when opening a new branch is a conditional mandate under the UMRA that is likely to impact a substantial number of Federal savings associations per year. We estimate that the cost associated with this new mandate is approximately $17,380 per year (182 Federal savings associations × 1 hour × $95.5 per hour). Our estimate is based on the number of 1- or 2-rated Federal savings associations that have more than one office that increased their investment in premises during either of the last two years (or approximately 50 percent of all 1- and 2-rated Federal savings associations).

[134] Pub. L. 104-13, 109 Stat. 163 (1995), codified at 44 U.S.C. 3501 et seq.

Collection (OMB Control No. 1557-0014). Pursuant to 5 CFR 1320.11(c), OMB filed a comment on the information collection instructing the OCC to examine public comment in response to the proposed rule and describe in the supporting statement of its next collection any public comments received regarding the collection as well as why (or why it did not) incorporate the commenter's recommendation. The OCC received no comments regarding the information collection and has resubmitted the information collection requirements to OMB for review in connection with the final rule.

The final rule contains both new and revised information collection requirements. Some of the revisions provide exceptions to existing requirements, which will result in a reduction in burden. Some of the requirements are currently in place for national banks and are being extended to cover both national banks and Federal savings associations. Some of the amendments impose new requirements on Federal savings associations and amend the requirements for national banks. A number of the revisions involve amendments to definitions, which, in some cases, will affect the respondent count for related provisions. For example, the change in the definition of "eligible bank" to include the consumer compliance rating in addition to the CAMELS and CRA rating will affect respondent counts. A number of the provisions being amended contain existing PRA requirements that have been previously approved by OMB.[135] The amendments made today do not create any new information collection requirements and, therefore, require no PRA filings, other than non-material changes necessary due to the consolidation of the regulations.

Rules of General Applicability

[135] OMB Control Nos. 1557-0106, 1557-0140, 1557-0190, 1557-0204, 1557-0221, 1557-0266, and 1557-0310.

Federal savings associations will be required to follow the procedure and processing provisions currently imposed on national banks (part 5, subpart A) instead of those in part 116, which they currently follow. Only well capitalized Federal savings associations will qualify for expedited treatment and adequately capitalized institutions will no longer qualify. Public notices of filings will be required to be filed as soon as practicable after a filing date instead of seven days prior to the filing date. Public notice will have to state that a filing is being made and the date of the filing. A single public notice will be acceptable for multiple transactions or transactions filed with the OCC and another agency, under certain circumstances. Comments in response to a filing will have to be obtained from the OCC, as comments will no longer be sent directly to the institution.

The requirement for publication of notice of a filing by national banks will be made more specific and require the notice: to be published in English; to specify the name of institution that is the subject of the filing; to indicate that the public portion is available on request; and to provide the address of the applicant. Under certain circumstances, the OCC can require the applicant to publish a new notice.

Fiduciary Powers

In order to exercise fiduciary powers, Federal savings associations will be required to comply with the application requirements of § 5.26 in place of the requirements under current part 150. In addition, § 5.26 will be revised to require a national bank or Federal savings association that has not conducted previously approved fiduciary powers for 18 consecutive months to provide the OCC with 60 days' advance notice before engaging in the activities. It will also require that a national bank or Federal savings association that has received approval to exercise limited fiduciary powers apply to the OCC to exercise full fiduciary powers. Eligible

Federal savings associations will receive expedited review of applications. A provision is added setting out the circumstances under which a Federal savings association does not need to apply for fiduciary powers in connection with certain mergers.

Establishment, Acquisition, and Relocation of a Branch

New § 5.31 addresses the establishment and relocation of branches, or the establishment of agency offices, by Federal savings associations and replaces several provisions currently found in part 145.

Section 5.31(f)(1) sets out the general requirement that each Federal savings association proposing to establish or relocate a branch shall submit a separate application for each proposed branch, unless the transaction qualifies for an exception. The provision in § 145.93(e) stating that a Federal savings association may not file an application or notice, or use any of the exceptions, to establish a branch if the association has filed an application to merge or otherwise surrender its charter and the application has been pending for less than six months has not been carried over to § 5.31.

Section 145.93(b)(3) provided that certain highly rated Federal savings associations are not required to file an application to change the permanent location of an existing branch or to establish a new branch if it meets certain requirements, including that the Federal savings association meet the eligibility requirements for expedited treatment. Under § 5.31(f)(2)(iii) of the final rule, the Federal savings association is an "eligible savings association," as defined in 12 CFR 5.3(g), rather than eligible for expedited treatment.

Section 5.31(f)(3) is added in the final rule, which requires that highly rated Federal savings associations not required to file a branch application must file a notice with the OCC

within 10 days after the opening of the branch. This notice must include the date the branch was established or relocated and the address of the branch.

Section 5.31(g) sets out exceptions to the rules of general applicability for applications by a Federal savings association to establish or relocate a branch and specifies that the OCC will be able to waive or reduce the public notice and comment period in certain emergency situations or with respect to certain temporary branches.

Section 5.31(h) provides that OCC's approval of a branch expires if the branch has not commenced business within 18 months, unless the OCC grants an extension. This period is longer than the current 12-month expiration period for branch approvals for Federal savings associations under § 145.95(c).

Section 145.93(c) currently requires prior approval for any savings association branch that would be subject to section 5(m)(1) of the HOLA (regarding District of Columbia savings associations), if the association meets the requirements of § 145.93(b) for an exception to the branch application filing requirement. New § 5.31(j) requires an application and prior written approval for each application. State and Federal savings associations will be required to file an application with the OCC to establish or move a branch in the District of Columbia.

Investment in Bank Service Companies

Section 5.35 is expanded to cover Federal savings associations. It replaces the after-the-fact notice before making an investment in the equity of a bank service company or performing new activities in an existing bank service company with an expedited prior notice procedure.

Investments in Premises

Section 5.37 is expanded to cover Federal savings associations. In addition, an alternative, after-the-fact notice process is added for both national banks and Federal savings

associations and an exception to the premise application and notice requirements for investments in banking premises through a service corporation is provided for Federal savings associations. Amendments to the definitions of "capital stock" and "capital and surplus," which will increase the amount that a Federal savings association can invest in banking premises without OCC approval, will result in a decrease in the number of requests for approval. A transition provision is added for Federal savings associations to grandfather existing banking premises investments. Modifying, expanding, or approving such investments will require prior approval. Section 7.1000(d) provides that a Federal savings association will be given a five year timeframe for the use of real estate acquired for future premises in place of the current guidance, which requires use of real estate acquired for future expansion within one to three years and, after holding the real estate for one year, requires a statement by resolution of the definite plans for use.

Main Office and Home Office Relocations

Under § 5.40, Federal savings associations will be required to submit prior notice to the OCC for home office relocations to a branch site in the same city, town, or village of the current home office and obtain prior approval for other relocations. They will also be required to obtain prior approval to establish a branch at the site of a former main or home office.

Change in Corporate Title

For change in corporate title, Federal savings associations will be required to submit an after-the-fact notice in place of the current 30-day prior notice under § 5.42.

Voluntary Liquidation

Section 5.48 is expanded to cover Federal savings associations. The liquidating agent or committee of the national bank or Federal savings association will be required to submit: a report to the appropriate OCC licensing office at the start of liquidation showing the bank's or savings

association's balance sheet as of the start of liquidation; quarterly Call Reports; a report of condition at the start of the liquidation; annual progress reports; and a final report of liquidation. National banks and Federal savings associations will be required to notify all depositors, other known creditors, and known claimants of the bank or savings association.

Change in Control; Reporting of Stock Loans

This section is expanded to cover Federal savings associations. Certain procedures for rebuttal of control and concerted action under part 174 will no longer be applicable to Federal savings associations. Persons who acquire control of a Federal savings association as a result of testate or intestate succession will need to file a notice within 90 days of the transaction, while the current regulations require only a notification of the acquisition within 60 days. Under § 5.50, acquirers of beneficial ownership exceeding 10 percent of any class of stock of a Federal savings association that does not file a control notice or control rebuttal will not be required to file a certification of ownership.

Changes in Directors and Senior Executive Officers

The notice of a change in directors or senior executive officers for a national bank in § 5.51 will need to include financial information on the individual, except when the OCC determines it is not required. If the OCC requests additional information, a national bank may request a time extension to provide the information, if necessary.

Federal savings associations will be required to provide 90 days prior notice of a new director or senior executive officer, under certain circumstances, in place of the current shorter notice period. Only a Federal savings association will be permitted to file the notice; nominees no longer will be able to file. Federal savings associations will be able to appeal an OCC notice of disapproval.

Change in Address

Section 5.52 provides that, under certain circumstances, national banks and Federal savings associations will no longer be required to file a notice of home office change of address and Federal savings associations will no longer be required to provide notice of a post office box address.

Bank Activities and Operations

A number of provisions in part 7 are being expanded to cover Federal savings associations. A transition period is added to grandfather Federal savings associations' existing premise investments, provided they are not modified, expanded, or improved. A transition period is also provided for Federal savings associations that share space or employees with another business under an agreement that complies with legal requirements previously in place that would violate this provision. They will be permitted to continue under the existing agreement, but will not be able to amend, renew, or extend the agreement without prior approval.

The requirements in part 145 regarding the establishment of agency offices of Federal savings associations is removed and agency offices of Federal savings associations that conduct non-branch activities will not be considered branches and will not be required to obtain OCC approval for these offices.

Organizing a National Bank or Federal Savings Association

In § 5.20, paragraph (h) specifies requirements for the organizers' business plan or operating plan, paragraph (i) lists the procedures that the organizers must follow, paragraph (j) specifies the requirements for expedited review of an application, and paragraph (l) lists requirements for the establishment of special purpose banks. An application to charter a Federal savings association will be subject to the two-part approval process contained in paragraph (i)(5). The OCC uses a

two-part approval process for de novo national bank charters. After an application is filed, if the OCC determines it meets the applicable standards, the application is given preliminary approval. The national banking organization would then take the steps needed to organize itself, raise capital, obtain any other regulatory approvals, and generally become ready to commence business. Final approval is given and the national bank's charter is issued only after all these steps are concluded, including compliance with any conditions imposed in the preliminary approval. Currently, the OCC issues only one approval before it issues the charter, but this approval is subject to the institution completing various post-approval organizational steps and other requirements before it can begin conducting business. Paragraph (j) currently provides for expedited review of an application to establish a full-service national bank filed by a bank holding company with a lead depository institution that is an eligible depository institution. Under the final rule, Federal savings associations and savings and loan holding companies are added.

The corresponding rules applicable to organizing Federal savings associations are found in parts 143, 144, and 152, and § 163.1. Sections 144.1 and 152.3 contain specific language and requirements to be used for the charter of Federal mutual savings associations and Federal stock savings associations, respectively, and §§ 144.2 and 152.4 contain specific requirements for the bylaws of Federal mutual savings associations and Federal stock savings associations, respectively. Sections 143.2(g)(2)(i) and 152.1(b)(3)(i) provide that approval of an application to organize a Federal mutual or stock savings association, respectively, is conditioned on OCC receipt of written confirmation from the FDIC that accounts will be insured. Section 152.2, which provides procedures for the organization of interim Federal savings associations, is rescinded and addressed in the business combinations regulation at § 5.33.

Section 5.21(j) specifies the language and requirements for Federal mutual savings association bylaws. The provision reflects the requirements in § 144.5.

Federal Stock Savings Association Charter, Bylaws and Related Provisions

Section 5.22(e) specifies the language and requirements for a Federal stock savings association charter. The provision reflects the requirements in § 152.3.

Federal Savings Association Charter and Bylaws Availability Requirement

Section 163.1(b), which requires each Federal savings association to cause a true copy of its charter and bylaws and all amendments thereto to be available to accountholders at all times in each office of the savings association, and to deliver to any accountholders a copy of such charter and bylaws or amendments thereto, upon request, is rescinded and the OCC will continue applying this requirement only with respect to Federal mutual savings associations under new § 5.21(i).

Conversions to and from National Bank and Federal Savings Association Charters

In § 5.24(d), regarding the policy for approving and disapproving conversions to national bank charters, a statement is added that the institution seeking to convert to a national bank charter must obtain all necessary regulatory and shareholder approvals. A parallel provision is found in § 143.8(a)(2), which is now in § 5.25 of the final rule. The public notice and inspection requirements at § 143.9(a)(2) are rescinded. If there are instances where the OCC believes publication is warranted, the OCC may require publication under § 5.2(b), which allows the OCC to require materially different procedures for a particular filing.

Section 5.24(e)(2)(ix) requires the application for conversion to include a business plan if the converting institution has been operating for less than three years or plans to make significant

changes to its business after the conversion, instead of the current policy of requesting it on a case-by-case basis.

Section 5.24(g), which allows for expedited review of a conversion application filed by an eligible depository institution, will be limited to applications by institutions already supervised by the OCC.

Section 5.23(d)(2)(ii)(K) requires a converting institution that does not meet the qualified thrift lender test of 12 U.S.C. 1467a(m) to include a plan to achieve compliance within a reasonable period of time and to request an exception from the OCC in the application.

Section 5.25(d) provides that converting from a Federal charter does not require prior OCC approval. The institution must file only a notice with the OCC. Currently, Federal savings associations that are not eligible for expedited treatment must file an application to convert to a national bank or state bank. The notice must contain a copy of the conversion application to the regulator to which it is applying for approval to convert, and a discussion of any issues regarding the permissibility of the conversion under section 612 of Dodd-Frank Act. The institution will also be required to file a copy of its conversion application with the Federal banking agency that would become its appropriate Federal banking agency after the conversion.

For conversions between a national bank and a Federal savings association, the applicable "converting-in" regulation (§ 5.23 or § 5.24) will require the institution to file an application with the OCC with respect to the "converting-in" aspect of the transaction. Information regarding the "converting-out" to a national bank from a Federal savings association or from a Federal savings association to a national bank will no longer be required in a separate notice but included in the "converting-in" application.

Sections 5.24(e)(2)(x) and 5.23(d)(2)(ii)(J) will require the conversion application to include information about enforcement actions and other supervisory criticisms and the applicant's analysis of whether conversion is permissible under 12 U.S.C. 35, as amended by section 612.

Section 5.25(d)(3) would require that the information that must be submitted to the OCC when a national bank or Federal savings association plans to convert to a state bank or state savings association must include a discussion of the impact of any enforcement action on the permissibility of the conversion under 12 U.S.C. 214d or 1464(i)(6).

Sections 5.24(e)(2), 5.23(d)(2)(ii), 5.25(d)(3)(i), and 5.25(d)(3)(ii)(A) require that, at the time an insured depository institution files a conversion application, it must transmit a copy of the conversion application to both the appropriate Federal banking agency for the institution and the Federal banking agency that will become the appropriate Federal banking agency for the institution after the proposed conversion.

Service Corporations

Under the current service corporation regulation, a Federal savings association must file a notice under part 116 at least 30 days before establishing or acquiring a subsidiary or engaging in a new activity in a subsidiary. A Federal savings association is not required to file a service corporation application if the association proposes to make a non-controlling investment in a service corporation. The final rule amends the service corporation regulation at § 5.59 to require that a Federal savings association file with the OCC before acquiring or establishing any service corporation, including one that it would not control.

Section 5.59(h)(1)(ii) requires a Federal savings association to list for each state the lines of business for which the service corporation holds, or will hold, an insurance license, and each

state in which the service corporation holds a resident license or charter. Section 5.59(h)(2) changes the circumstances under which a Federal savings association would receive expedited review for a service corporation filing, currently found in part 116. A service corporation filing will be eligible for expedited review if the savings association is "well capitalized" and "well managed," and the service corporation engages only in one or more of the preapproved activities listed in § 5.59(f).

Operating Subsidiaries; Subordinate Organizations

New § 5.34(e)(2)(iii) is added to clarify that a national bank must have reasonable policies and procedures to preserve the limited liability of the bank and its operating subsidiaries. This requirement has been adapted from § 159.10 and is consistent with the new operating subsidiary rule for Federal savings associations.

Current § 5.34(e)(5)(i) provides that national banks meeting certain requirements are not required to file a prior application but may give after-the-fact notice when establishing or acquiring an operating subsidiary or performing a new activity in an existing operating subsidiary. Paragraph (e)(5)(ii) requires a prior application and OCC approval in other instances and sets out the information that must be included in the filing.

Current § 5.34(e)(5)(vi) provides that no application or notice is required for a national bank that is well managed and adequately capitalized or well capitalized to acquire or establish an operating subsidiary or perform a new activity in an existing operating subsidiary, if the activities of the new subsidiary are limited to those previously reported to the OCC in connection with a prior operating subsidiary and certain other requirements are met. The final rule changes the criteria from adequately capitalized to well capitalized. This is consistent with the well capitalized requirement to be eligible for the after-the-fact notice procedure.

Section 5.38(b) will require a Federal savings association to file an application to acquire or establish any operating subsidiary or to commence a new activity in an existing operating subsidiary. Part 159 required Federal savings associations to give 30 days' notice to the OCC prior to establishing or acquiring an operating subsidiary or commencing a new activity in an operating subsidiary. Section 159.11 required a filing when it is required under 12 U.S.C. 1828(m), and section 1828(m) does not require a filing if the subsidiary is an insured depository institution. Section 5.38(b) will require an application to acquire an insured depository institution as an operating subsidiary. A proposal for a Federal savings association to own an insured depository institution subsidiary that would cause the savings association to be a bank holding company or a savings and loan holding company raises issues of law and policy as well as supervisory concerns. The acquisition of other insured depository institutions as operating subsidiaries also requires agency review. Accordingly, the OCC believes an application is needed, even if not required under 12 U.S.C. 1828(m).

Section 5.38(d) sets out definitions for "well capitalized" and "well managed," which will be used as part of the determination of which applications are eligible for expedited review by the OCC. These definitions are the same as those in § 5.34(d), and the OCC uses these terms as criteria to permit national banks to make an after-the-fact notice filing pursuant to § 5.34(e)(5). They are also used in § 5.38 to determine if an application by a Federal savings association is eligible for expedited review.

Section 5.38(e)(2)(iv)(A) (similar to § 159.10) expressly requires a savings association to have reasonable policies and procedures to preserve the limited liability of the savings association and its operating subsidiaries. Section 5.38(e)(5) sets forth the operating subsidiary application requirements for savings associations.

Section 159.11 specifies when Federal savings associations must file a notice at least 30 days prior to establishing or acquiring an operating subsidiary or conducting a new activity in an existing operating subsidiary. Section 5.38(e)(5) specifies the procedures a Federal savings association must follow when filing applications required under § 5.38. Section 5.38(e)(5)(ii)(A) provides for expedited review of applications to establish or acquire an operating subsidiary, or to perform a new activity in an existing operating subsidiary. The expedited review process is similar to that contained in § 159.11.

Section 159.3(p)(1) provided that a Federal savings association must consult with the appropriate OCC licensing office prior to redesignating a service corporation as an operating subsidiary, and make available for examination adequate internal records demonstrating that the redesignated office meets all of the requirements for an operating subsidiary and that the board of directors has approved of the redesignation. Section 5.38(e)(vi) requires a Federal savings association to provide 30 days' prior notice to the OCC when the savings association wants to redesignate a service corporation as an operating subsidiary.

Pass-through Investments

Section 160.32(b) currently provides that a Federal savings association may make certain qualifying pass-through investments without prior notice to the OCC in any entity that is a limited partnership, an open-ended mutual fund, a closed-end investment trust, a limited liability company, or an entity in which the Federal savings association is investing primarily to use the company's services. Section 160.32(c) requires a Federal savings association to provide the OCC with written notice 30 days prior to making any pass-through investment that does not meet the no-notice standards. The notice is a form of application and may become a standard application

if the OCC notifies the filer that the investment presents supervisory, legal, or safety and soundness concerns. The final rule removes these provisions and cross-references § 5.36.

New § 5.58(e) mirrors § 5.36(e) and provides that a well capitalized, well managed Federal savings association may make certain pass-through investments, directly or through its operating subsidiary, in certain entities by filing a written after-the-fact notice with the OCC no later than 10 days after making the investment if the activity conducted by the enterprise is on the list of activities eligible for a notice filing for operating subsidiaries, or if it is substantially the same as an activity that has been previously approved for a Federal savings association (or its operating subsidiary).

If a Federal savings association is not well capitalized and well managed or if the activity conducted by the enterprise does not qualify for the after-the-fact notice procedure, the savings association will be required to apply to the OCC and receive prior approval for the non-controlling investment.

Section 5.58(g)(1) provides for an expedited notice procedure for pass-through investments in entities holding assets in satisfaction of debts previously contracted. A Federal savings association will not be required to file a notice or application under § 5.58 when acquiring a non-controlling investment in shares of a company through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted.

Under § 5.58, Federal savings associations will be permitted to make non-controlling investments greater than 25 percent of the company's equity. The investment, however, will constitute "control," making the enterprise a subsidiary of the association and triggering a filing. Section 5.58(f)(2) provides that a Federal savings association must submit an application for

approval prior to investing in an enterprise that is considered a subsidiary of the Federal savings association that would not be an operating subsidiary or a service corporation.

Section 5.58 changes the filing requirements for Federal savings associations' non-controlling investments. Some pass-through investments will meet the requirements for the after-the-fact notice procedure, and only the after-the-fact notice will be required. Some non-controlling investments that qualify for the no-notice procedure under § 160.32(b) will require a filing under § 5.58. Section 5.58(h) will continue the no-notice procedure for investments by Federal savings associations in investment companies that held assets permissible to be held directly. Some investments that may have qualified for the no-notice procedure may be eligible for the after-the-fact notice of § 5.58(e).

Change in Asset Composition

The final rule expands the requirements of § 5.53 and removes § 163.22 regarding change in asset composition. Institutions contemplating transactions that may constitute a material change will be advised to consult the appropriate OCC supervisory office. National banks will find more situations in which applications for approval are required than under current § 5.53, but these additional situations likely already will involve discussions between the bank and its supervisory office. Federal savings associations will find fewer situations in which applications for approval are required than now required under current § 163.22(c).

Under the application exception for asset changes that are part of a voluntary liquidation, the final rule adds that the bank or savings association must have received OCC approval of its plan of liquidation.

The expedited treatment under § 163.22(c) for of bulk transfer filings if all of the participating Federal savings associations meet the conditions for expedited treatment is not carried over into § 5.53.

Business Combinations

Section 5.33(d)(2)(v) expands the definition of "business combination" in § 5.33(d)(2), which currently includes only the assumption of deposit liabilities from another depository institution, to also include the assumption, from a credit union or any other institution that is not FDIC-insured, of deposit accounts or other liabilities that will become deposits at the assuming national bank or Federal savings association. Federal savings associations are currently required to file an application under § 163.22(c). The final rule retains the requirement and expands it to cover national banks.

The final rule amends § 5.33(e)(3) to require that the business combination application identify financial subsidiary investments, bank service company investments, service corporation investments, and other equity investments in addition to subsidiaries, and provide an analysis of the permissibility for the national bank or Federal savings association to hold the subsidiary or investment.

Under § 5.33(e)(6), regarding the exercise of fiduciary powers by the resulting national bank or Federal savings association, a clarification is made that if the applicant intends to exercise fiduciary powers after the combination and requires OCC approval for such powers, it must include in the business combination application the information required in § 5.26 for a request for fiduciary powers.

Section 5.33(f)(1) is amended to clarify that the requirement of public notice and comment would apply only when the application is subject to a public notice requirement under

the Bank Merger Act or other applicable statute that requires notice to the public. This publication requirement is not a change for national banks or Federal savings associations. The frequency and timing of publication for transactions that are subject to the Bank Merger Act are changed for Federal savings associations. Section 163.22(e)(1)(i) requires an initial publication and then publication on a weekly basis during the public comment period. Under § 5.33(f)(1), the OCC will require the initial publication and two other publications during the standard 30-day public comment period.

Section 5.33(g)(1), addressing the merger or consolidation of a national bank or a state bank into a national bank, requires that a national bank that will not be the resulting bank in a merger or consolidation with another national bank file a notice to the OCC under § 5.33(k). This notice will also be required whenever a national bank or Federal savings association merges or consolidates into another institution. It provides the OCC information about the target national bank's compliance with requirements to "merge-out" and sets in motion the steps for the disappearing national bank to end its separate existence.

Section 5.33(g)(2)(ii), under which the OCC may conduct an appraisal of dissenters' shares of stock in a national bank involved in a consolidation with a Federal savings association if all the parties agree, is changed from a voluntary to a required process. Sections 5.33(g)(2)(ii)(A) and (B) specify the process for appraisal of dissenters' shares of stock in a stock Federal savings association involved in a consolidation or merger into a national bank.

Section 5.33(g)(2)(iii) includes a requirement that a consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution.

New § 5.33(g)(3), addressing consolidations and mergers of other institutions into a Federal savings association, requires an application to the OCC and compliance with requirements and procedures similar to those currently imposed on them. If a combination involves a whole purchase and assumption of a Federal savings association, then the combination will be treated as a consolidation for participating Federal savings associations, and the procedural requirements in § 5.33(o) will apply.

Section 5.33(g)(3)(ii) includes a requirement that the consolidation or merger agreement must address the effect upon and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution.

Section 5.33(g)(6)(iv) includes a requirement that the consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution. This requirement is based on provisions in §§ 146.2(b)(9) and 152.13(f)(9).

Section 5.33(g)(7) addresses a consolidation or merger of a Federal savings association into a state bank, state savings bank, state savings association, state trust company, or credit union and requires only a notice to the OCC, not application and approval. This requirement is a change for Federal savings associations from § 163.22(c), under which an application is required for a combination with an uninsured bank, savings association or trust company or a credit union. Section 5.33(g)(7)(ii) includes a provision under which a whole purchase and assumption of the target Federal savings association will be treated as a consolidation for the Federal savings association, so that the procedural requirements in § 5.33(o) will apply.

Section 5.33(g)(7)(iii) sets out the process for appraisal of dissenters' shares of stock in a stock Federal savings association involved in a consolidation or merger into a state bank, state

savings bank, state savings association, state trust company, or credit union. Section 5.33(g)(7)(iv) requires that the consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution.

Section 5.33(i), which provides for expedited review of business reorganizations and streamlined applications, is expanded to include Federal savings association applications. Expedited review under § 5.33(j) replaces the automatic approval provision in § 163.22(f) for Federal savings associations, which provides that an application is deemed to be approved automatically 30 days after the OCC sends the applicant a written notice that the application is complete.

New § 5.33(k) addresses notices to be filed when a national bank or Federal savings association is consolidating or merging with another national bank or Federal savings association or with a state chartered institution or credit union and the target national bank or Federal savings association is not the resulting institution. It includes the steps to be taken to terminate the institution's status as a national bank or Federal savings association. This consolidates requirements from §§ 5.33(g)(3), 146.2(g), 152.13(k), 163.22(b), and 163.22(h)(1)(i) and (ii). There is no change for Federal savings associations, but national banks will be required to include more information in the notice than currently required.

Section 5.33(m) addresses certification of a consolidation or merger and documentation of its effective date. The applicant will be required to submit information showing that all steps needed to complete the transaction have been met and to notify the OCC of the planned consummation date. This reflects current OCC practice for national banks. It accomplishes through an applicant notification letter and issuance of an OCC certification letter what §

152.13(j) does in requiring the applicant to submit two sets of "Articles of Combination" that are filed with the OCC, and then endorsed by the OCC, with one set returned to the applicant with a specification of the effective date.

New § 5.33(o) includes provisions from §§ 146.2 and 152.13 that set out the procedural requirements for board, shareholder (in the case of stock savings associations), and, if required by the OCC, voting member (in the case of mutual savings associations) approval of business combinations involving the Federal savings association.

Changes in Permanent Capital

Section 5.46(g)(1) is amended to describe more fully those increases in permanent capital of a national bank for which an application and prior approval are not required and when such increases are considered approved by the OCC. Portions of this requirement are currently in paragraph (i)(3), which addresses the bank's notification to the OCC that the increase has occurred and the certification of the increase by the OCC.

Subordinated Debt

The expedited treatment process in part 116 for savings associations is replaced by the expedited review process in part 5 for Federal savings associations seeking expedited review of filings to issue subordinated debt. This could result in a change in which savings associations qualify for the expedited process, due to the difference between the eligibility requirements for expedited review and the requirements for expedited treatment.

Capital Distributions

New § 5.55 contains Federal savings association procedures and standards for capital distributions currently found in part 163 and filing procedures based on provisions in part 5 regarding eligible savings associations and expedited review. A Federal savings association must

be an "eligible savings association" in order to qualify for expedited review of filings for capital distributions. Because the eligibility requirements in part 5 and in the current Federal savings association rules are not identical, the part 5 eligibility requirements for expedited review may affect which Federal savings associations qualify for the expedited process.

Title of Information Collection: Comptroller's Licensing Rules.

OMB Control No: 1557-0014.

Frequency of Response: Event generated.

Affected Public: Businesses or other for-profit organizations.

Current Burden for the Comptroller's Licensing Rules:

Number of Respondents: 3,831.

Average Burden per Respondent: 3.18 hours.

Total Burden: 12,174 hours.

Burden Estimates for the Comptroller's Licensing Rules as Amended by the final rule:

Number of Respondents: 3,863.

Average Burden per Respondent: 3.16 hours.

Total Burden: 12,220 hours.

The change in burden for the collection is an overall increase of 46 hours, or 0.37 percent. The change in number of respondents is due to an increase in the number of regulated entities involved in licensing activities and the revisions to certain definitions. The change in burden per respondent is an overall decrease of .02 hours. This is a result of the combination of the expansion of national bank requirements to savings associations, the revision of requirements for both national banks and savings associations, the addition of exemptions, and the streamlining and elimination of unnecessary requirements.

The OCC requests comment on:

a. Whether the information collection is necessary for the proper performance of the OCC's functions, and how the instructions can be clarified so that information gathered has more practical utility;

b. The accuracy of the OCC's estimates of the burdens of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

VI. Redesignation Table

The following redesignation table is provided for reader reference. It lists the current savings association provision and identifies the provision in this final rule that replace it.

Subject	Former Section Number/Guidance	New Section Number
Application Processing Procedures:	Part 116	Part 5, subpart A. See also relevant activity or transaction rule in part 5
What does this part do?	116.1	5.1, 5.2
Do the same procedures apply to all applications under this part?	116.5	5.2
How does the OCC compute time periods under this part?	116.10	5.12
Must I meet with the OCC before I file my application?	116.15	5.4(f)
What information must I include in my draft business plan?	116.20	See 5.4(f)
What type of application must I file?	116.25	See 5.4
What information must I provide with my application?	116.30	See 5.4 (e)
May I keep portions of my application confidential?	116.35	5.9
Where do I file my application?	116.40	5.4(d)
What is the filing date of my application?/Filing fees	116.45	See 5.12
How do I amend or supplement my application?	116.47	None
Public notice	116.50 – 116.80	5.8
Comment procedures: What does this subpart do?	116.100	None
Public comment	116.110 – 116.140	5.10
Meeting procedures: What does this subpart do?	116.160	None
When will the OCC conduct a meeting on an application?	116.170	5.11
What procedures govern the conduct of a meeting?	116.180	5.11
Will the OCC approve or disapprove an application at a meeting?	116.185	None
Will a meeting affect application processing time frames?	116.190	See 5.10(b)(2), 5.11(h), and 5.13(a)(2)
If I file a notice under expedited treatment, when may I engage in the proposed activities?	116.200	See relevant activity or transaction rule in part 5
What will the OCC do after I file my application?	116.210	5.13
If the OCC requests additional information to	116.220	5.13

complete my application, how will it process my application?		
Will the OCC conduct an eligibility examination?	116.230	5.7
What may the OCC require me to do after my application is deemed complete?	116.240	5.8(g), 5.13(c)
Will the OCC require me to publish a new public notice?	116.250	5.8(g)
May the OCC suspend processing of my application?	116.260	None
How long is the OCC review period?	116.270	5.13; See also relevant activity or transaction rule in part 5
How will I know if my application is approved?	116.280	5.13(d)
What will happen if the OCC does not approve or disapprove my application within two calendar years after the filing date?	116.290	See 5.13(c)
Federal Mutual Savings Associations – Incorporation, Organization, and Conversion	Part 143	5.20; 5.42
Corporate title	143.1	5.20(f)(2(i)), 5.42
Application for permission to organize	143.2	5.20
"De novo" applications for a Federal savings association charter	143.3	5.20
Issuance of charter	143.4	None
Completion of organization	143.5	5.20
Limitations on transaction of business	143.6	None
Federal savings association created in connection with an association in default or in danger of default	143.7	None
Conversions	143.8 – 143.10	5.23
Organization plan for governance during first years after issuance of Federal mutual savings bank charter	143.11	None
Continuity of existence	143.14	5.23
Federal Mutual Savings Associations – Charter and Bylaws	144	5.21
Federal mutual charter	144.1	5.21(e)
Charter amendments	144.2	5.21(f) – (h)
Issuance of charter	144.4	None
Federal mutual savings association bylaws	144.5	See 5.21(j)
Effect of subsequent charter of bylaw change	144.6	5.21(j)(5)

Availability – in association offices	144.7	5.21(i)
Communication between members of a Federal mutual savings association	144.8	144.8
Federal Savings Associations - Operations	Part 145	5.31, 5.40, 5.52
Home office	145.91(a) 145.91(b)	None 5.52
Branch offices	145.92	5.31
Application and notice requirements and processing procedures for branch and home offices	145.93, 145.95	5.31 (branch office) 5.40 (home office)
Agency office	145.96	5.31(k)
Federal Mutual Savings Associations – Merger, Dissolution, Reorganization, and Conversion	Part 146	5.33, 5.48
Definitions, procedures, and transfer of assets upon merger or consolidation	146.1 – 146.3	5.33
Voluntary dissolution	146.4	5.48
Fiduciary Powers of Federal Savings Associations	Part 150, subpart A	5.26
Obtaining fiduciary powers: Must I obtain OCC approval or file a notice before I exercise fiduciary powers?	150.70	150.70 (revised), 5.26
Obtaining fiduciary powers	150.80 – 150.125	5.26
Federal Stock Associations – Incorporation, Organization, and Conversion	Part 152	5.20, 5.22, 5.23, 5.24, 5.25, 5.33
Procedure for organization of Federal stock association	152.1	5.20
Procedures for organization of interim Federal stock association	152.2	5.33(e)(4)
Charters, bylaws, boards of directors and officers, share certificates, and books and records	152.3 – 152.11	5.22
Business combinations	152.13 – 152.15	5.33
Effect of subsequent charter or bylaw change	152.16	5.22(j)(4)
Federal stock association created in connection with an association in default or in danger of default	152.17	None
Conversion from stock form depository institution to Federal stock association	152.18	5.23
Conversion to National banking association or state bank	152.19	5.24 (to national bank) 5.25 (to state bank)
Subordinate organizations	159 (159.1 – 159.13)	5.38 (operating

		subsidiaries) 5.59 (service corporations)
Lending and investment		
Pass-through investments	160.32, except: 160.32(a) 160.32(b)	5.58 160.32(a) (same) 160.32(b) (revised)
Real estate for office and related facilities	160.37	5.37, 7.1000, 7.3001
Savings Associations - Operations		
Submission for approval of chartering documents	163.1(a)	See 5.20(e)(1)(iii)(A)
Availability of chartering documents	163.1(b)	None (Federal stock savings associations) 5.21(i) (Federal mutual savings associations)
Merger, consolidation, purchase or sale of assets, or assumption of liabilities	163.22	5.33, 5.53
Conversion to state bank	163.22(b)(1)(ii)	5.25
Conversion to national bank	163.22(b)(2)	5.24
Inclusion of subordinated debt securities and mandatorily redeemable preferred stock as supplementary capital	163.81	5.56
Capital Distributions	163.140 – 163.146 (subpart E)	5.55
Management and financial policies	163.161	5.59 (e)(7)(service corporations only)
Notice of change of director or senior executive officer	163.550 - 163.590 (subpart H)	5.51
Acquisition of Control of Federal Savings Associations	174.1 – 174.7 174, Appendix A	5.50 None

List of Subjects

12 CFR Part 4

Administrative practice and procedure, Freedom of information, Individuals with disabilities, Minority businesses, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women.

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 7

Computer technology, Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 14

Banks, Banking, Consumer protection, Insurance, National banks, Reporting and recordkeeping requirements.

12 CFR Part 24

Affordable housing, Community development, Credit, Investments, Economic development and job creation, Low- and moderate-income areas, Low and moderate income housing, National banks, Public welfare investments, Reporting and recordkeeping requirements, Rural areas, Small businesses, Tax credit investments.

12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

12 CFR Part 100

Savings associations.

12 CFR Part 116

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

12 CFR Part 143

Reporting and recordkeeping requirements; Savings associations.

12 CFR Part 144

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 145

Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 146

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 150

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

12 CFR Part 152

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 159

Reporting and recordkeeping requirements, Savings associations, Subsidiaries.

12 CFR Part 160

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 161

Administrative practice and procedure, Savings associations.

12 CFR Part 162

Accounting, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 163

Accounting, Administrative practice and procedure, Advertising, Conflict of interests, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 174

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

12 CFR Part 192

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 193

Accounting, Savings associations, Securities.

For the reasons set forth in the preamble, and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 4 - ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS

1. The authority citation for part 4 is revised to read as follows:

Authority: 12 U.S.C. 1, 12 U.S.C. 93a, 12 U.S.C. 5321, 12 U.S.C. 5412, and 12 U.S.C. 5414. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 161, 481, 482, 484(a), 1442, 1462a, 1463, 1464 1817(a)(2) and (3), 1818(u) and (v), 1820(d)(6), 1820(k), 1821(c), 1821(o), 1821(t), 1831m, 1831p-1, 1831o, 1867, 1951 et seq., 2601 et seq., 2801 et seq., 2901 et seq., 3101 et seq., 3401 et seq.; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C.

641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510. Subpart D also issued under 12 U.S.C. 1833e. Subpart E is also issued under 12 U.S.C. 1820(k).

2. Revise § 4.5 to read as follows:

§ 4.5 Other OCC supervisory offices.

(a) Midsize Bank Supervision (MBS). Midsize Bank Supervision is responsible for supervising midsize national banks and Federal savings associations that present unique supervisory challenges based on size, complexity, and/or product line. MBS also supervises credit card and certain other special purpose banks. MBS is headquartered in Chicago, Il and located at 1 South Wacker Drive, Suite 2000, Chicago, IL 60606.

(b) District offices. Each district office of the OCC is responsible for the direct supervision of the national banks and Federal savings associations in its district, with the exception of the national banks and Federal savings associations supervised by the Washington office pursuant to § 4.4 of this part or Midsize Bank Supervision pursuant to § 4.5(a). The four district offices cover the United States, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. The geographical composition of each district follows:

District	Office location	Geographical composition
Northeastern District	Office of the Comptroller of the Currency, 340 Madison Avenue, 5th Floor New York, NY 10173–0002	Connecticut, Delaware, District of Columbia, northeast Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, the Virgin

		Islands, Virginia, and West Virginia.
Central District	Office of the Comptroller of the Currency, One Financial Place, Suite 2700, 440 South LaSalle Street, Chicago, IL 60605	Illinois, Indiana, central and southern Kentucky, Michigan, northern and eastern Minnesota, eastern Missouri, North Dakota, Ohio, and Wisconsin.
Southern District	Office of the Comptroller of the Currency, 500 North Akard Street, Suite 1600, Dallas, TX 75201	Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas.
Western District	Office of the Comptroller of the Currency, 1225 17th Street, Suite 300, Denver, CO 80202	Alaska, American Samoa, Arizona, California, Colorado, Guam, Hawaii, Idaho, Iowa, Kansas, southwestern Minnesota, western Missouri, Montana, Nebraska, Nevada, New Mexico, Northern Mariana Islands, Oregon, South Dakota, Utah, Washington, and Wyoming.

(c) Field offices and other supervisory offices. Field offices and other supervisory offices support the bank and savings association supervision responsibilities of the district offices.

§ 4.18 [Amended]

3. Section 4.18(b) is amended by removing "202 874-4700" and adding in its place "(202) 649-6700".

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

4. The authority citation for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1 et seq., 24a, 93a, 215a–2, 215a–3, 481, 1462a, 1463, 1464, 2901 et seq., 3907, and 5412(b)(2)(B).

5. Section 5.1 is revised to read as follows:

§ 5.1 Scope.

This part establishes rules, policies and procedures of the Office of the Comptroller of the Currency (OCC) for corporate activities and transactions involving national banks and Federal savings associations. It contains information on rules of general and specific applicability, where and how to file, and requirements and policies applicable to filings. This part also establishes the corporate filing procedures for Federal branches and agencies of foreign banks.

6. Subpart A of part 5 is revised to read as follows:

Subpart A—Rules of General Applicability

Sec.

5.2 Rules of general applicability.

5.3 Definitions.

5.4 Filing required.

5.5 Filing fees.

5.6 [Reserved]

5.7 Investigations.

5.8 Public notice.

5.9 Public availability.

5.10 Comments.

5.11 Hearings and other meetings.

5.12 Computation of time.

5.13 Decisions.

Subpart A—Rules of General Applicability

§ 5.2 Rules of general applicability.

(a) In general. The rules in this subpart apply to all sections in this part unless otherwise stated.

(b) Exceptions. The OCC may adopt materially different procedures for a particular filing, or class of filings, in exceptional circumstances or for unusual transactions, after providing notice of the change to the applicant and to any other party that the OCC determines should receive notice.

(c) Comptroller's Licensing Manual. The "Comptroller's Licensing Manual" provides additional filing guidance, including policies and procedures. This Manual and sample forms are available on the OCC's Internet Web page at www.occ.gov.

(d) Electronic filing. The OCC encourages electronic filing for all filings. The Comptroller's Licensing Manual describes the OCC's electronic filing procedures.

§ 5.3 Definitions.

As used in this part:

(a) Applicant means a person or entity that submits a notice or application to the OCC under this part.

(b) Application means a submission requesting OCC approval to engage in various corporate activities and transactions.

(c) Appropriate OCC licensing office means the OCC office that is responsible for processing applications or notices to engage in various corporate activities or transactions, as described at www.occ.gov.

(d) Appropriate OCC supervisory office means the OCC office that is responsible for the supervision of a national bank or Federal savings association, as described in subpart A of 12 CFR part 4.

(e) Capital and surplus means:

(1) A bank's or Federal savings association's tier 1 and tier 2 capital calculated under the OCC's risk-based capital standards set forth in 12 CFR part 3, as applicable, as reported in the bank's or savings association's Consolidated Reports of Condition and Income (Call Reports) filed under 12 U.S.C. 161 or 12 U.S.C. 1464(v), respectively; plus

(2) The balance of the national bank's or Federal savings association's allowance for loan and lease losses not included in the institution's tier 2 capital, for purposes of the calculation of risk-based capital reported in the institution's Call Reports, described in paragraph (e)(1) of this section.

(f) Depository institution means any bank or savings association.

(g) Eligible bank or eligible savings association means a national bank or Federal savings association that:

(1) Is well capitalized as defined in 12 CFR 6.4;

(2) Has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (CAMELS);

(3) Has a Community Reinvestment Act (CRA), 12 U.S.C. 2901 et seq., rating of "Outstanding" or "Satisfactory," if applicable;

(4) Has a consumer compliance rating of 1 or 2 under the Uniform Interagency Consumer Compliance Rating System; and

(5) Is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive (see 12 CFR part 6, subpart B) or, if subject to any such order, agreement, or directive, is informed in writing by the OCC that the bank or savings association may be treated as an "eligible bank or eligible savings association" for purposes of this part.

(h) Eligible depository institution means:

(1) With respect to a national bank, a state bank or a Federal or state savings association that meets the criteria for an "eligible bank or eligible savings association" under § 5.3(g) and is FDIC-insured; and

(2) With respect to a Federal savings association, a state or national bank or a state savings association that meets the criteria for an "eligible bank or eligible savings association" under § 5.3(g) and is FDIC-insured.

(i) Filing means an application or notice submitted to the OCC under this part.

(j) Notice, in general, means a submission notifying the OCC that a national bank or Federal savings association intends to engage in or has commenced certain corporate activities or transactions. The specific meaning of notice depends on the context of the rule in which it is used and may require the filer to obtain prior OCC approval before engaging in the activity or transaction, may provide the OCC with authority to disapprove the notice, or may be informational requiring no official OCC action.

(k) Principal city means an area designated as a "principal city" by the Office of Management and Budget.

(l) Short-distance relocation means moving the premises of a branch or main office of a national bank or a branch or home office of a Federal savings association within a:

(1) One thousand foot-radius of the site if the branch, main office, or home office is located within a principal city of an MSA;

(2) One-mile radius of the site if the branch, main office, or home office is not located within a principal city, but is located within an MSA; or

(3) Two-mile radius of the site if the branch, main office, or home office is not located within an MSA.

§ 5.4 Filing required.

(a) Filing. A depository institution shall file an application or notice with the OCC to engage in corporate activities and transactions as described in this part.

(b) Availability of forms. Forms and instructions for filing are available on the OCC's Internet Web page at www.occ.gov.

(c) Other agency's applications or filings. At the request of the applicant, the OCC may accept an application or other filing submitted to another Federal agency that covers the proposed action or transaction and contains substantially the same information as required by the OCC. The OCC also may require the applicant to submit supplemental information.

(d) Where to file. An applicant should address a filing or other submission under this part to the appropriate OCC licensing office or appropriate OCC supervisory office, unless the OCC advises an applicant otherwise. Relevant addresses are listed on the OCC's Internet Web page at www.occ.gov.

(e) Incorporation of other material. An applicant may incorporate any material contained in any other application or filing filed with the OCC or other Federal agency by reference,

provided that the material is attached to the application and is current and responsive to the information requested by the OCC. The filing must clearly indicate that the information is so incorporated and include a cross-reference to the information incorporated.

(f) Prefiling meeting. When submitting an application to the OCC, an applicant is encouraged to contact the appropriate OCC licensing office to determine the need for a prefiling meeting. The OCC decides whether to require a prefiling meeting on a case-by-case basis. Submission of a draft business plan or other relevant information before any prefiling meeting may expedite the filing review process. Information on model business plans can be found in the Comptroller's Licensing Manual.

§ 5.5 Filing fees.

(a) Procedure. An applicant shall submit the appropriate filing fee, if any, in connection with its filing. Filing fees may be paid by check, money order, cashier's check, or wire transfer. Additional information on filing fees, including where to file, can be found in the Comptroller's Licensing Manual. The OCC generally does not refund the filing fees.

(b) Fee schedule. The OCC publishes a fee schedule in the "Notice of Comptroller of the Currency Fees," as described in 12 CFR 8.8.

§ 5.6 [Reserved]

§ 5.7 Investigations.

(a) Authority. The OCC may examine or investigate and evaluate facts related to a filing to the extent necessary to reach an informed decision.

(b) Fees. As described in 12 CFR 8.6, the OCC may assess fees for investigations or examinations conducted under paragraph (a) of this section. The OCC publishes a fee schedule in the "Notice of Comptroller of the Currency Fees," as described in 12 CFR 8.8.

§ 5.8 Public notice.

(a) In general. An applicant shall publish a public notice of its filing in a newspaper of general circulation in the community in which the applicant proposes to engage in business, on the date of filing, or as soon as practicable before or after the date of filing. This notice shall be published in the English language but if the OCC determines that the primary language of a significant number of adult residents of the community is a language other than English, the OCC may require that an additional notice(s) simultaneously be published in the community in the appropriate language(s).

(b) Contents of the public notice. The public notice shall state that a filing is being made, the date of the filing, the name and address of the applicant, the subject matter of the filing (including the name of the institution that is the subject of the filing), that the public may submit comments to the appropriate OCC licensing office, the address of the appropriate OCC licensing office where comments should be sent, the closing date of the public comment period, that the public portion of the filing is available on request, and any other information that the OCC requires.

(c) Confirmation of public notice. Promptly following publication, the applicant shall mail or otherwise deliver to the appropriate OCC licensing office a statement containing the date of publication, the name and address of the newspaper that published the public notice, a copy of the public notice, and any other information that the OCC requires.

(d) Multiple transactions. The OCC may consider more than one transaction, or a series of transactions, to be a single filing for purposes of the publication requirements of this section. When filing a single public notice for multiple transactions, the applicant shall explain in the notice how the transactions are related.

(e) Joint public notices accepted. Upon the request of an applicant, for a transaction subject to a public notice requirement of both the OCC and another Federal agency, the OCC may accept publication of a single joint notice containing the information required by both the OCC and the other Federal agency, provided that the notice states that comments must be submitted to both the OCC and, if applicable, the other Federal agency.

(f) Public notice by the OCC. In addition to the foregoing, the OCC may require or give public notice and request comment on any filing and in any manner the OCC determines appropriate for the particular filing.

(g) New public notice. At the OCC's discretion, an applicant may be required to publish a new public notice if:

(1) The applicant submits either a revised filing or new or additional information related to a filing;

(2) A major issue of law or change in circumstance arises after a filing; or

(3) The OCC determines that a new public notice is appropriate.

§ 5.9 Public availability.

(a) In general. The OCC provides a copy of the public file to any person who requests it. A requestor should submit a written request for the public file concerning a pending filing to the appropriate OCC licensing office. A requestor should submit a written request for the public file concerning a decided or closed filing to the OCC's Freedom of Information Act Officer, Communications Division, at the address listed on www.occ.gov. The OCC may impose a fee in accordance with 12 CFR 4.17 and at the rate the OCC publishes in the "Notice of Comptroller of the Currency Fees," described in 12 CFR 8.8.

(b) Public file. A public file consists of the portions of the filing, supporting data, supplementary information, and information submitted by interested persons, to the extent that those documents have not been afforded confidential treatment. Applicants and other interested persons may request that confidential treatment be afforded information submitted to the OCC pursuant to paragraph (c) of this section.

(c) Confidential treatment. The applicant or an interested person submitting information may request that specific information be treated as confidential under the Freedom of Information Act, 5 U.S.C. 552 (see 12 CFR 4.12(b)). A submitter should draft its request for confidential treatment narrowly to extend only to those portions of a document it considers confidential. If a submitter requests confidential treatment for information that the OCC does not consider to be confidential, the OCC may include that information in the public file after providing notice to the submitter. Moreover, at its own initiative, the OCC may determine that certain information should be treated as confidential and withhold that information from the public file. A person requesting information withheld from the public file should submit the request to the OCC's Freedom of Information Act Officer, Communications Division, under the procedures described in 12 CFR part 4, subpart B. That request may be subject to the predisclosure notice procedures of 12 CFR 4.16.

§ 5.10 Comments.

(a) Submission of comments. During the comment period, any person may submit written comments on a filing to the appropriate OCC licensing office.

(b) Comment period—(1) In general. Unless otherwise stated, the comment period is 30 days after publication of the public notice required by § 5.8(a). If a new public notice is required

under § 5.8(g), the OCC may require a new comment period of up to 30 days after publication of the new public notice.

(2) Extension. The OCC may extend a comment period if:

(i) The applicant fails to file all required publicly available information on a timely basis to permit review by interested persons or makes a request for confidential treatment not granted by the OCC that delays the public availability of that information;

(ii) Any person requesting an extension of time satisfactorily demonstrates to the OCC that additional time is necessary to develop factual information that the OCC determines is necessary to consider the application; or

(iii) The OCC determines that other extenuating circumstances exist.

(3) Applicant response. The OCC may give the applicant an opportunity to respond to comments received.

§ 5.11 Hearings and other meetings.

(a) Hearing requests. Prior to the end of the comment period, any person may submit to the appropriate OCC office a written request for a hearing on a filing. The request must describe the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation of those issues or facts to the OCC. A person requesting a hearing shall simultaneously submit a copy of the request to the applicant.

(b) Action on a hearing request. The OCC may grant or deny a request for a hearing and may limit the issues to those it deems relevant or material. The OCC generally grants a hearing request only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise benefit the decision-making process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.

(c) Denial of a hearing request. If the OCC denies a hearing request, it shall notify the person requesting the hearing of the reason for the denial.

(d) OCC procedures prior to the hearing—(1) Notice of hearing. The OCC issues a Notice of Hearing if it grants a request for a hearing or orders a hearing because it is in the public interest. The OCC sends a copy of the Notice of Hearing to the applicant, to the person requesting the hearing, and anyone else requesting a copy. The Notice of Hearing states the subject and date of the filing, the time and place of the hearing, and the issues to be addressed. The OCC may limit the issues considered at a hearing to those it determines are relevant or material.

(2) Presiding officer. The OCC appoints a presiding officer to conduct the hearing. The presiding officer is responsible for all procedural questions not governed by this section.

(e) Participation in the hearing. Any person who wishes to appear (participant) shall notify the appropriate OCC licensing office of his or her intent to participate in the hearing within 10 days from the date the OCC issues the Notice of Hearing. At least five days before the hearing, each participant shall submit to the appropriate OCC licensing office, the applicant, and any other person the OCC requires, the names of witnesses and one copy of each exhibit the participant intends to present.

(f) Hearing transcripts. The OCC arranges for a hearing transcript. The person requesting the hearing may be required to bear the cost of one copy of the transcript for his or her use.

(g) Conduct of the hearing—(1) Presentations. Subject to the rulings of the presiding officer, the applicant and participants may make opening statements and present witnesses, material, and data.

(2) Information submitted. A person presenting documentary material shall furnish one copy to the OCC and one copy to the applicant and each participant.

(3) Laws not applicable to hearings. The Administrative Procedure Act (5 U.S.C. 551 et seq.), the Federal Rules of Evidence (28 U.S.C. appendix), the Federal Rules of Civil Procedure (28 U.S.C. Rule 1 et seq.), and the OCC's Rules of Practice and Procedure (12 CFR part 19) do not apply to hearings under this section.(h) Closing the hearing record. At the applicant's or participant's request, the OCC may keep the hearing record open for up to 14 days following the OCC's receipt of the transcript. The OCC resumes processing the filing after the record closes.

(i) Other meetings—(1) Public meetings. The OCC may arrange for a public meeting in connection with an application, either upon receipt during the comment period of a written request for such a meeting or upon the OCC's own initiative, if the OCC finds that written submissions are insufficient to address facts or issues raised in the application or otherwise determines that a meeting will benefit the decision-making process. Public meetings will be arranged and presided over by a presiding officer.

(2) Private meetings. The OCC may arrange a meeting with an applicant or other interested parties to clarify and narrow the issues and to facilitate the resolution of the issues.

(3) Issues at meetings. The OCC may limit the issues considered at a meeting to those it determines are relevant or material.

(4) Meeting format. The OCC may conduct a meeting in the format that it determines is appropriate, including a telephone conference, a face-to-face meeting, or a more formal meeting.

§ 5.12 Computation of time.

In computing the period of days, the OCC does not include the day of the act or event (e.g., the date an application is received by the OCC) from which the period begins to run. When

the last day of a time period is a Saturday, Sunday, or Federal holiday, the time period runs until the end of the next day that is not a Saturday, Sunday or Federal holiday.

§ 5.13 Decisions.

(a) In general. The OCC may approve, conditionally approve, or deny a filing after appropriate review and consideration of the record. In reviewing a filing, the OCC may consider the activities, resources, or condition of an affiliate of the applicant that may reasonably reflect on or affect the applicant. It also may consider information available from any source, including any comments submitted by interested parties or views expressed by interested parties at meetings with the OCC.

(1) Conditional approval. The OCC may impose conditions on any approval, including to address a significant supervisory, CRA (if applicable), or compliance concern, if the OCC determines that the conditions are necessary or appropriate to ensure that approval is consistent with relevant statutory and regulatory standards and OCC policies thereunder and safe and sound banking practices.

(2) Expedited review. The OCC grants eligible banks and eligible savings associations expedited review within a specified time after filing or commencement of the public comment period.

(i) The OCC may extend the expedited review period or remove a filing from expedited review procedures if it concludes that the filing, or an adverse comment regarding the filing, presents a significant supervisory, CRA (if applicable), or compliance concern, or raises a significant legal or policy issue, requiring additional OCC review. The OCC will provide the applicant with a written explanation if it decides not to process an application from an eligible bank or eligible savings association under expedited review pursuant to this paragraph.

(ii) Adverse comments that the OCC determines do not raise a significant supervisory, CRA (if applicable), or compliance concern, or a significant legal or policy issue, or are frivolous, filed primarily as a means of delaying action on the filing, or that raise a CRA concern that the OCC determines has been satisfactorily resolved, do not affect the OCC's decision under paragraph (a)(2)(i) of this section. The OCC considers a CRA concern to have been satisfactorily resolved if the OCC previously reviewed (e.g., in an examination or an application) a concern presenting substantially the same issue in substantially the same assessment area during substantially the same time, and the OCC determines that the concern would not warrant denial or imposition of a condition on approval of the application.

(iii) If a bank or savings association files an application for any activity or transaction that is dependent upon the approval of another application under this part, or if requests for approval for more than one activity or transaction are combined in a single application under applicable sections of this part, none of the subject applications may be deemed approved upon expiration of the applicable time periods, unless all of the applications are subject to expedited review procedures and the longest of the time periods expires without the OCC issuing a decision or notifying the bank or savings association that the filings are not eligible for expedited review under the standards in paragraph (a)(2)(i) of this section.

(b) Denial. The OCC may deny a filing if:

(1) A significant supervisory, CRA (if applicable), or compliance concern exists with respect to the applicant;

(2) Approval of the filing is inconsistent with applicable law, regulation, or OCC policy thereunder; or

(3) The applicant fails to provide information requested by the OCC that is necessary for the OCC to make an informed decision.

(c) Required information and abandonment of filing. A filing must contain information required by the applicable section set forth in this part. To the extent necessary to evaluate an application, the OCC may require an applicant to provide additional information. The OCC may deem a filing abandoned if information required or requested by the OCC in connection with the filing is not furnished within the time period specified by the OCC. The OCC may return an application without a decision if it finds the filing to be materially deficient. A filing is materially deficient if it lacks sufficient information for the OCC to make a determination under the applicable statutory or regulatory criteria.

(d) Notification of final disposition. The OCC notifies the applicant, and any person who makes a written request, of the final disposition of a filing, including confirmation of an expedited review under this part. If the OCC denies a filing, the OCC notifies the applicant in writing of the reasons for the denial.

(e) Publication of decision. The OCC will issue a public decision when a decision represents a new or changed policy or presents issues of general interest to the public or the banking industry. In rendering its decisions, the OCC may elect not to disclose information that the OCC deems to be private or confidential.

(f) Appeal. An applicant may file an appeal of an OCC decision in writing with the Deputy Comptroller for Licensing or with the Ombudsman at the address listed on www.occ.gov. In the event that the Deputy Comptroller for Licensing was the deciding official of the matter appealed, or was involved personally and substantially in the matter, the appeal may be referred instead to the Chief Counsel or the Ombudsman.

(g) Extension of time. When the OCC approves or conditionally approves a filing, the OCC generally gives the applicant a specified period of time to commence that new or expanded activity. The OCC does not generally grant an extension of the time specified to commence a new or expanded corporate activity approved under this part, unless the OCC determines that the delay is beyond the applicant's control.

(h) Nullifying a decision—(1) Material misrepresentation or omission. An applicant shall certify that any filing or supporting material submitted to the OCC contains no material misrepresentations or omissions. The OCC may review and verify any information filed in connection with a notice or an application. If the OCC discovers a material misrepresentation or omission after the OCC has rendered a decision on the filing, the OCC may nullify its decision. Any person responsible for any material misrepresentation or omission in a filing or supporting materials may be subject to enforcement action and other penalties, including criminal penalties provided in 18 U.S.C. 1001.

(2) Other nullifications. The OCC may nullify any decision on a filing that is:

(i) Contrary to law, regulation, or OCC policy thereunder; or

(ii) Granted due to clerical or administrative error, or a material mistake of law or fact.

7. Section 5.20 is revised to read as follows:

§ 5.20 Organizing a national bank or Federal savings association.

(a) Authority. 12 U.S.C. 21, 22, 24(Seventh), 26, 27, 92a, 93a, 1814(b), 1816, 1462a, 1463, 1464, 2903, and 5412(b)(2)(B).

(b) Licensing requirements. Any person desiring to establish a national bank or a Federal savings association shall submit an application and obtain prior OCC approval.

(c) Scope. This section describes the procedures and requirements governing OCC review and approval of an application to establish a national bank or a Federal stock or mutual savings association, including a national bank or a Federal savings association with a special purpose. Information regarding an application to establish an interim national bank or an interim Federal savings association solely to facilitate a business combination is set forth in § 5.33.

(d) Definitions. For purposes of this section:

(1) Bankers' bank means a bank owned exclusively (except to the extent directors' qualifying shares are required by law) by other depository institutions or depository institution holding companies (as that term is defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813), the activities of which are limited by its articles of association exclusively to providing services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and to providing correspondent banking services at the request of other depository institutions or their holding companies.

(2) Control means with respect to an application to establish a national bank, control as used in section 2 of the Bank Holding Company Act, 12 U.S.C. 1841(a)(2), and with respect to an application to establish a Federal savings association, control as used in section 10 of the Home Owners' Loan Act, 12 U.S.C. 1467a(a)(2).

(3) Final approval means the OCC action issuing a charter and authorizing a national bank or Federal savings association to open for business.

(4) Holding company means any company that controls or proposes to control a national bank or a Federal savings association whether or not the company is a bank holding company

under section 2 of the Bank Holding Company Act, 12 U.S.C. 1841(a)(1), or a savings and loan holding company under section 10 of the Home Owners' Loan Act, 12 U.S.C. 1467a.

(5) Lead depository institution means the largest depository institution controlled by a bank holding company or savings and loan holding company based on a comparison of the average total assets controlled by each depository institution as reported in its Consolidated Report of Condition and Income required to be filed for the immediately preceding four calendar quarters.

(6) Institution means either a national bank or Federal savings association.

(7) Organizing group means five or more persons acting on their own behalf, or serving as representatives of a sponsoring holding company, who apply to the OCC for a national bank or Federal savings association charter.

(8) Preliminary approval means a decision by the OCC permitting an organizing group to go forward with the organization of the proposed national bank or Federal savings association. A preliminary approval generally is subject to certain conditions that an applicant must satisfy before the OCC will grant final approval.

(e) Requirements—(1) In general. (i) The OCC charters a national bank under the authority of the National Bank Act of 1864, as amended, 12 U.S.C. 1 et seq. The bank may be a special purpose bank that limits its activities to fiduciary activities or to any other activities within the business of banking. A special purpose bank that conducts activities other than fiduciary activities must conduct at least one of the following three core banking functions: receiving deposits; paying checks; or lending money. The name of a proposed national bank must include the word "national."

(ii) The OCC charters a Federal savings association under the authority of section 5 of the Home Owners' Loan Act, 12 U.S.C. 1464, which in an application to establish a Federal savings association requires the OCC to consider:

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

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

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

(D) Whether the association can be established without undue injury to properly conducted existing local savings associations and home financing institutions.

(iii) In determining whether to approve an application to establish a national bank or Federal savings association, the OCC verifies that the proposed national bank or Federal savings association has complied with the following requirements. A national bank or a Federal savings association shall:

(A) File either articles of association (for a national bank), or a charter and by-laws (for a Federal savings association) with the OCC;

(B) In the case of an application to establish a national bank, file an organization certificate containing specified information with the OCC;

(C) Ensure that all capital stock is paid in, or in the case of a Federal mutual savings association, ensure that at least a minimum amount of capital is paid in; and

(D) Have at least five elected directors.

(2) Community Reinvestment Act. (i) Twelve CFR part 25 requires the OCC to take into account a proposed insured national bank's description of how it will meet its CRA objectives.

(ii) Twelve CFR part 195 requires the OCC to take into account a proposed insured Federal savings association description of how it will meet its CRA objectives.

(3) Federal Deposit Insurance. Preliminary approval for an application to establish a Federal savings association will be conditioned on the savings association applying for and receiving approval for deposit insurance from the Federal Deposit Insurance Corporation (FDIC). Final approval for an application to establish a Federal savings association will not be issued until receipt by the OCC of written confirmation by the FDIC that the accounts of the Federal savings association will be insured by the FDIC.

(f) Policy—(1) In general. In determining whether to approve an application to establish a national bank or Federal savings association, the OCC is guided by the following principles:

(i) Maintaining a safe and sound banking system;

(ii) Encouraging a national bank or Federal savings association to provide fair access to financial services by helping to meet the credit needs of its entire community;

(iii) Ensuring compliance with laws and regulations; and

(iv) Promoting fair treatment of customers including efficiency and better service.

(2) Policy considerations. (i) In evaluating an application to establish a national bank or Federal savings association, the OCC considers whether the proposed institution:

(A) Has organizers who are familiar with national banking laws and regulations or Federal savings association laws and regulations, respectively;

(B) Has competent management, including a board of directors, with ability and experience relevant to the types of services to be provided;

(C) Has capital that is sufficient to support the projected volume and type of business;

(D) Can reasonably be expected to achieve and maintain profitability;

(E) Will be operated in a safe and sound manner; and

(F) Does not have a title that misrepresents the nature of the institution or the services it offers.

(ii) In evaluating an application to establish a Federal savings association, the OCC considers whether the proposed Federal savings association will be operated as a qualified thrift lender under section 10(m) of the Home Owners' Loan Act, 12 U.S.C. 1467a(m).

(iii) The OCC may also consider additional factors listed in section 6 of the Federal Deposit Insurance Act, 12 U.S.C. 1816, including the risk to the Federal deposit insurance fund, and whether the proposed institution's corporate powers are consistent with the purposes of the Federal Deposit Insurance Act, the National Bank Act, and the Home Owners' Loan Act, as applicable.

(3) OCC evaluation. The OCC evaluates a proposed institution's organizing group and its business plan or operating plan together. The OCC's judgment concerning one may affect the evaluation of the other. An organizing group and its business plan or operating plan must be stronger in markets where economic conditions are marginal or competition is intense.

(g) Organizing group—(1) In general. Strong organizing groups generally include diverse business and financial interests and community involvement. An organizing group must have the experience, competence, willingness, and ability to be active in directing the proposed institution's affairs in a safe and sound manner. The institution's initial board of directors generally is comprised of many, if not all, of the organizers. The business plan or operating plan and other information supplied in the application must demonstrate an organizing group's collective ability to establish and operate a successful national bank or Federal savings association in the economic and competitive conditions of the market to be served. Each

organizer should be knowledgeable about the business plan or operating plan. A poor business plan or operating plan reflects adversely on the organizing group's ability, and the OCC generally denies applications with poor business plans or operating plans.

(2) Management selection. The initial board of directors must select competent senior executive officers before the OCC grants final approval. Early selection of executive officers, especially the chief executive officer, contributes favorably to the preparation and review of a business plan or operating plan that is accurate, complete, and appropriate for the type of national bank or Federal savings association proposed and its market, and reflects favorably upon an application. As a condition of the charter approval, the OCC retains the right to object to and preclude the hiring of any officer, or the appointment or election of any director, for a two-year period from the date the institution commences business, or longer as appropriate.

(3) Financial resources. (i) Each organizer must have a history of responsibility, personal honesty, and integrity. Personal wealth is not a prerequisite to become an organizer or director of a national bank or Federal savings association. However, directors' stock purchases, or, in the case of a Federal mutual savings association, capital contributions, individually and in the aggregate, should reflect a financial commitment to the success of the institution that is reasonable in relation to their individual and collective financial strength. A director should not have to depend on institution dividends, fees, or other compensation to satisfy financial obligations.

(ii) Because directors are often the primary source of additional capital for an institution not affiliated with a holding company, it is desirable that the proposed directors of the national bank or Federal savings association, as a group, be able to supply or have a realistic plan to enable the institution to obtain capital when needed.

(iii) Any financial or other business arrangement, direct or indirect, between the organizing group or other insiders and the proposed national bank or Federal savings association must be on nonpreferential terms.

(4) Organizational expenses. (i) Organizers are expected to contribute time and expertise to the organization of the national bank or Federal savings association. Organizers should not bill excessive charges to the institution for professional and consulting services or unduly rely upon these fees as a source of income.

(ii) A proposed national bank or Federal savings association shall not pay any fee that is contingent upon an OCC decision. Such action generally is grounds for denial of the application or withdrawal of preliminary approval. Organizational expenses for denied applications are the sole responsibility of the organizing group.

(5) Sponsor's experience and support. A sponsor must be financially able to support the new institution's operations and to provide or locate capital when needed. The OCC primarily considers the financial and managerial resources of the sponsor and the sponsor's record of performance, rather than the financial and managerial resources of the organizing group, if an organizing group is sponsored by:

(i) An existing holding company;

(ii) Individuals currently affiliated with other depository institutions; or

(iii) Individuals who, in the OCC's view, are otherwise collectively experienced in banking and have demonstrated the ability to work together effectively.

(h) Business plan or Operating plan—(1) In general. (i) Organizers of a proposed national bank or Federal savings association shall submit a business plan or operating plan that adequately addresses the statutory and policy considerations set forth in paragraphs (e) and (f)(2)

of this section. In the case of a proposed Federal savings association the plan must also specifically address meeting qualified thrift lender requirements. The plan must reflect sound banking principles and demonstrate realistic assessments of risk in light of economic and competitive conditions in the market to be served.

(ii) The OCC may offset deficiencies in one factor by strengths in one or more other factors. However, deficiencies in some factors, such as unrealistic earnings prospects, may have a negative influence on the evaluation of other factors, such as capital adequacy, or may be serious enough by themselves to result in denial. The OCC considers inadequacies in a business plan or operating plan to reflect negatively on the organizing group's ability to operate a successful institution.

(2) Earnings prospects. The organizing group shall submit pro forma balance sheets and income statements as part of the business plan or operating plan. The OCC reviews all projections for reasonableness of assumptions and consistency with the business plan or operating plan.

(3) Management. (i) The organizing group shall include in the business plan or operating plan information sufficient to permit the OCC to evaluate the overall management ability of the organizing group. If the organizing group has limited banking experience or community involvement, the senior executive officers must be able to compensate for such deficiencies.

(ii) The organizing group may not hire an officer or elect or appoint a director if the OCC objects to that person at any time prior to the date the institution commences business.

(4) Capital. A proposed bank or Federal savings association must have sufficient initial capital, net of any organizational expenses that will be charged to the institution's capital after it begins operations, to support the institution's projected volume and type of business.

(5) Community service. (i) The business plan or operating plan must indicate the organizing group's knowledge of and plans for serving the community. The organizing group shall evaluate the banking needs of the community, including its consumer, business, nonprofit, and government sectors. The business plan or operating plan must demonstrate how the proposed national bank or Federal savings association responds to those needs consistent with the safe and sound operation of the institution. The provisions of this paragraph may not apply to an application to organize an institution for a special purpose.

(ii) As part of its business plan or operating plan, the organizing group shall submit a statement that demonstrates its plans to achieve CRA objectives.

(iii) Because community support is important to the long-term success of a national bank or Federal savings association, the organizing group shall include plans for attracting and maintaining community support.

(6) Safety and soundness. The business plan or operating plan must demonstrate that the organizing group (and the sponsoring company, if any), is aware of, and understands, applicable depository institution laws and regulations, and safe and sound banking operations and practices. The OCC will deny an application that does not meet these safety and soundness requirements.

(7) Fiduciary powers. The business plan or operating plan must indicate if the proposed institution intends to exercise fiduciary powers. The information required by § 5.26 shall be filed with the charter application. A separate application is not required.

(i) Procedures—(1) Prefiling meeting. The OCC normally requires a prefiling meeting with the organizers of a proposed national bank or Federal savings association before the organizers file an application. Organizers should be familiar with the OCC's chartering policy and procedural requirements in the Comptroller’s Licensing Manual before the prefiling meeting.

The prefiling meeting normally is held in the district office where the application will be filed but may be held at another location at the request of the applicant.

(2) Business plan or operating plan. An organizing group shall file a business plan or operating plan that addresses the subjects discussed in paragraph (h) of this section.

(3) Contact person. The organizing group shall designate a contact person to represent the organizing group in all contacts with the OCC. The contact person shall be an organizer and proposed director of the new national bank or Federal savings association, except a representative of the sponsor or sponsors may serve as contact person if an application is sponsored by an existing holding company, individuals currently affiliated with other depository institutions, or individuals who, in the OCC's view, are otherwise collectively experienced in banking and have demonstrated the ability to work together effectively.

(4) Decision notification. The OCC notifies the spokesperson and other interested persons in writing of its decision on an application.

(5) Activities. (i) Before the OCC grants final approval, a proposed national bank or Federal savings association must be established as a legal entity. A national bank becomes a legal entity after it has filed its organization certificate and articles of association with the OCC as required by law. A Federal savings association becomes a legal entity after it has filed its proposed charter and bylaws with the OCC. A proposed national bank may offer and sell securities prior to OCC preliminary approval of the proposed national bank's charter application, provided that the proposed national bank has filed articles of association, an organization certificate, and a completed charter application and the bank complies with paragraph (i)(5)(iii) of this section. A proposed Federal stock savings association may offer and sell securities prior to OCC preliminary approval of the proposed Federal stock savings association's charter

application, provided that the proposed Federal stock savings association has filed a proposed charter, bylaws, and a completed charter application and the Federal stock savings association complies with paragraph (i)(5)(iii) of this section.

(ii)(A) After the OCC grants preliminary approval, the organizing group shall elect a board of directors, take steps necessary to organize the proposed national bank or Federal savings association and prepare it for commencing business.

(B) A proposed national bank may not conduct the business of banking until the OCC grants final approval and issues a charter. A proposed Federal savings association may not commence business until the OCC grants final approval and issues a charter, which shall be in the form provided in this part.

(iii) For all capital obtained through a public offering a proposed national bank or Federal savings association shall use an offering circular that complies with the OCC's securities offering regulations, 12 CFR part 16 or part 197, as applicable. All securities of a particular class in the initial offering shall be sold at the same price.

(iv) A national bank or Federal savings association in organization shall raise its capital before it commences business. Preliminary approval expires if the proposed national bank or Federal savings association does not raise the required capital within 12 months from the date the OCC grants preliminary approval. Preliminary approval expires if the proposed national bank or Federal savings association does not commence business within 18 months from the date of preliminary approval, unless the OCC grants an extension. If preliminary approval expires, all cash collected on subscriptions shall be returned.

(j) Expedited review. An application to establish a full-service national bank or Federal savings association that is sponsored by a bank holding company or savings and loan holding

company whose lead depository institution is an eligible bank or eligible savings association is deemed preliminarily approved by the OCC as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC:

(1) Notifies the applicant prior to that date that the filing is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2); or

(2) Notifies the applicant prior to that date that the OCC has determined that the proposed bank will offer banking services that are materially different than those offered by the lead depository institution.

(k) National bankers' banks—(1) Activities and customers. In addition to the other requirements of this section, when an organizing group seeks to organize a national bankers' bank, the organizing group shall list in the application the anticipated activities and customers or clients of the proposed national bankers' bank.

(2) Waiver of requirements. At the organizing group's request, the OCC may waive requirements that are applicable to national banks in general if those requirements are inappropriate for a national bankers' bank and would impede its ability to provide desired services to its market. An applicant must submit a request for a waiver with the application and must support the request with adequate justification and legal analysis. A national bankers' bank that is already in operation may also request a waiver. The OCC cannot waive statutory provisions that specifically apply to national bankers' banks pursuant to 12 U.S.C. 27(b)(1).

(3) Investments. A national bank or Federal savings association may invest up to 10 percent of its capital and surplus in a bankers' bank and may own five percent or less of any class of a bankers' bank's voting securities.

(l) Special purpose institutions. An applicant for a national bank or Federal savings association charter that will limit its activities to fiduciary activities, credit card operations, or another special purpose shall adhere to established charter procedures with modifications appropriate for the circumstances as determined by the OCC. An applicant for a national bank or Federal savings association charter that will have a community development focus shall also adhere to established charter procedures with modifications appropriate for the circumstances as determined by the OCC. A national bank that seeks to invest in a bank or savings association with a community development focus must comply with applicable requirements of 12 CFR part 24. A Federal savings association that seeks to invest in a bank or savings association with a community development focus must comply with § 160.36 or any other applicable requirements.

8. Section 5.21 is added to read as follows:

§ 5.21 Federal Mutual Savings Association Charter and Bylaws.

(a) Authority. 12 U.S.C. 1462a, 1463, 1464, and 2901 et seq.

(b) Licensing requirements. A Federal mutual savings association must file an application, notice, or other filing as prescribed by this section when adopting or amending its charter or bylaws.

(c) Scope. This section describes the procedures and requirements governing charters and bylaws for Federal mutual savings associations.

(d) Exceptions to rules of general applicability. Notwithstanding any other provision of this part, §§ 5.8 through 5.11 shall not apply to this section.

(e) Charter form. Except as provided in paragraphs (f) and (g) of this section, a Federal mutual savings association shall have a charter in the following form. 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 OCC. 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 the Comptroller of the Currency ("OCC").

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

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 OCC.

Section 8. Capital, surplus, and distribution of earnings. The association shall maintain for the purpose of meeting losses the amount of capital required by section 5 of the Home Owners' Loan Act and by regulations of the OCC. The association shall distribute net earnings on its accounts on such basis and in accordance with such terms and conditions as may from time to time be authorized by the OCC: Provided, That the association may establish minimum-balance requirements for accounts to be eligible for distribution of earnings. All holders of accounts of the association shall be entitled to equal distribution of assets, pro rata to the value of their accounts, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association. Moreover, in any such event, or in any other situation in which the priority of such accounts is in controversy, all such accounts shall, to the extent of their withdrawal value, be debts of the association having the same priority as the claims of general creditors of the association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association.

Section 9. Amendment of charter. Adoption of any preapproved charter amendment shall be effective after such preapproved amendment has been approved by the members at a legal meeting. Any other amendment, addition, change, or repeal of this charter must be approved by the OCC prior to approval by the members at a legal meeting, and shall be effective upon filing with the OCC in accordance with regulatory procedures.

Attest:_____

Secretary of the Association

By:_____

President or Chief Executive Officer of the Association

Attest:_____

Deputy Comptroller for Licensing

By:_____

Comptroller of the Currency

Effective Date:_____

(f) Charter amendments. In order to adopt a charter amendment, a Federal mutual savings association must comply with the following requirements:

(1) Board of directors approval. The board of directors of the association must adopt a resolution proposing the charter amendment that states the text of such amendment;

(2) Form of filing—(i) Application requirement. If the proposed charter amendment would: render more difficult or discourage a merger, proxy contest, the assumption of control by a mutual account holder of the association, or the removal of incumbent management; or involve

a significant issue of law or policy; then, the association shall file the proposed amendment and obtain the prior approval of the OCC.

(ii) Notice requirement. If the proposed charter amendment does not involve a provision that would be covered by paragraph (f)(2)(i) of this section and is permissible under all applicable laws, rules and regulations, then the association shall submit the proposed amendment to the appropriate OCC licensing office, at least 30 days prior to the effective date of the proposed charter amendment.

(g) Approval. Any charter amendment filed pursuant to paragraph (f)(2)(ii) of this section shall automatically be approved 30 days from the date of filing of such amendment, provided that the association follows the requirements of its charter in adopting such amendment. This automatic approval does not apply if, prior to the expiration of such 30-day period, the OCC notifies the association that such amendment is rejected or that such amendment is deemed to be filed under the provisions of paragraph (f)(2)(i) of this section. In addition, notwithstanding anything in paragraph (f) of this section to the contrary, the following charter amendments, including the adoption of the Federal mutual charter as set forth in paragraph (e) of this section, shall be effective and deemed approved at the time of adoption, if adopted without change and filed with the OCC, within 30 days after adoption, provided the association follows the requirements of its charter in adopting such amendments:

(1) Purpose and powers. Add a second paragraph to section 4, as follows:

> Section 4. Purpose and powers. * * * The association shall have the express power: (i) To act as fiscal agent of the United States when designated for that purpose by the Secretary of the Treasury, under such regulations as the Secretary may prescribe, to perform all such reasonable duties as fiscal agent of

the United States as may be required, and to act as agent for any other instrumentality of the United States when designated for that purpose by any such instrumentality; (ii) To sue and be sued, complain and defend in any court of law or equity; (iii) To have a corporate seal, affixed by imprint, facsimile or otherwise; (iv) To appoint officers and agents as its business shall require and allow them suitable compensation; (v) To adopt bylaws not inconsistent with the Constitution or laws of the United States and rules and regulations adopted thereunder and under this Charter; (vi) To raise capital, which shall be unlimited, by accepting payments on savings, demand, or other accounts, as are authorized by rules and regulations made by the OCC, and the holders of all such accounts or other accounts as shall, to such extent as may be provided by such rules and regulations, be members of the association and shall have such voting rights and such other rights as are thereby provided; (vii) To issue notes, bonds, debentures, or other obligations, or securities, provided by or under any provision of Federal statute as from time to time is in effect; (viii) To provide for redemption of insured accounts; (ix) To borrow money without limitation and pledge and otherwise encumber any of its assets to secure its debts; (x) To lend and otherwise invest its funds as authorized by statute and the rules and regulations of the OCC; (xi) To wind up and dissolve, merge, consolidate, convert, or reorganize; (xii) To purchase, hold, and convey real estate and personalty consistent with its objects, purposes, and powers; (xiii) To mortgage or lease any real estate and personalty and take such property by gift, devise, or bequest; and (xiv) To exercise all powers conferred by law. In addition to the foregoing powers expressly

enumerated, this association shall have power to do all things reasonably incident to the accomplishment of its express objects and the performance of its express powers.

(2) Title change. A Federal mutual savings association that has complied with § 5.42 may amend its charter by substituting a new corporate title in section 1.

(3) Home office. A Federal mutual savings association may amend its charter by substituting a new home office in section 2, if it has complied with applicable requirements of § 5.40.

(4) Maximum number of votes. A Federal mutual savings association may amend its charter by substituting any number of votes per member between 1 and 1000 in section 6.

(h) Reissuance of charter. A Federal mutual savings association that has amended its charter may apply to have its charter, including the amendments, reissued by the OCC. Such request for reissuance should be filed at the appropriate OCC licensing office and contain signatures required under paragraph (e) of this section, together with such supporting documents as may be needed to demonstrate that the amendments were properly adopted.

(i) Availability of chartering documents. A Federal mutual savings association shall cause a true copy of its charter and bylaws and all amendments thereto to be available to accountholders at all times in each office of the savings association, and shall upon request deliver to any accountholders a copy of such charter and bylaws or amendments thereto.

(j) Bylaws for Federal mutual savings associations—(1) In general. A Federal mutual savings association shall operate under bylaws that contain provisions that comply with all requirements specified by the OCC in this paragraph and that are not otherwise inconsistent with the provisions of this paragraph, the association's charter, and all other applicable laws, rules,

and regulations provided that, a bylaw provision inconsistent with the provisions of this paragraph may be adopted with the approval of the OCC. Bylaws may be adopted, amended or repealed by a majority of the votes cast by the members at a legal meeting or a majority of the association's board of directors. The bylaws for a Federal mutual savings bank shall substitute the term “savings bank” for “association”. The term “trustee” may be substituted for the term “director”.

(2) Requirements. The following requirements are applicable to Federal mutual savings associations:

(i) Annual meetings of members. (A) An association shall provide for and conduct an annual meeting of its members for the election of directors and at which any other business of the association may be conducted. Such meeting shall be held at any convenient place the board of directors may designate, and at a date and time within 150 days after the end of the association's fiscal year.

(B) At each annual meeting, the officers shall make a full report of the financial condition of the association and of its progress for the preceding year and shall outline a program for the succeeding year.

(ii) Special meetings of members. Procedures for calling any special meeting of the members and for conducting such a meeting shall be set forth in the bylaws. The board of directors of the association or the holders of 10 percent or more of the voting capital shall be entitled to call a special meeting. For purposes of this paragraph, “voting capital” means FDIC-insured deposits as of the voting record date.

(iii) Notice of meeting of members. Notice specifying the date, time, and place of the annual or any special meeting and adequately describing any business to be conducted shall be

published for two successive weeks immediately prior to the week in which such meeting shall convene in a newspaper of general circulation in the city or county in which the principal place of business of the association is located, or mailed postage prepaid at least 15 days and not more than 45 days prior to the date on which such meeting shall convene to each of its members of record. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such meeting shall convene. The bylaws may permit a member to waive in writing any right to receive personal delivery of the notice. When any meeting is adjourned for 30 days or more, notice of the adjournment and reconvening of the meeting shall be given as in the case of the original meeting.

(iv) Fixing of record date. The bylaws shall provide for the fixing of a record date and a method for determining from the books of the association the members entitled to vote. Such date shall be not more than 60 days nor fewer than 10 days prior to the date on which the action, requiring such determination of members, is to be taken. The same determination shall apply to any adjourned meeting.

(v) Member quorum. Any number of members present and voting, represented in person or by proxy, at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of the members shall determine any question, unless otherwise required by regulation. At any adjourned meeting, any business may be transacted that might have been transacted at the meeting as originally called. Members present at a duly constituted meeting may continue to transact business until adjournment.

(vi) Voting by proxy. Procedures shall be established for voting at any annual or special meeting of the members by proxy pursuant to the rules and regulations of the OCC. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the

identity of the member. All proxies with a term greater than eleven months or solicited at the expense of the association must run to the board of directors as a whole, or to a committee appointed by a majority of such board.

(vii) Communications between members. Provisions relating to communications between members shall be consistent with § 144.8 of this chapter. No member, however, shall have the right to inspect or copy any portion of any books or records of a Federal mutual savings association containing:

(A) A list of depositors in or borrowers from such association;

(B) Their addresses;

(C) Individual deposit or loan balances or records; or

(D) Any data from which such information could be reasonably constructed.

(viii) Number of directors, membership. The bylaws shall set forth a specific number of directors, not a range. The number of directors shall be not fewer than five nor more than fifteen, unless a higher or lower number has been authorized by the OCC. Each director of the association shall be a member of the association. Directors may be elected for periods of one to three years and until their successors are elected and qualified, but if a staggered board is chosen, provision shall be made for the election of approximately one-third or one-half of the board each year, as appropriate. State-chartered savings banks converting to Federal savings banks may include alternative provisions for the election and term of office of directors so long as such provisions are authorized by the OCC, and provide for compliance with the standard provisions of this paragraph no later than six years after the conversion to a Federal savings association.

(ix) Meetings of the board. The board of directors shall determine the place, frequency, time, procedure for notice, which shall be at least 24 hours unless waived by the directors, and

waiver of notice for all regular and special meetings. The board also may permit telephonic or electronic participation at meetings. The bylaws may provide for action to be taken without a meeting if unanimous written consent is obtained for such action. A majority of the authorized directors shall constitute a quorum for the transaction of business. The act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board.

(x) Officers, employees and agents. (A) The bylaws shall contain provisions regarding the officers of the association, their functions, duties, and powers. The officers of the association shall consist of a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected annually by the board of directors. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed in the bylaws. Any two or more offices may be held by the same person, except the offices of president and secretary.

(B) Any officer may be removed by the board of directors with or without cause, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed. Termination for cause, for purposes of this § 5.21 and § 5.22, shall include termination because of the person's personal dishonesty, incompetence, willful misconduct, breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, willful violation of any law, rule, or regulation (other than traffic violations or similar offenses) or final cease and desist order, or material breach of any provision of an employment contract.

(xi) Vacancies, resignation or removal of directors. In the event of a vacancy on the board, the board of directors may, by their affirmative vote, fill such vacancy, even if the remaining directors constitute less than a quorum. A director elected to fill a vacancy shall be

elected to serve only until the next election of directors by the members. The bylaws shall set out the procedure for the resignation of a director. Directors may be removed only for cause, as defined in § 5.21(j)(2)(x)(B), by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

(xii) Powers of the board. The board of directors shall have the power to exercise any and all of the powers of the association not expressly reserved by the charter to the members.

(xiii) Nominations for directors. The bylaws shall provide that nominations for directors may be made at the annual meeting by any member and shall be voted upon, except, however, the bylaws may require that nominations by a member must be submitted to the secretary and then prominently posted in the principal place of business, at least 10 days prior to the date of the annual meeting. However, if such provision is made for prior submission of nominations by a member, then the bylaws must provide for a nominating committee, which, except in the case of a nominee substituted as a result of death or other incapacity, must submit nominations to the secretary and have such nominations similarly posted at least 15 days prior to the date of the annual meeting.

(xiv) New business. The bylaws shall provide procedures for the introduction of new business at the annual meeting.

(xv) Amendment. Bylaws may include any provision for their amendment that would be consistent with applicable law, rules, and regulations and adequately addresses its subject and purpose.

(A) Amendments shall be effective:

(1) After approval by a majority vote of the authorized board, or by a majority of the vote cast by the members of the association at a legal meeting; and

(2) After receipt of any applicable regulatory approval.

(B) When an association fails to meet its quorum requirement, solely due to vacancies on the board, the bylaws may be amended by an affirmative vote of a majority of the sitting board.

(xvi) Miscellaneous. The bylaws may also address any other subjects necessary or appropriate for effective operation of the association.

(3) Form of filing—(i) Application requirement. (A) Any bylaw amendment shall be submitted to the appropriate OCC licensing office for OCC approval if it would render more difficult or discourage a merger, proxy contest, the assumption of control by a mutual account holder of the association, or the removal of incumbent management; involve a significant issue of law or policy, including indemnification, conflicts of interest, and limitations on director or officer liability; or be inconsistent with the requirements of this paragraph or with applicable laws, rules, regulations, or the association's charter.

(B) For purposes of paragraph (j)(2) of this section, bylaw provisions that adopt the language of the OCC's model or optional bylaws, if adopted without change, and filed with the OCC within 30 days after adoption, are effective upon adoption.

(ii) Filing requirement. If the proposed bylaw amendment does not involve a provision that would be covered by paragraph (j)(2)(i)(A) of this section, then the association shall submit the amendment to the appropriate OCC licensing office at least 30 days prior to the date the bylaw amendment is to be adopted by the association.

(iii) Corporate governance procedures. A Federal mutual association may elect to follow the corporate governance procedures of the laws of the state where the main office of the institution is located, provided that such procedures may be elected only to the extent not inconsistent with applicable Federal statutes, regulations, and safety and soundness, and such

procedures are not of the type described in paragraph (j)(2)(i)(A) of this section. If this election is selected, a Federal mutual association shall designate in its bylaws the provision or provisions from the body of law selected for its corporate governance procedures, and shall file a copy of such bylaws, which are effective upon adoption, within 30 days after adoption. The submission shall indicate, where not obvious, why the bylaw provisions meet the requirements stated in paragraph (j)(2)(i)(A) of this section.

(4) Effectiveness. Any bylaw amendment filed pursuant to paragraph (j)(2)(ii) of this section shall automatically be effective 30 days from the date of filing of such amendment, provided that the association follows the requirements of its charter and bylaws in adopting such amendment. This automatic effective date does not apply if, prior to the expiration of such 30-day period, the OCC notifies the association that such amendment is rejected or that such amendment requires an application to be filed pursuant to paragraph (j)(2)(i) of this section.

(5) Effect of subsequent charter or bylaw change. Notwithstanding any subsequent change to its charter or bylaws, the authority of a Federal mutual savings association to engage in any transaction shall be determined only by the association's charter or bylaws then in effect.

9. Section 5.22 is added to read as follows:

§ 5.22 Federal stock savings association charter and bylaws.

(a) Authority. 12 U.S.C. 1462a, 1463, 1464, and 2901 et seq.

(b) Licensing requirements. A Federal stock savings association must file an application, notice, or other filing as prescribed by this section when adopting or amending its charter or bylaws.

(c) Scope. This section describes the procedures and requirements governing charters and bylaws for Federal stock savings associations.

(d) Exceptions to rules of general applicability. Notwithstanding any other provision of this part, §§ 5.8 through 5.11 shall not apply to this section.

(e) Charter form. The charter of a Federal stock association shall be in the following form, except as provided in this section. An association that has converted from the mutual form pursuant to part 192 of this chapter shall include in its charter a section establishing a liquidation account as required by § 192.3(c)(13) of this chapter. A charter for a Federal stock savings bank shall substitute the term "savings bank" for "association." Charters may also include any preapproved optional provision contained in this section.

Federal Stock Charter

Section 1. Corporate title. The full corporate title of the 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 savings association chartered under section 5 of the Home Owners' Loan Act and to exercise all of 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 the Comptroller of the Currency ("OCC").

Section 5. Capital stock. The total number of shares of all classes of the capital stock that the association has the authority to issue is ___, all of which shall be common stock of par [or if no par is specified then shares shall have a stated]

value of ___ per share. The shares may be issued from time to time as authorized by the board of directors without the approval of its shareholders, except as otherwise provided in this Section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the association. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted to the association), labor, or services actually performed for the association, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the association, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the retained earnings of the association that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance.

Except for shares issued in the initial organization of the association or in connection with the conversion of the association from the mutual to stock form of capitalization, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association other than as part of a general public offering or as qualifying shares to a director,

unless the issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting. The holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors, unless the charter provides that there shall be no such cumulative voting. Subject to any provision for a liquidation account, in the event of any liquidation, dissolution, or winding up of the association, the holders of the common stock shall be entitled, after payment or provision for payment of all debts and liabilities of the association, to receive the remaining assets of the association available for distribution, in cash or in kind. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

Section 6. Preemptive rights. Holders of the capital stock of the association shall not be entitled to preemptive rights with respect to any shares of the association which may be issued.

Section 7. Directors. The association shall be under the direction of a board of directors. The authorized number of directors, as stated in the association's bylaws, shall not be fewer than five nor more than fifteen except when a greater or lesser number is approved by the OCC.

Section 8. Amendment of charter. Except as provided in Section 5, no amendment, addition, alteration, change or repeal of this charter shall be made, unless such is proposed by the board of directors of the association, approved by

the shareholders by a majority of the votes eligible to be cast at a legal meeting, unless a higher vote is otherwise required, and approved or preapproved by the OCC.

Attest:_____

Secretary of the Association

By:_____

President or Chief Executive Officer of the Association

Attest:_____

Deputy Comptroller for Licensing

By:_____

Comptroller of the Currency

Effective Date:_____

(f) Charter amendments. In order to adopt a charter amendment, a Federal stock savings association must comply with the following requirements:

(1) Board of directors approval. The board of directors of the association must adopt a resolution proposing the charter amendment that states the text of such amendment;

(2) Form of filing—(i) Application requirement. If the proposed charter amendment would render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a block of the association's stock, the removal of incumbent management, or involve a significant issue of law or policy, the association shall file the proposed amendment and shall obtain the prior approval of the OCC; and

(ii) Notice requirement. If the proposed charter amendment does not involve a provision that would be covered by paragraph (f)(2)(i) of this section and such amendment is permissible

under all applicable laws, rules or regulations, then the association shall submit the proposed amendments to the appropriate OCC licensing office, at least 30 days prior to the date the proposed charter amendment is to be mailed for consideration by the association's shareholders.

(g) Approval. Any charter amendment filed pursuant to paragraph (f)(2)(ii) of this section shall automatically be approved 30 days from the date of filing of such amendment, provided that the association follows the requirements of its charter in adopting such amendment, unless prior to the expiration of such 30-day period the OCC notifies the association that such amendment is rejected or that such amendment is deemed to be filed under the provisions of paragraph (f)(2)(i) of this section. In addition, the following charter amendments, including the adoption of the Federal stock charter as set forth in paragraph (e) of this section, shall be approved at the time of adoption, if adopted without change and filed with the OCC within 30 days after adoption, provided the association follows the requirements of its charter in adopting such amendments:

(1) Title change. A Federal stock association that has complied with § 5.42 of this chapter may amend its charter by substituting a new corporate title in section 1.

(2) Home office. A Federal savings association may amend its charter by substituting a new home office in section 2, if it has complied with applicable requirements of § 5.40.

(3) Number of shares of stock and par value. A Federal stock association may amend Section 5 of its charter to change the number of authorized shares of stock, the number of shares within each class of stock, and the par or stated value of such shares.

(4) Capital stock. A Federal stock association may amend its charter by revising Section 5 to read as follows:

Section 5. Capital stock. The total number of shares of all classes of capital stock that the association has the authority to issue is ___, of which ___ shall be common stock of par [or if no par value is specified the stated] value of ___ per share and of which [list the number of each class of preferred and the par or if no par value is specified the stated value per share of each such class]. The shares may be issued from time to time as authorized by the board of directors without further approval of shareholders, except as otherwise provided in this Section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the association. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted), labor, or services actually performed for the association, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the association, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the retained earnings of the association that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance.

Except for shares issued in the initial organization of the association or in connection with the conversion of the association from the mutual to the stock form of capitalization, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association other than as part of a general public offering or as qualifying shares to a director, unless their issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

Nothing contained in this Section 5 (or in any supplementary sections hereto) shall entitle the holders of any class of a series of capital stock to vote as a separate class or series or to more than one vote per share, except as to the cumulation of votes for the election of directors, unless the charter otherwise provides that there shall be no such cumulative voting: Provided, That this restriction on voting separately by class or series shall not apply:

i. To any provision which would authorize the holders of preferred stock, voting as a class or series, to elect some members of the board of directors, less than a majority thereof, in the event of default in the payment of dividends on any class or series of preferred stock;

ii. To any provision that would require the holders of preferred stock, voting as a class or series, to approve the merger or consolidation of the association with another corporation or the sale, lease, or conveyance (other than by mortgage or pledge) of properties or business in exchange for securities of a corporation other than the association if the preferred stock is exchanged for

securities of such other corporation: Provided, That no provision may require such approval for transactions undertaken with the assistance or pursuant to the direction of the OCC or the Federal Deposit Insurance Corporation;

iii. To any amendment which would adversely change the specific terms of any class or series of capital stock as set forth in this Section 5 (or in any supplementary sections hereto), including any amendment which would create or enlarge any class or series ranking prior thereto in rights and preferences. An amendment which increases the number of authorized shares of any class or series of capital stock, or substitutes the surviving association in a merger or consolidation for the association, shall not be considered to be such an adverse change.

A description of the different classes and series (if any) of the association's capital stock and a statement of the designations, and the relative rights, preferences, and limitations of the shares of each class of and series (if any) of capital stock are as follows:

A. Common stock. Except as provided in this Section 5 (or in any supplementary sections thereto) the holders of the common stock shall exclusively possess all voting power. Each holder of shares of the common stock shall be entitled to one vote for each share held by each holder, except as to the cumulation of votes for the election of directors, unless the charter otherwise provides that there shall be no such cumulative voting.

Whenever there shall have been paid, or declared and set aside for payment, to the holders of the outstanding shares of any class of stock having

preference over the common stock as to the payment of dividends, the full amount of dividends and of sinking fund, retirement fund, or other retirement payments, if any, to which such holders are respectively entitled in preference to the common stock, then dividends may be paid on the common stock and on any class or series of stock entitled to participate therewith as to dividends out of any assets legally available for the payment of dividends.

In the event of any liquidation, dissolution, or winding up of the association, the holders of the common stock (and the holders of any class or series of stock entitled to participate with the common stock in the distribution of assets) shall be entitled to receive, in cash or in kind, the assets of the association available for distribution remaining after: (i) Payment or provision for payment of the association's debts and liabilities; (ii) distributions or provision for distributions in settlement of its liquidation account; and (iii) distributions or provision for distributions to holders of any class or series of stock having preference over the common stock in the liquidation, dissolution, or winding up of the association. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

B. Preferred stock. The association may provide in supplementary sections to its charter for one or more classes of preferred stock, which shall be separately identified. The shares of any class may be divided into and issued in series, with each series separately designated so as to distinguish the shares thereof from the shares of all other series and classes. The terms of each series shall be set forth in a supplementary section to the charter. All shares of the same class shall be

identical except as to the following relative rights and preferences, as to which there may be variations between different series:

a. The distinctive serial designation and the number of shares constituting such series;

b. The dividend rate or the amount of dividends to be paid on the shares of such series, whether dividends shall be cumulative and, if so, from which date(s), the payment date(s) for dividends, and the participating or other special rights, if any, with respect to dividends;

c. The voting powers, full or limited, if any, of shares of such series;

d. Whether the shares of such series shall be redeemable and, if so, the price(s) at which, and the terms and conditions on which, such shares may be redeemed;

e. The amount(s) payable upon the shares of such series in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association;

f. Whether the shares of such series shall be entitled to the benefit of a sinking or retirement fund to be applied to the purchase or redemption of such shares, and if so entitled, the amount of such fund and the manner of its application, including the price(s) at which such shares may be redeemed or purchased through the application of such fund;

g. Whether the shares of such series shall be convertible into, or exchangeable for, shares of any other class or classes of stock of the association and, if so, the conversion price(s) or the rate(s) of exchange, and the adjustments

thereof, if any, at which such conversion or exchange may be made, and any other terms and conditions of such conversion or exchange.

h. The price or other consideration for which the shares of such series shall be issued; and

i. Whether the shares of such series which are redeemed or converted shall have the status of authorized but unissued shares of serial preferred stock and whether such shares may be reissued as shares of the same or any other series of serial preferred stock.

Each share of each series of serial preferred stock shall have the same relative rights as and be identical in all respects with all the other shares of the same series.

The board of directors shall have authority to divide, by the adoption of supplementary charter sections, any authorized class of preferred stock into series, and, within the limitations set forth in this section and the remainder of this charter, fix and determine the relative rights and preferences of the shares of any series so established.

Prior to the issuance of any preferred shares of a series established by a supplementary charter section adopted by the board of directors, the association shall file with the OCC a dated copy of that supplementary section of this charter established and designating the series and fixing and determining the relative rights and preferences thereof.

(5) Limitations on subsequent issuances. A Federal stock association may amend its charter to require shareholder approval of the issuance or reservation of common stock or

securities convertible into common stock under circumstances which would require shareholder approval under the rules of the New York Stock Exchange if the shares were then listed on the New York Stock Exchange.

(6) Cumulative voting. A Federal stock association may amend its charter by substituting the following sentence for the second sentence in the third paragraph of Section 5: "Each holder of shares of common stock shall be entitled to one vote for each share held by such holder and there shall be no right to cumulate votes in an election of directors."

(7) Anti-takeover provisions following mutual to stock conversion. Notwithstanding the law of the state in which the association is located, a Federal stock association may amend its charter by renumbering existing sections as appropriate and adding a new section 8 as follows:

> Section 8. Certain Provisions Applicable for Five Years. Notwithstanding anything contained in the Association's charter or bylaws to the contrary, for a period of [specify number of years up to five] years from the date of completion of the conversion of the Association from mutual to stock form, the following provisions shall apply:
>
> A. Beneficial Ownership Limitation. No person shall directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of any class of an equity security of the association. This limitation shall not apply to a transaction in which the association forms a holding company without change in the respective beneficial ownership interests of its stockholders other than pursuant to the exercise of any dissenter and appraisal rights, the purchase of shares by underwriters in connection with a public offering, or the purchase of

less than 25 percent of a class of stock by a tax-qualified employee stock benefit plan as defined in § 192.25 of the OCC's regulations.

In the event shares are acquired in violation of this section 8, all shares beneficially owned by any person in excess of 10 percent shall be considered "excess shares" and shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matters submitted to the stockholders for a vote.

For purposes of this section 8, the following definitions apply:

1. The term "person" includes an individual, a group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization or similar company, a syndicate or any other group formed for the purpose of acquiring, holding or disposing of the equity securities of the association.

2. The term "offer" includes every offer to buy or otherwise acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security for value.

3. The term "acquire" includes every type of acquisition, whether effected by purchase, exchange, operation of law or otherwise.

4. The term "acting in concert" means (a) knowing participation in a joint activity or conscious parallel action towards a common goal whether or not pursuant to an express agreement, or (b) a combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any

contract, understanding, relationship, agreement or other arrangements, whether written or otherwise.

B. Cumulative Voting Limitation. Stockholders shall not be permitted to cumulate their votes for election of directors.

C. Call for Special Meetings. Special meetings of stockholders relating to changes in control of the association or amendments to its charter shall be called only upon direction of the board of directors.

(h) Anti-takeover provisions. The OCC may grant approval to a charter amendment not listed in paragraph (g) of this section regarding the acquisition by any person or persons of its equity securities provided that the association shall file as part of its application for approval an opinion, acceptable to the OCC, of counsel independent from the association that the proposed charter provision would be permitted to be adopted by a corporation chartered by the state in which the principal office of the association is located. Any such provision must be consistent with applicable statutes, regulations, and OCC policies. Further, any such provision that would have the effect of rendering more difficult a change in control of the association and would require for any corporate action (other than the removal of directors) the affirmative vote of a larger percentage of shareholders than is required by this part, shall not be effective unless adopted by a percentage of shareholder vote at least equal to the highest percentage that would be required to take any action under such provision.

(i) Reissuance of charter. A Federal stock association that has amended its charter may apply to have its charter, including the amendments, reissued by the OCC. Such requests for reissuance should be filed with the appropriate OCC licensing office, and contain signatures

required under (c) of this part, together with such supporting documents as needed to demonstrate that the amendments were properly adopted.

(j) Bylaws for Federal stock savings associations—(1) In general. Bylaws may be adopted, amended or repealed by either a majority of the votes cast by the shareholders at a legal meeting or a majority of the board of directors. A bylaw provision inconsistent with paragraph (k), (l), (m) or (n) of this section may be adopted only with the approval of the OCC.

(2) Form of filing—(i) Application requirement. (A) Any bylaw amendment shall be submitted to the OCC for approval if it would:

(1) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management; or

(2) Be inconsistent with paragraphs (k) through (n) of this section, with applicable laws, rules, regulations or the association's charter or involve a significant issue of law or policy, including indemnification, conflicts of interest, and limitations on director or officer liability.

(B) Bylaw provisions that adopt the language of the OCC's model or optional bylaws, if adopted without change, and filed with the OCC within 30 days after adoption, are effective upon adoption.

(ii) Filing requirement. If the proposed bylaw amendment does not involve a provision that would be covered by paragraph (j)(2)(i) or (iii) of this section and is permissible under all applicable laws, rules, or regulations, then the association shall submit the amendment to the OCC at least 30 days prior to the date the bylaw amendment is to be adopted by the association.

(iii) Corporate governance procedures. A Federal stock association may elect to follow the corporate governance procedures of: The laws of the state where the main office of the

association is located; the laws of the state where the association's holding company, if any, is incorporated or chartered; Delaware General Corporation law; or The Model Business Corporation Act, provided that such procedures may be elected to the extent not inconsistent with applicable Federal statutes and regulations and safety and soundness, and such procedures are not of the type described in paragraph (j)(2)(i) of this section. If this election is selected, a Federal stock association shall designate in its bylaws the provision or provisions from the body or bodies of law selected for its corporate governance procedures, and shall file a copy of such bylaws, which are effective upon adoption, within 30 days after adoption. The submission shall indicate, where not obvious, why the bylaw provisions meet the requirements stated in paragraph (j)(2)(i) of this section.

(3) Effectiveness. Any bylaw amendment filed pursuant to paragraph (j)(2)(ii) of this section shall automatically be effective 30 days from the date of filing of such amendment, provided that the association follows the requirements of its charter and bylaws in adopting such amendment, unless prior to the expiration of such 30-day period the OCC notifies the association that such amendment is rejected or that such amendment requires an application to be filed pursuant to paragraph (j)(2)(i) of this section.

(4) Effect of subsequent charter or bylaw change. Notwithstanding any subsequent change to its charter or bylaws, the authority of a Federal savings association to engage in any transaction shall be determined only by the association's charter or bylaws then in effect.

(k) Shareholders of Federal stock savings associations—(1) Shareholder meetings. A meeting of the shareholders of the association for the election of directors and for the transaction of any other business of the association shall be held annually within 150 days after the end of the association's fiscal year. Unless otherwise provided in the association's charter, special

meetings of the shareholders may be called by the board of directors or on the request of the holders of 10 percent or more of the shares entitled to vote at the meeting, or by such other persons as may be specified in the bylaws of the association. All annual and special meetings of shareholders shall be held at any convenient place the board of directors may designate.

(2) Notice of shareholder meetings. Written notice stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not fewer than 20 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, the secretary, or the directors, or other persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the mail, addressed to the shareholder at the address appearing on the stock transfer books or records of the association as of the record date prescribed in paragraph (i)(3) of this section, with postage thereon prepaid. When any shareholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Notwithstanding anything in this section, however, a Federal stock association that is wholly owned shall not be subject to the shareholder notice requirement.

(3) Fixing of record date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of shareholders. Such date in any case shall be not more than 60 days and, in case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. When a determination of

shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

(4) Voting lists. (i) At least 20 days before each meeting of the shareholders, the officer or agent having charge of the stock transfer books for the shares of the association shall make a complete list of the stockholders of record entitled to vote at such meeting, or any adjournments thereof, arranged in alphabetical order, with the address and the number of shares held by each. This list of shareholders shall be kept on file at the home office of the association and shall be subject to inspection by any shareholder of record or the stockholder's agent during the entire time of the meeting. The original stock transfer book shall constitute prima facie evidence of the stockholders entitled to examine such list or transfer books or to vote at any meeting of stockholders. Notwithstanding anything in this section, however, a Federal stock association that is wholly owned shall not be subject to the voting list requirements.

(ii) In lieu of making the shareholders list available for inspection by any shareholders as provided in paragraph (j)(4)(i) of this section, the board of directors may perform such acts as required by paragraphs (a) and (b) of Rule 14a–7 of the General Rules and Regulations under the Securities and Exchange Act of 1934 (17 CFR 240.14a–7) as may be duly requested in writing, with respect to any matter which may be properly considered at a meeting of shareholders, by any shareholder who is entitled to vote on such matter and who shall defray the reasonable expenses to be incurred by the association in performance of the act or acts required.

(5) Shareholder quorum. A majority of the outstanding shares of the association entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less

than a quorum. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless the vote of a greater number of stockholders voting together or voting by classes is required by law or the charter. Directors, however, are elected by a plurality of the votes cast at an election of directors.

(6) Shareholder voting—(i) Proxies. Unless otherwise provided in the association's charter, at all meetings of shareholders, a shareholder may vote in person or by proxy executed in writing by the shareholder or by a duly authorized attorney in fact. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the shareholder. Proxies solicited on behalf of the management shall be voted as directed by the shareholder or, in the absence of such direction, as determined by a majority of the board of directors. No proxy shall be valid more than eleven months from the date of its execution except for a proxy coupled with an interest.

(ii) Shares controlled by association. Neither treasury shares of its own stock held by the association nor shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the association, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for purposes of any meeting.

(7) Nominations and new business submitted by shareholders. Nominations for directors and new business submitted by shareholders shall be voted upon at the annual meeting if such nominations or new business are submitted in writing and delivered to the secretary of the association at least five days prior to the date of the annual meeting. Ballots bearing the names of all the persons nominated shall be provided for use at the annual meeting.

(8) Informal action by stockholders. If the bylaws of the association so provide, any action required to be taken at a meeting of the stockholders, or any other action that may be taken at a meeting of the stockholders, may be taken without a meeting if consent in writing has been given by all the stockholders entitled to vote with respect to the subject matter.

(l) Board of directors—(1) General powers and duties. The business and affairs of the association shall be under the direction of its board of directors. Directors need not be stockholders unless the bylaws so require.

(2) Number and term. The bylaws shall set forth a specific number of directors, not a range. The number of directors shall be not fewer than five nor more than fifteen, unless a higher or lower number has been authorized by the OTS, prior to July 21, 2011 or the OCC. Directors shall be elected for a term of one to three years and until their successors are elected and qualified. If a staggered board is chosen, the directors shall be divided into two or three classes as nearly equal in number as possible and one class shall be elected by ballot annually.

(3) Regular meetings. The board of directors shall determine the place, frequency, time and procedure for notice of regular meetings.

(4) Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business at any meeting of the board of directors. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the OCC.

(5) Vacancies. Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors although less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the shareholders. Any directorship to be filled by reason of an increase in

the number of directors may be filled by election by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

(6) Removal or resignation of directors. (i) At a meeting of shareholders called expressly for that purpose, any director may be removed only for cause, as termination for cause is defined in § 5.21(j)(2)(x)(B), by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. Associations may provide for procedures regarding resignations in the bylaws.

(ii) If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against the removal would be sufficient to elect a director if then cumulatively voted at an election of the class of directors of which such director is a part.

(iii) Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the charter or supplemental sections thereto, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

(7) Executive and other committees. The board of directors, by resolution adopted by a majority of the full board, may designate from among its members an executive committee and one or more other committees. No committee shall have the authority of the board of directors with reference to: the declaration of dividends; the amendment of the charter or bylaws of the association; recommending to the stockholders a plan of merger, consolidation, or conversion; the sale, lease, or other disposition of all, or substantially all, of the property and assets of the association otherwise than in the usual and regular course of its business; a voluntary dissolution of the association; a revocation of any of the foregoing; or the approval of a transaction in which

any member of the executive committee, directly or indirectly, has any material beneficial interest. The designation of any committee and the delegation of authority thereto shall not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

(8) Notice of special meetings. Written notice of at least 24 hours regarding any special meeting of the board of directors or of any committee designated thereby shall be given to each director in accordance with the bylaws, although such notice may be waived by the director. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting need be specified in the notice or waiver of notice of such meeting. The bylaws may provide for electronic participation at a meeting.

(9) Action without a meeting. Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by all of the directors.

(10) Presumption of assent. A director of the association who is present at a meeting of the board of directors at which action on any association matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention shall be entered in the minutes of the meeting or unless a written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the secretary of the association within five days after the date on which a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such action.

(11) Age limitation on directors. A Federal association may provide a bylaw on age limitation for directors. Bylaws on age limitations must comply with all Federal laws, rules and regulations.

(m) Officers—(1) Positions. The officers of the association shall be a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The offices of the secretary and treasurer or comptroller may be held by the same person and the vice president may also be either the secretary or the treasurer or comptroller. The board of directors may designate one or more vice presidents as executive vice president or senior vice president.

(2) Removal. Any officer may be removed by the board of directors whenever in its judgment the best interests of the association will be served thereby; but such removal, other than for cause, as termination for cause is defined in § 5.21(j)(2)(x)(B), shall be without prejudice to the contractual rights, if any, of the person so removed. Employment contracts shall conform with 12 CFR 163.39.

(3) Age limitation on officers. A Federal association may provide a bylaw on age limitation for officers. Bylaws on age limitations must comply with all Federal laws, rules, and regulations.

(n) Certificates for shares and their transfer—(1) Certificates for shares. Certificates representing shares of capital stock of the association shall be in such form as shall be determined by the board of directors and approved by the OCC. The name and address of the person to whom the shares are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the association. All certificates surrendered to the

association for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in the case of a lost or destroyed certificate a new certificate may be issued upon such terms and indemnity to the association as the board of directors may prescribe.

(2) Transfer of shares. Transfer of shares of capital stock of the association shall be made only on its stock transfer books. Authority for such transfer shall be given only by the holder of record or by a legal representative, who shall furnish proper evidence of such authority, or by an attorney authorized by a duly executed power of attorney and filed with the association. The transfer shall be made only on surrender for cancellation of the certificate for the shares. The person in whose name shares of capital stock stand on the books of the association shall be deemed by the association to be the owner for all purposes.

10. Section 5.23 is added to read as follows:

§ 5.23 Conversion to become a Federal savings association.

(a) Authority. 12 U.S.C. 35, 1462a, 1463, 1464, 1467a, 2903, and 5412(b)(2)(B).

(b) Scope. (1) This section describes procedures and standards governing OCC review and approval of an application by a mutual depository institution to convert to a Federal mutual savings association or an application by a stock depository institution to convert to a Federal stock savings association.

(2) As used in this section, depository institution means any commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank or a credit union, chartered in the United States and having its principal office located in the United States.

(c) Licensing requirements. A depository institution that is mutual in form ("mutual depository institution") shall submit an application and obtain prior OCC approval to convert to a Federal mutual savings association. A stock depository institution shall submit an application and obtain prior OCC approval to convert to a Federal stock savings association. At the time of conversion, the applicant must have deposits insured by the Federal Deposit Insurance Corporation (FDIC). An institution that is not already insured by the FDIC must apply to the FDIC, and obtain FDIC approval, for deposit insurance before converting.

(d) Conversion of a mutual depository institution or a stock depository institution to a Federal savings association—(1) Policy. Consistent with the OCC's chartering policy, it is OCC policy to allow conversion to a Federal savings association charter by another financial institution that can operate safely and soundly as a Federal savings association in compliance with applicable laws, regulations, and policies. This includes consideration of the factors set out in section 5(e) of the Home Owners' Loan Act, 12 U.S.C. 1464(e). The converting financial institution must obtain all necessary regulatory and shareholder or member approvals. The OCC may deny an application by any mutual depository institution or stock depository institution to convert to a Federal mutual savings association charter or Federal stock association charter, respectively, on the basis of the standards for denial set forth in § 5.13(b) or when conversion would permit the applicant to escape supervisory action by its current regulators.

(2) Procedures—(i) Prefiling communications. The applicant should consult with the appropriate OCC licensing office prior to filing if it anticipates that its application will raise unusual or complex issues. If a prefiling meeting is appropriate, it will normally be held in the OCC licensing office where the application will be filed, but may be held at another location at the request of the applicant.

(ii) Application. A mutual depository institution or a stock depository institution shall submit its application to convert to a Federal mutual savings association or Federal stock depository association, respectively, to the appropriate OCC licensing office and shall send a copy of the application to its current appropriate Federal banking agency. The application must:

(A) Be signed by the president or other duly authorized officer;

(B) Identify each branch that the resulting financial institution expects to operate after conversion;

(C) Include the institution's most recent audited financial statements (if any);

(D) Include the latest report of condition and report of income (the most recent daily statement of condition will suffice if the institution does not file these reports);

(E) Unless otherwise advised by the OCC in a prefiling communication, include an opinion of counsel that, in the case of state-chartered institutions, the conversion is not in contravention of applicable state law, or in the case of Federally-chartered institutions, the conversion is not in contravention of applicable Federal law;

(F) State whether the institution wishes to exercise fiduciary powers after the conversion;

(G) Identify all subsidiaries, service corporation investments, bank service company investments, and other equity investments that will be retained following the conversion, and provide the information and analysis of the subsidiaries' activities and the service corporation investments and other equity investments that would be required if the converting mutual institution or stock institution were a Federal mutual savings association or Federal stock savings association, respectively, establishing each subsidiary or making each service corporation or other equity investment pursuant to §§ 5.35, 5.36, 5.38, or 5.59, or other applicable law and regulation;

(H) Identify any nonconforming assets (including nonconforming subsidiaries) and nonconforming activities that the institution engages in, and describe the plans to retain or divest those assets and activities;

(I) Include a business plan if the converting institution has been operating for less than three years, plans to make significant changes to its business after the conversion, or at the request of the OCC;

(J) Include a list of all outstanding conditions or other requirements imposed by the institution's current appropriate Federal banking agency and, if applicable, current state bank supervisor or state attorney-general in any cease and desist order, written agreement, other formal enforcement order, memorandum of understanding, approval of any application, notice or request, commitment letter, board resolution, or in any other manner, including the converting institution's analysis whether any such actions prohibit conversion under 12 U.S.C. 35, and the converting institution's plans regarding adhering to such conditions and requirements after conversion; and

(K) If the converting institution does not meet the qualified thrift lender test of 12 U.S.C. 1467a(m), include a plan to achieve compliance within a reasonable period of time and a request for an exception from the OCC.

(iii) The OCC may permit a Federal savings association to retain nonconforming assets of a converting institution for the time period prescribed by the OCC following a conversion, subject to conditions and an OCC determination of the carrying value of the retained assets consistent with the requirements of section 5(c) of the HOLA relating to loans and investments. The OCC may permit a Federal savings association to continue nonconforming activities of a

converting institution for the time period prescribed by the OCC following a conversion, subject to conditions.

(iv) Approval for an institution to convert to a Federal savings association expires if the conversion has not occurred within six months of the OCC's approval of the application, unless the OCC grants an extension of time.

(v) When the OCC determines that the applicant has satisfied all statutory and regulatory requirements and any other conditions, the OCC issues a charter. The charter provides that the institution is authorized to begin conducting business as a Federal mutual savings association or a Federal stock savings association as of a specified date.

(3) Exceptions to rules of general applicability. Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

(4) Expedited review. An application by an eligible national bank to convert to a Federal savings association charter is deemed approved by the OCC as of the 60th day after the filing is received by the OCC, unless the OCC notifies the applicant prior to that date that the filing is not eligible for expedited review under § 5.13(a)(2).

(e) Conversion of a mutual depository institution to a Federal mutual savings association – supplemental rules. In addition to the rules and procedures set forth in paragraph (d) of this section, an applicant converting from a mutual depository institution to a Federal mutual savings association shall comply with the following: After a Federal charter is issued to a converting institution, 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 care of all other actions

necessary to fully effectuate 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.

(f) Conversion of a national bank to a Federal stock savings association – supplemental rules—(1) Additional procedures. A national bank may convert to a Federal stock savings association. In addition to the rules and procedures set forth in paragraph (d) of this section, a national bank that desires to convert to a Federal stock savings association shall follow the requirements and procedures set forth in 12 U.S.C. 214a as if it were converting to a state bank and include in its application information demonstrating compliance with the applicable requirements of 12 U.S.C. 214a.

(2) Termination and change of status. The appropriate OCC licensing office provides instructions to the converting national bank for terminating its status as a national bank and beginning its status as a Federal savings association.

(g) Continuation of business and entity. The existence of the converting institution shall continue in the resulting Federal savings association. The resulting Federal savings association shall be considered the same business and entity as the converting institution, although as to rights, powers, and duties, the resulting Federal savings association is a Federal savings association. Any and all of the assets and other property (whether real, personal, mixed, tangible or intangible, including choses in action, rights, and credits) of the converting institution become assets and property of the resulting Federal savings association when the conversion occurs. Similarly, any and all of the obligations and debts of and claims against the converting institution become obligations and debts of and claims against the Federal savings association when the conversion occurs.

11. Section 5.24 is revised to read as follows:

§ 5.24. Conversion to become a national bank.

(a) Authority. 12 U.S.C. 35, 93a, 214a, 214b, 214c, and 2903.

(b) Licensing requirements. A state bank, a stock state savings association, or a Federal stock savings association shall submit an application and obtain prior OCC approval to convert to a national bank charter. A Federal mutual savings association that plans to convert to a national bank must first convert to a Federal stock savings association under 12 CFR part 192.

(c) Scope. (1) This section describes procedures and standards governing OCC review and approval of an application by a state bank, a stock state savings association, or a Federal stock savings association to convert to a national bank charter.

(2) As used in this section, state bank includes a state bank as defined in 12 U.S.C. 214(a).

(d) Policy. Consistent with the OCC's chartering policy, it is OCC policy to allow conversion to a national bank charter by another financial institution that can operate safely and soundly as a national bank in compliance with applicable laws, regulations, and policies. A converting financial institution also must obtain all necessary regulatory and shareholder approvals. The OCC may deny an application by any state bank, stock state savings association, and any Federal stock savings association to convert to a national bank charter on the basis of the standards for denial set forth in § 5.13(b), or when conversion would permit the applicant to escape supervisory action by its current regulators.

(e) Procedures—(1) Prefiling communications. The applicant should consult with the appropriate OCC licensing office prior to filing if it anticipates that its application will raise unusual or complex issues. If a prefiling meeting is appropriate, it will normally be held at the

OCC licensing office where the application will be filed, but may be held at another location at the request of the applicant.

(2) Application. A state bank, a stock state savings association, or a Federal stock savings association shall submit its application to convert to a national bank to the appropriate OCC licensing office and send a copy to its current appropriate Federal banking agency. The application must:

(i) Be signed by the president or other duly authorized officer;

(ii) Identify each branch that the resulting bank expects to operate after conversion;

(iii) Include the institution's most recent audited financial statements (if any);

(iv) Include the latest report of condition and report of income (the most recent daily statement of condition will suffice if the institution does not file these reports);

(v) Unless otherwise advised by the OCC in a prefiling communication, include an opinion of counsel that, in the case of a state bank, the conversion is not in contravention of applicable state law, or in the case of a Federal stock savings association, the conversion is not in contravention of applicable Federal law;

(vi) State whether the institution wishes to exercise fiduciary powers after the conversion;

(vii) Identify all subsidiaries, bank service company investments, and other equity investments that will be retained following the conversion, and provide the information and analysis of the subsidiaries' activities, the bank service company investments, and the other equity investments that would be required if the converting bank or savings association were a national bank establishing each subsidiary or making each bank service company investment or other equity investment pursuant to §§ 5.34, 5.35, 5.36, 5.39, 12 CFR part 1, or other applicable law and regulation;

(viii) Identify any nonconforming assets (including nonconforming subsidiaries) and nonconforming activities that the institution engages in and describe the plans to retain or divest those assets and activities;

(ix) Include a business plan if the converting institution has been operating for fewer than three years, plans to make significant changes to its business after the conversion, or at the request of the OCC; and

(x) List all outstanding conditions or other requirements imposed by the institution's current appropriate Federal banking agency and, if applicable, current state bank supervisor or state attorney-general in any cease and desist order, written agreement, other formal enforcement order, memorandum of understanding, approval of any application, notice or request, commitment letter, board resolution, or in any other manner, including the converting institution's analysis whether the conversion is prohibited under 12 U.S.C. 35, and state the institution's plans regarding adhering to such conditions or requirements after conversion.

(3) The OCC may permit a national bank to retain nonconforming assets of a state bank or stock state savings association, subject to conditions and an OCC determination of the carrying value of the retained assets, pursuant to 12 U.S.C. 35. The OCC may permit a national bank to continue nonconforming activities of a state bank or stock state savings association, or to retain the nonconforming assets or nonconforming activities of a Federal stock savings association, for a reasonable period of time following a conversion, subject to conditions imposed by the OCC.

(4) Approval for an institution to convert to a national bank expires if the conversion has not occurred within six months of the OCC's approval of the application, unless the OCC grants an extension of time.

(5) When the OCC determines that the applicant has satisfied all statutory and regulatory requirements, including those set forth in 12 U.S.C. 35, and any other conditions, the OCC issues a charter certificate. The certificate provides that the institution is authorized to begin conducting business as a national bank as of a specified date.

(f) Conversion of a Federal stock savings association to a national bank – supplemental rules—(1) Additional information. A Federal stock savings association may convert to a national bank. In addition to the rules and procedures set forth in paragraph (e) of this section, a Federal stock savings association that desires to convert to a national bank shall include in its application information demonstrating compliance with applicable laws regarding the permissibility, requirements, and procedures for conversions, including any applicable stockholder or account holder approval requirements.

(2) Termination and change of status. The appropriate OCC licensing office provides instructions to the converting Federal stock savings association for terminating its status as a Federal stock savings association and beginning its status as a national bank.

(g) Exceptions to rules of general applicability. Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all of §§ 5.8, 5.10, and 5.11 apply.

(h) Expedited review. An application by an eligible savings association to convert to a national bank charter is deemed approved by the OCC as of the 60th day after the filing is received by the OCC, unless the OCC notifies the applicant prior to that date that the filing is not eligible for expedited review under § 5.13(a)(2).

(i) Continuation of business and corporate entity. The corporate existence of the converting institution shall continue in the resulting national bank. The resulting national bank shall be considered the same business and corporate entity as the converting institution, although as to rights, powers, and duties, the resulting national bank is a national bank. Any and all of the assets and other property (whether real, personal, mixed, tangible or intangible, including choses in action, rights, and credits) of the converting institution become assets and property of the resulting national bank when the conversion occurs. Similarly, any and all of the obligations and debts of and claims against the converting institution become obligations and debts of and claims against the national bank when the conversion occurs.

12. Section 5.25 is added to read as follows:

§ 5.25 Conversion from a national bank or Federal savings association to a state bank or state savings association.

(a) Authority. 12 U.S.C. 93a, 214a, 214b, 214c, 214d, 1462a, 1463, 1464, and 5412(b)(2)(B).

(b) Licensing requirement. A national bank shall give notice to the OCC before converting to a state bank (including a state bank as defined in 12 U.S.C. 214(a)) or a state savings association. A Federal savings association shall give notice to the OCC before converting to a state savings association or a state bank. A Federal mutual savings association that plans to convert to a stock state bank must first convert to a Federal stock savings association under 12 CFR part 192.

(c) Scope. This section describes the procedures for a national bank seeking to convert to a state bank or a state savings association or for a Federal savings association seeking to convert to a state savings association or a state bank.

(d) Procedures—(1) National banks. A national bank may convert to a state bank (including a state bank as defined in 214(a)) or a state savings association in accordance with 12 U.S.C. 214a and 214c, without prior OCC approval, subject to compliance with 12 U.S.C. 214d. Termination of a national bank's status as a national bank occurs upon the bank's completion of the requirements of 12 U.S.C. 214a, and upon the OCC's receipt of the bank's national bank charter in connection with the consummation of the conversion.

(2) Federal savings associations. A Federal savings association may convert to a state savings association or to a state bank, without prior OCC approval, subject to compliance with 12 U.S.C. 1464(i)(6). Termination of a Federal savings association's status as a Federal savings association occurs upon receipt of the Federal savings association's charter in connection with the consummation of the conversion.

(3) Notice of intent. (i) A national bank that desires to convert to a state bank (including a state bank as defined in 214(a)) or state savings association, or a Federal savings association that desires to convert to a state savings association or a state bank, shall submit a notice of intent to convert to the appropriate OCC licensing office. The national bank or Federal savings association shall file this notice with the OCC at the time it files a conversion application with the appropriate state authority or the prospective appropriate Federal banking agency. The national bank or Federal savings association also shall transmit a copy of the conversion application to the prospective appropriate Federal banking agency if it has not already done so.

(ii) The notice shall include:

(A) A copy of the conversion application; and

(B) An analysis demonstrating that the conversion is in compliance with laws of the applicable jurisdictions regarding the permissibility, requirements, and procedures for conversions, including any applicable stockholder or account holder approval requirements.

(4) Consultation. The OCC may consult with the appropriate state authorities or the prospective appropriate Federal banking agency regarding the proposed conversion.

(5) Termination of status. After receipt of the notice, the appropriate OCC licensing office provides instructions to the national bank or Federal savings association for terminating its status as a national bank or Federal savings association.

(e) Exceptions to rules of general applicability. Sections 5.5 through 5.8 and 5.10 through 5.13 do not apply to this section.

13. Section 5.26 is revised to read as follows:

§ 5.26 Fiduciary powers of national banks and Federal savings associations.

(a) Authority. 12 U.S.C. 92a and 1462a, 1463, 1464(n), and 5412(b)(2)(B).

(b) Licensing requirements. A national bank or Federal savings association must submit an application and obtain prior approval from, or in certain circumstances file a notice with, the OCC in order to exercise fiduciary powers. No approval or notice is required in the following circumstances:

(1) Where two or more national banks consolidate or merge, and any of the national banks has, prior to the consolidation or merger, received OCC approval to exercise fiduciary powers and that approval is in force at the time of the consolidation or merger, the resulting national bank may exercise fiduciary powers in the same manner and to the same extent as the national bank to which approval was originally granted;

(2) Where two or more Federal savings associations consolidate or merge, and any of the Federal savings associations has, prior to the consolidation or merger, received approval from the OCC or the Office of Thrift Supervision to exercise fiduciary powers and that approval is in force at the time of the consolidation or merger, the resulting Federal savings association may exercise fiduciary powers in the same manner and to the same extent as the Federal savings association to which approval was originally granted;

(3) Where a national bank with prior OCC approval to exercise fiduciary powers is the resulting bank in a merger or consolidation with a state bank, state savings association, or Federal savings association and the national bank will exercise fiduciary powers in the same manner and to the same extent to which approval was originally granted; and

(4) Where a Federal savings association with prior approval from the OCC or the Office of Thrift Supervision to exercise fiduciary powers is the resulting savings association in a merger or consolidation with a state bank, state savings association, or national bank and the Federal savings association will exercise fiduciary powers in the same manner and to the same extent to which approval was originally granted.

(c) Scope. This section sets forth the procedures governing OCC review and approval of an application, and in certain cases the filing of a notice, by a national bank or Federal savings association to exercise fiduciary powers. Fiduciary activities of national banks are subject to the provisions of 12 CFR part 9. Fiduciary activities of Federal savings associations are subject to the provisions of 12 CFR part 150.

(d) Policy. The exercise of fiduciary powers is primarily a management decision of the national bank or Federal savings association. The OCC generally permits a national bank or Federal savings association to exercise fiduciary powers if the bank or savings association is

operating in a satisfactory manner, the proposed activities comply with applicable statutes and regulations, and the bank or savings association retains qualified fiduciary management.

(e) Procedure—(1) In general. The following institutions must obtain approval from the OCC in order to exercise fiduciary powers:

(i) A national bank or Federal savings association without fiduciary powers:

(ii) A national bank without fiduciary powers that desires to exercise fiduciary powers as the resulting bank after merging with a state bank, state savings association, or Federal savings association with fiduciary powers or a Federal savings association without fiduciary powers that desires to exercise fiduciary powers as the resulting savings association after merging with a state bank, state savings association or national bank with fiduciary powers;

(iii) A national bank that results from the conversion of a state bank or a state or Federal savings association that was exercising fiduciary powers prior to the conversion or a Federal savings association that results from a conversion of a state or national bank or a state savings association that was exercising fiduciary powers prior to the conversion; and

(iv) A national bank or Federal savings association that has received approval from the OCC to exercise limited fiduciary powers that desires to exercise full fiduciary powers.

(2) Application. (i) Except as provided in paragraph (e)(2)(ii) of this section, a national bank or Federal savings association that desires to exercise fiduciary powers shall submit to the OCC an application requesting approval. The application must contain:

(A) A statement requesting full or limited powers (specifying which powers);

(B) A statement that the capital and surplus of the national bank or Federal savings association is not less than the capital and surplus required by state law of state banks, trust companies, and other corporations exercising comparable fiduciary powers;

(C) Sufficient biographical information on proposed trust management personnel to enable the OCC to assess their qualifications;

(D) A description of the locations where the national bank or Federal savings association will conduct fiduciary activities;

(E) If requested by the OCC, an opinion of counsel that the proposed activities do not violate applicable Federal or state law, including citations to applicable law; and

(F) Any other information necessary to enable the OCC to sufficiently assess the factors described in paragraph (e)(2)(iii) of this section.

(ii) If approval to exercise fiduciary powers is desired in connection with any other transaction subject to an application under this part, the applicant covered under paragraph (e)(1)(ii), (e)(1)(iii), or (e)(1)(iv) of this section may include a request for approval of fiduciary powers, including the information required by paragraph (e)(2)(i) of this section, as part of its other application. The OCC does not require a separate application requesting approval to exercise fiduciary powers under these circumstances.

(iii) When reviewing any application filed under this section, the OCC considers factors such as the following:

(A) The financial condition of the national bank or Federal savings association;

(B) The adequacy of the national bank's or Federal savings association's capital and surplus and whether it is sufficient under the circumstances and not less than the capital and surplus required by state law or state banks, trust companies, and other corporations exercising comparable fiduciary powers;

(C) The character and ability of proposed trust management, including qualifications, experience, and competency. The OCC must approve any trust management change the bank or savings association makes prior to commencing trust activities;

(D) The adequacy of the proposed business plan, if applicable;

(E) The needs of the community to be served; and

(F) Any other factors or circumstances that the OCC considers proper.

(3) Expedited review. An application by an eligible national bank or eligible Federal savings association to exercise fiduciary powers is deemed approved by the OCC as of the 30th day after the application is received by the OCC, unless the OCC notifies the bank or savings association prior to that date that the filing is not eligible for expedited review under § 5.13(a)(2).

(4) Permit. Approval of an application under this section constitutes a permit under 12 U.S.C. 92a for national banks and 12 U.S.C. 1464(n) for Federal savings associations to conduct the fiduciary powers requested in the application.

(5) Notice required. A national bank or Federal savings association that has ceased to conduct previously approved fiduciary powers for 18 consecutive months must provide the OCC with a notice describing the nature and manner of the activities proposed to be conducted and containing the information required by paragraph (e)(2)(i) of this section 60 days prior to commencing any fiduciary activity.

(6) Notice of fiduciary activities in additional states. (i) No further application under this section is required when a national bank or Federal savings association with existing OCC approval to exercise fiduciary powers plans to engage in any of the activities specified in § 9.7(d) of this chapter or to conduct activities ancillary to its fiduciary business, in a state in addition to the state described in the application for fiduciary powers that the OCC has approved.

(ii) Unless the national bank or Federal savings association provides notice through other means (such as a merger application), the national bank or Federal savings association shall provide written notice to the OCC no later than 10 days after it begins to engage in any of the activities specified in § 9.7(d) of this chapter in a state in addition to the state described in the application for fiduciary powers that the OCC has approved. The written notice must identify the new state or states involved, identify the fiduciary activities to be conducted, and describe the extent to which the activities differ materially from the fiduciary activities the national bank or Federal savings association previously conducted.

(iii) No notice is required if the national bank or Federal savings association is conducting only activities ancillary to its fiduciary business through a trust representative office or otherwise.

(7) Exceptions to rules of general applicability. Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

(8) Expiration of approval. Approval expires if a national bank or Federal savings association does not commence fiduciary activities within 18 months from the date of approval, unless the OCC grants an extension of time.

14. Section 5.30 is revised to read as follows:

§ 5.30 Establishment, acquisition, and relocation of a branch of a national bank.

(a) Authority. 12 U.S.C. 1–42 and 2901–2907.

(b) Licensing requirements. A national bank shall submit an application and obtain prior OCC approval in order to establish or relocate a branch.

(c) Scope—(1) In general. This section describes the procedures and standards governing OCC review and approval of an application by a national bank to establish a new branch or to relocate a branch.

(2) Branch established through a conversion or business combination. The standards of this section governing review and approval of applications by the OCC and, as applicable, 12 U.S.C. 36(b), but not the application procedures set forth in this section, apply to branches acquired or retained in a conversion approved under 12 CFR 5.24 or a business combination approved under § 5.33. A branch acquired or retained in a conversion or business combination is subject to the application procedures set forth in §§ 5.24 or 5.33.

(d) Definitions—(1) Branch includes any branch bank, branch office, branch agency, additional office, or any branch place of business established by a national bank in the United States or its territories at which deposits are received, checks paid, or money lent.

(i) A branch established by a national bank includes a mobile facility, temporary facility, intermittent facility, drop box or a seasonal agency as described in 12 U.S.C. 36(c).

(ii) A facility otherwise described in this paragraph (d)(1) is not a branch if:

(A) The bank establishing the facility does not permit members of the public to have physical access to the facility for purposes of making deposits, paying checks, or borrowing money (e.g., an office established by the bank that receives deposits only through the mail); or

(B) It is located at the site of, or is an extension of, an approved main office or branch office of the national bank. The OCC determines whether a facility is an extension of an existing main office or branch office on a case-by-case basis. For this purpose, the OCC will consider a drive-in or pedestrian facility located within 500 feet of a public entrance to an existing main office or branch office to be an extension of the existing main office or branch office, provided

the functions performed at the drive-in or pedestrian facility are limited to functions that are ordinarily performed at a teller window.

(iii) A branch does not include an automated teller machine (ATM), a remote service unit (such as an automated loan machine or personal computer used in providing financial services), a loan production office, a deposit production office, a trust office, an administrative office, a data processing office, or any other office that does not engage in any of the activities in paragraph (d)(1) of this section.

(2) Home state means the state in which the national bank's main office is located.

(3) Intermittent branch means a branch that is operated by a national bank for one or more limited periods of time to provide branch banking services at a specified recurring event, on the grounds or premises where the event is held or at a fixed site adjacent to the grounds or premises where the event is held, and exclusively during the occurrence of the event. Examples of an intermittent branch include the operation of a branch on the campus of, or at a fixed site adjacent to the campus of, a specific college during school registration periods; or the operation of a branch during a state fair on state fairgrounds or at a fixed site adjacent to the fairgrounds.

(4) Messenger service has the meaning set forth in 12 CFR 7.1012.

(5) Mobile branch is a branch of a national bank, other than a messenger service branch, that does not have a single, permanent site, and includes a vehicle that travels to various public locations to enable customers to conduct their banking business. A mobile branch may provide services at various regularly scheduled locations or it may be open at irregular times and locations such as at county fairs, sporting events, or school registration periods. A branch license is needed for each mobile unit.

(6) Temporary branch means a branch of a national bank that is located at a fixed site and which, from the time of its opening, is scheduled to, and will, permanently close no later than a certain date (not longer than one year after the branch is first opened) specified in the branch application and the public notice.

(e) Policy. In determining whether to approve an application to establish or relocate a branch, the OCC is guided by the following principles:

(1) Maintaining a safe and sound banking system;

(2) Encouraging a national bank to provide fair access to financial services by helping to meet the credit needs of its entire community;

(3) Ensuring compliance with laws and regulations; and

(4) Promoting fair treatment of customers including efficiency and better service.

(f) Procedures—(1) In general. Except as provided in paragraph (f)(2) of this section, each national bank proposing to establish a branch shall submit to the appropriate OCC licensing office a separate application for each proposed branch.

(2) Messenger services. A national bank may request approval, through a single application, for multiple messenger services to serve the same general geographic area. (See 12 CFR 7.1012). Unless otherwise required by law, the bank need not list the specific locations to be served.

(3) Jointly established branches. If a national bank proposes to establish a branch jointly with one or more national banks or other depository institutions, only one of the national banks must submit a branch application. The national bank submitting the application may act as agent for all national banks in the group of depository institutions proposing to share the branch. The application must include the name and main office address of each national bank in the group.

(4) Intermittent branches. Prior to operating an intermittent branch, a national bank shall file a branch application and publish notice in accordance with § 5.8, both of which shall identify the event at which the branch will be operated; designate a location for operation of the branch which shall be on the grounds or premises at which the event is held or on a fixed site adjacent to those grounds or premises; and specify the approximate time period during which the event will be held and during which the branch will operate, including whether operation of the branch will be on an annual or otherwise recurring basis. If the branch is approved, then the bank need not obtain approval each time it seeks to operate the branch in accordance with the original application and approval.

(5) Authorization. The OCC authorizes operation of the branch when all requirements and conditions for opening are satisfied.

(6) Expedited review. An application submitted by an eligible bank to establish or relocate a branch is deemed approved by the OCC as of the 15th day after the close of the applicable public comment period or the 45th day after the filing is received by the OCC (or in the case of a short-distance relocation the 30th day after the filing is received by the OCC), whichever is later, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2). An application to establish or relocate more than one branch is deemed approved by the OCC as of the 15th day after the close of the last public comment period.

(g) Interstate branches. A national bank that seeks to establish and operate a de novo branch in any state other than the bank's home state or a state in which the bank already has a branch shall satisfy the standards and requirements of 12 U.S.C. 36(g).

(h) Exceptions to rules of general applicability. (1) A national bank filing an application for a mobile branch or messenger service branch shall publish a public notice, as described in § 5.8, in the communities in which the bank proposes to engage in business.

(2) The comment period on an application to engage in a short-distance relocation is 15 days.

(3) The OCC may waive or reduce the public notice and comment period, as appropriate, with respect to an application to establish a branch to restore banking services to a community affected by a disaster or to temporarily replace banking facilities where, because of an emergency, the bank cannot provide services or must curtail banking services.

(4) The OCC may waive or reduce the public notice and comment period, as appropriate, for an application by a national bank with a CRA rating of Satisfactory or better to establish a temporary branch which, if it were established by a state bank to operate in the manner proposed, would be permissible under state law without state approval.

(i) Expiration of approval. Approval expires if a branch has not commenced business within 18 months after the date of approval unless the OCC grants an extension.

(j) Branch closings. A national bank shall comply with the requirements of 12 U.S.C. 1831r–1 with respect to procedures for branch closings.

15. Section 5.31 is added to read as follows:

§ 5.31 Establishment, acquisition, and relocation of a branch and establishment of an agency office of a Federal savings association.

(a) Authority. 12 U.S.C. 1462a, 1463, 1464. 2901–2907 and 5412(b)(2)(B).

(b) Licensing requirements. A Federal savings association shall submit an application and obtain prior OCC approval in order to establish or relocate a branch or to establish an agency office or conduct additional activities at an agency office, if required under this section.

(c) Scope—(1) In general. This section describes the procedures and standards governing OCC review and approval of an application by a Federal savings association to establish a new branch or to relocate a branch and the circumstances in which a Federal savings association may establish or relocate a branch without application to the OCC. It also describes the authority of a Federal savings association to establish an agency office.

(2) Branch established through a conversion or business combination. The standards of this section governing review and approval of applications by the OCC, but not the application procedures set forth in this section, apply to branches acquired or retained in a conversion approved under 12 CFR 5.23 or a business combination approved under 12 CFR 5.33. A branch acquired or retained in a conversion or business combination is subject to the application procedures set forth in §§ 5.23 or 5.33.

(3) Branching by savings associations in the District of Columbia. This section also implements section 5(m) of the HOLA, 12 U.S.C. 1464(m), addressing branching by savings associations in the District of Columbia.

(d) Definitions. (1) A branch office of a Federal savings association for purposes of this section is a branch office as defined in 12 CFR 145.92(a).

(2) Home state means the state in which the Federal savings association's home office is located.

(e) Policy. In determining whether to approve an application to establish or relocate a branch, the OCC is guided by the following principles:

(1) Maintaining a safe and sound banking system;

(2) Encouraging a Federal savings association to provide fair access to financial services by helping to meet the credit needs of its entire community;

(3) Ensuring compliance with laws and regulations; and

(4) Promoting fair treatment of customers including efficiency and better service.

(f) Procedures—(1) Application requirements. (i) Except as provided in paragraph (f)(2) of this section, each Federal savings association proposing to establish or relocate a branch shall submit to the appropriate OCC licensing office a separate application for each proposed branch.

(ii) Authorization. The OCC authorizes operation of the branch when all requirements and conditions for opening are satisfied.

(iii) Expedited review. If an application to establish or relocate a branch is required of an eligible Federal savings association, the application is deemed approved by the OCC as of the 15th day after the close of the applicable public comment period or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC notifies the savings association prior to that date that the filing is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2). An application to establish or relocate more than one branch is deemed approved by the OCC as of the 15th day after the close of the last public comment period.

(2) Exceptions. Except as provided in paragraph (j) of this section, a Federal savings association is not required to submit an application and receive OCC approval under the following circumstances:

(i) Drive-in or pedestrian offices. A Federal savings association may establish a drive-in or pedestrian office that is located within 500 feet of a public entrance to its existing home or

branch office, provided the functions performed at the office are limited to functions that are ordinarily performed at a teller window.

(ii) Short-distance relocation. A Federal savings association may change the permanent location of an existing branch office to a site that is within the market area and short-distance location area, as defined in § 5.3(l).

(iii) Highly rated Federal savings associations. A Federal savings association that is an eligible savings association as defined in § 5.3(g) may change the permanent location of, or establish a new, branch office if it meets all of the following requirements:

(A) It published a public notice under § 5.8 of its intent to change the location of the branch office or establish a new branch office. The public notice must be published at least 35 days before the proposed action establishment or relocation. If the notice is published more than 12 months before the proposed action, the publication is invalid.

(B) If the Federal savings association intends to change the location of an existing branch office, it must post a notice of its intent in a prominent location in the existing office to be relocated. This notice must be posted for 30 days from the date of publication of the initial public notice described in paragraph (f)(2)(iii)(A) of this section.

(C)(1) No person files a comment opposing the proposed action within 30 days after the date of the publication of the public notice; or

(2) A person files a comment opposing the proposed action and the OCC determines that the comment raises issues that are not relevant to the approval standards for an application for a branch or that OCC action in response to the comment is not required.

(3) Notice of branch opening. If a Federal savings association is not required to file an application to establish or relocate a branch pursuant to paragraph (f)(2)(iii) of this section, the

Federal savings association shall file a notice with the OCC with the date the branch was established or relocated and the address of the branch within 10 days after the opening of the branch.

(g) Exceptions to rules of general applicability. (1) The OCC may waive or reduce the public notice and comment period, as appropriate, with respect to an application to establish a branch to restore banking services to a community affected by a disaster or to temporarily replace banking facilities where, because of an emergency, the savings association cannot provide services or must curtail banking services.

(2) The OCC may waive or reduce the public notice and comment period, as appropriate, for an application by a Federal savings association with a CRA rating of Satisfactory or better to establish a temporary branch which, if it were established by a state bank to operate in the manner proposed, would be permissible under state law without state approval.

(h) Expiration of approval. Approval expires if a branch has not commenced business within 18 months after the date of approval unless the OCC grants an extension.

(i) Branch closings. A Federal savings association shall comply with the applicable requirements of 12 U.S.C. 1831r–1 with respect to procedures for branch closings.

(j) Section 5(m) of the HOLA. (1) Under section 5(m)(1) of the HOLA (12 U.S.C. 1464(m)(1)), no savings association may establish or move any branch in the District of Columbia or move its principal office in the District of Columbia without the OCC's prior written approval.

(2) Any Federal savings association that must obtain approval of the OCC under 12 U.S.C. 1464(m)(1) shall follow the application procedures of this section. Any state savings

association that must obtain approval of the OCC under 12 U.S.C. 1464(m)(1) shall follow the application procedures of this section as if it were a Federal savings association.

(k) Agency offices—(1) In general. A Federal savings association may establish or maintain an agency office to engage in one or more of the following activities:

(i) Servicing, originating, or approving loans and contracts;

(ii) Managing or selling real estate owned by the Federal savings association; and

(iii) Conducting fiduciary activities or activities ancillary to the association's fiduciary business in compliance with § 5.26(e).

(2) Additional services—(i) In general. A Federal savings association may request, and the OCC may approve, any service not listed in paragraph (k)(1) of this section, except for payment on savings accounts.

(ii) Application required. A Federal savings association desiring to engage in such additional services shall submit an application to the appropriate OCC licensing office.

(iii) Exceptions to rules of general applicability. Sections 5.8, 5.10, and 5.11 do not apply to filings under this paragraph (k)(2). However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10, and 5.11 apply.

(3) Records. A Federal savings association must maintain records of all business it transacts at an agency office. It must maintain these records at the agency office, and must transmit copies to a home or branch office.

16. Section 5.32 is amended by:

a. Revising the section heading;

b. Adding paragraph (d)(4); and

c. Removing, in paragraph (h)(2), the phrase “to the appropriate district office” and adding in its place the phrase “to the appropriate OCC licensing office”.

The revision and additions read as follows:

§ 5.32 Expedited procedures for certain reorganizations of a national bank.

* * * * *

(d) * * *

(4) Exceptions to rules of general applicability. Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10, and 5.11 apply.

* * * * *

17. Section 5.33 is revised to read as follows:

§ 5.33 Business combinations involving a national bank or Federal savings association.

(a) Authority. 12 U.S.C. 24(Seventh), 93a, 181, 214a, 214b, 215, 215a, 215a–1, 215a–3, 215b, 215c, 1462a, 1463, 1464, 1467a, 1828(c), 1831u, 2903, and 5412(b)(2)(B).

(b) Scope. This section sets forth the provisions governing business combinations and the standards for:

(1) OCC review and approval of an application by a national bank or a Federal savings association for a business combination resulting in a national bank or Federal savings association; and

(2) Requirements of notices and other procedures for national banks and Federal savings associations involved in other combinations in which a national bank or Federal savings association is not the resulting institution.

(c) Licensing requirements. As prescribed by this section, a national bank or Federal savings association shall submit an application and obtain prior OCC approval for a business combination when the resulting institution is a national bank or Federal savings association. As prescribed by this section, a national bank or Federal savings association shall give notice to the OCC prior to engaging in an other combination where the resulting institution will not be a national bank or Federal savings association.[1] A national bank shall submit an application and obtain prior OCC approval for any merger between the national bank and one or more of its nonbank affiliates.

(d) Definitions. For purposes of this section:

(1) Bank means any national bank or any state bank.

(2) Business combination means:

(i) Any merger or consolidation between a national bank or a Federal savings association and one or more depository institutions or state trust companies, in which the resulting institution is a national bank or Federal savings association;

(ii) In the case of a Federal savings association, any merger or consolidation with a credit union in which the resulting institution is a Federal savings association;

(iii) In the case of a national bank, any merger between a national bank and one or more of its nonbank affiliates;

(iv) The acquisition by a national bank or a Federal savings association of all, or substantially all, of the assets of another depository institution; or

[1] Other combination transactions do not require an application under this section. However, some may require an application under 12 CFR 5.53.

(v) The assumption by a national bank or a Federal savings association of any deposit liabilities of another insured depository institution or any deposit accounts or other liabilities of a credit union or any other institution that will become deposits at the national bank or Federal savings association.

(3) Business reorganization means either:

(i) A business combination between eligible banks and eligible savings associations, or between an eligible bank or an eligible savings association and an eligible depository institution, that are controlled by the same holding company or that will be controlled by the same holding company prior to the combination; or

(ii) A business combination between an eligible bank or an eligible savings association and an interim national bank or interim Federal savings association chartered in a transaction in which a person or group of persons exchanges its shares of the eligible bank or eligible savings association for shares of a newly formed holding company and receives after the transaction substantially the same proportional share interest in the holding company as it held in the eligible bank or eligible savings association (except for changes in interests resulting from the exercise of dissenters' rights), and the reorganization involves no other transactions involving the bank or savings association.

(4) Company means a corporation, limited liability company, partnership, business trust, association, or similar organization.

(5) For business combinations under paragraphs (g)(4) and (5) of this section, a company or shareholder is deemed to control another company if:

(i) Such company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company, or

(ii) Such company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company. No company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity.

(6) Credit union means a financial institution subject to examination by the National Credit Union Administration Board.

(7) Home state means, with respect to a national bank, the state in which the main office of the national bank is located and, with respect to a state bank, the state by which the bank is chartered.

(8) Interim national bank or interim Federal savings association means a national bank or Federal savings association that does not operate independently but exists solely as a vehicle to accomplish a business combination.

(9) Nonbank affiliate of a national bank means any company (other than a bank or Federal savings association) that controls, is controlled by, or is under common control with the national bank.

(10) Other combination means:

(i) Any merger or consolidation between a national bank or a Federal savings association and one or more depository institutions or state trust companies, in which the resulting institution is not a national bank or Federal savings association;

(ii) In the case of a Federal stock savings association, any merger or consolidation with a credit union in which the resulting institution is a credit union;

(iii) The transfer by a national bank or a Federal savings association of any deposit liabilities to another insured depository institution, a credit union or any other institution; or

(iv) The acquisition by a national bank or a Federal savings association of all, or substantially all, of the assets, or the assumption of all or substantially all of the liabilities, of any company other than a depository institution.

(11) Savings association and state savings association have the meaning set forth in section 3(b)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(1).

(12) State trust company means a trust company organized under state law that is not engaged in the business of receiving deposits, other than trust funds.

(e) Policy—(1) Factors—(i) In general. When the OCC evaluates any application for a business combination, the OCC considers the following factors:

(A) The capital level of any resulting national bank or Federal savings association

(B) The conformity of the transaction to applicable law, regulation, and supervisory policies;

(C) The purpose of the transaction;

(D) The impact of the transaction on safety and soundness of the national bank or Federal savings association; and

(E) The effect of the transaction on the national bank's or Federal savings association's shareholders (or members in the case of a mutual savings association), depositors, other creditors, and customers.

(ii) Bank Merger Act. When the OCC evaluates an application for a business combination under the Bank Merger Act, the OCC also considers the following factors:

(A) Competition. (1) The OCC considers the effect of a proposed business combination on competition. The applicant shall provide a competitive analysis of the transaction, including a definition of the relevant geographic market or markets. An applicant may refer to the Comptroller's Licensing Manual for procedures to expedite its competitive analysis.

(2) The OCC will deny an application for a business combination if the combination would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the business of banking in any part of the United States. The OCC also will deny any proposed business combination whose effect in any section of the United States may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the probable effects of the transaction in meeting the convenience and needs of the community clearly outweigh the anticompetitive effects of the transaction. For purposes of weighing against anticompetitive effects, a business combination may have favorable effects in meeting the convenience and needs of the community if the depository institution being acquired has limited long-term prospects, or if the resulting national bank or Federal savings association will provide significantly improved, additional, or less costly services to the community.

(B) Financial and managerial resources and future prospects. The OCC considers the financial and managerial resources and future prospects of the existing or proposed institutions.

(C) Convenience and needs of community. The OCC considers the probable effects of the business combination on the convenience and needs of the community served. The applicant shall describe these effects in its application, including any planned office closings or reductions in services following the business combination and the likely impact on the community. The OCC also considers additional relevant factors, including the resulting national bank's or Federal

savings association's ability and plans to provide expanded or less costly services to the community.

(D) Money laundering. The OCC considers the effectiveness of any insured depository institution involved in the business combination in combating money laundering activities, including in overseas branches.

(E) Financial stability. The OCC considers the risk to the stability of the United States banking and financial system.

(F) Deposit concentration limit. The OCC will not approve a transaction that would violate the deposit concentration limit in 12 U.S.C. 1828(c)(13) for certain interstate merger transactions.

(iii) Community Reinvestment Act. When the OCC evaluates an application for a business combination under the Community Reinvestment Act, the OCC also considers the performance of the applicant and the other depository institutions involved in the business combination in helping to meet the credit needs of the relevant communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices.

(2) Acquisition and retention of branches. An applicant shall disclose the location of any branch it will acquire and retain in a business combination, including approved but unopened branches. The OCC considers the acquisition and retention of a branch under the standards set out in § 5.30 or § 5.31, as applicable, but it does not require a separate application.

(3) Subsidiaries. (i) An applicant must identify any subsidiary, financial subsidiary investment, bank service company investment, service corporation investment, or other equity investment to be acquired in a business combination and state the activities of each subsidiary or

other company in which the applicant would be acquiring an investment. The OCC does not require a separate application or notice under §§ 5.34, 5.35, 5.36, 5.38, 5.39, 5.58, and 5.59.

(ii) An national bank applicant proposing to acquire, through a business combination, a subsidiary, financial subsidiary investment, bank service company investment, service corporation investment, or other equity investment of any entity other than a national bank must provide the same information and analysis of the subsidiary's activities, or of the investment, that would be required if the applicant were establishing the subsidiary, or making such investment, pursuant to §§ 5.34, 5.35, 5.36, or 5.39.

(iii) A Federal savings association applicant proposing to acquire, through a business combination, a subsidiary, bank service company investment, service corporation investment, or other equity investment of any entity other than a Federal savings association must provide the same information and analysis of the subsidiary's activities, or of the investment, that would be required if the applicant were establishing the subsidiary, or making such investment, pursuant to §§ 5.35, 5.38, 5.58, or 5.59.

(4) Interim national bank or interim Federal savings association. (i) Application. An applicant for a business combination that plans to use an interim national bank or interim Federal savings association to accomplish the transaction shall file an application to organize an interim national bank or interim Federal savings association as part of the application for the related business combination.

(ii) Conditional approval. The OCC grants conditional preliminary approval to form an interim national bank or interim Federal savings association when it acknowledges receipt of the application for the related business combination.

(iii) Corporate status. An interim national bank or interim Federal savings association becomes a legal entity and may enter into legally valid agreements when it has filed, and the OCC has accepted, the interim national bank's duly executed articles of association and organization certificate or the Federal savings association's charter and bylaws. OCC acceptance occurs:

(A) On the date the OCC advises the interim national bank that its articles of association and organization certificate are acceptable or advises the interim Federal savings association that its charter and bylaws are acceptable; or

(B) On the date the interim national bank files articles of association and an organization certificate that conform to the form for those documents provided by the OCC in the Comptroller's Licensing Manual or the date the interim Federal savings association files a charter and bylaws that conform to the requirements set out in this part 5.

(iv) Other corporate procedures. An applicant should consult the Comptroller's Licensing Manual to determine what other information is necessary to complete the chartering of the interim national bank as a national bank or the interim Federal savings association as a Federal savings association.

(5) Nonconforming assets. (i) An applicant shall identify any nonconforming activities and assets, including nonconforming subsidiaries, of other institutions involved in the business combination that will not be disposed of or discontinued prior to consummation of the transaction. The OCC generally requires a national bank or Federal savings association to divest or conform nonconforming assets, or discontinue nonconforming activities, within a reasonable time following the business combination.

(ii) Any resulting Federal savings association shall conform to the requirements of sections 5(c) and 10(m) of the Home Owners' Loan Act (12 U.S.C. 1464(c) and 1467a(m)) within the time period prescribed by the OCC.

(6) Fiduciary powers. (i) An applicant shall state whether the resulting national bank or Federal savings association intends to exercise fiduciary powers pursuant to § 5.26(b).

(ii) If an applicant intends to exercise fiduciary powers after the combination and requires OCC approval for such powers, the applicant must include the information required under § 5.26(e)(2).

(7) Expiration of approval. Approval of a business combination, and conditional approval to form an interim national bank or interim Federal savings association, if applicable, expires if the business combination is not consummated within six months after the date of OCC approval, unless the OCC grants an extension of time.

(8) Adequacy of disclosure. (i) An applicant shall inform shareholders of all material aspects of a business combination and shall comply with any applicable requirements of the Federal securities laws and securities regulations of the OCC. Accordingly, an applicant shall ensure that all proxy and information statements prepared in connection with a business combination do not contain any untrue or misleading statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(ii) A national bank or Federal savings association applicant with one or more classes of securities subject to the registration provisions of section 12(b) or (g) of the Securities Exchange Act of 1934, 15 U.S.C. 78 l (b) or 78 l (g), shall file preliminary proxy material or information statements for review with the Director, Securities and Corporate Practices Division, OCC,

Washington, DC 20219. Any other applicant shall submit the proxy materials or information statements it uses in connection with the combination to the appropriate OCC licensing office no later than when the materials are sent to the shareholders.

(f) Exceptions to rules of general applicability—(1) National bank or Federal savings association applicant—(i) In general. Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10 and 5.11 apply.

(ii) Statutory notice. If an application is subject to the Bank Merger Act or to another statute that requires notice to the public, a national bank or Federal savings association applicant shall follow the public notice requirements contained in 12 U.S.C. 1828(c)(3) or the other statute and sections 5.8(b) through 5.8(e), 5.10, and 5.11.

(2) Interim national bank or interim Federal savings association. Sections 5.8, 5.10, and 5.11 do not apply to an application to organize an interim national bank or interim Federal savings association. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply. The OCC treats an application to organize an interim national bank or interim Federal savings association as part of the related application to engage in a business combination and does not require a separate public notice and public comment process.

(3) State bank, or state savings association, state trust company, or credit union as resulting institution. Sections 5.7 through 5.13 do not apply to transactions covered by paragraphs (g)(6) or (g)(7) of this section.

(g) Provisions governing consolidations and mergers with different types of entities—(1) Consolidations and mergers under 12 U.S.C. 215 or 215a of a national bank with other national banks and state banks as defined in 12 U.S.C. 215b(1) resulting in a national bank. (i) A national bank entering into a consolidation or merger authorized pursuant to 12 U.S.C. 215 or 215a, respectively, is subject to the approval procedures and requirements with respect to treatment of dissenting shareholders set forth in those provisions.

(ii) Any national bank that will not be the resulting bank in a consolidation or merger under 12 U.S.C. 215 or 215a shall provide a notice to the OCC under paragraph (k) of this section.

(2) Consolidations and mergers of a national bank with Federal savings associations under 12 U.S.C. 215c resulting in a national bank. (i) With the approval of the OCC, any national bank and any Federal savings association may consolidate or merge with a national bank as the resulting institution by complying with the following procedures:

(A) A national bank entering into the consolidation or merger shall follow the procedures of 12 U.S.C. 215 or 215a, respectively, as if the Federal savings association were a national bank.

(B)(1) A Federal savings association entering into the consolidation or merger shall comply with the requirements of paragraph (n) of this section and follow the procedures set out in paragraph (o) of this section and shall provide a notice to the OCC under paragraph (k) of this section.

(2) For purposes of this paragraph (g)(2), a combination in which a national bank acquires all or substantially all of the assets, or assumes all or substantially all of the liabilities,

of a Federal savings association shall be treated as a consolidation for the Federal savings association.

(ii)(A) National bank shareholders who dissent from a plan to consolidate may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 215 as if the Federal savings association were a national bank.

(B) Federal savings association shareholders who dissent from a plan to merge or consolidate may receive in cash the value of their Federal savings association shares if they comply with the requirements of 12 U.S.C. 215 or 215a as if the Federal savings association were a national bank.

(C) The OCC will conduct an appraisal or reappraisal of the value of the national bank or Federal savings association held by dissenting shareholders in accordance with the provisions of 12 U.S.C. 215 or 215a, as applicable, except that the costs and expenses of any appraisal or reappraisal may be apportioned and assessed by the Comptroller as he or she may deem equitable against all or some of the parties. In making this determination the Comptroller shall consider whether any party has acted arbitrarily or not in good faith in respect to the rights provided by this paragraph.

(iii) The consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any participating institution by the resulting institution.

(3) Consolidation or merger of a Federal savings association with another Federal savings association, a national bank, a state bank, a state savings bank, a state savings association, a state trust company, or a credit union resulting in a Federal savings association. (i) With the approval of the OCC, a Federal savings association may consolidate or merge with another Federal

savings association, a national bank, a state bank, a state savings association, a state trust company, or a credit union with the Federal savings association as the resulting institution by complying with the following procedures:

(A)(1) The applicant Federal savings association shall comply with the requirements of paragraph (n) of this section and follow the procedures set out in paragraph (o) of this section.

(2) For purposes of this paragraph (g)(3), a combination in which a Federal savings association acquires all or substantially all of the assets, or assumes all or substantially all of the liabilities, of another other participating institution shall be treated as a consolidation for the acquiring Federal savings association and as a consolidation by a Federal savings association whose assets are acquired, if any.

(B)(1) A national bank entering into a merger or consolidation with a Federal savings association when the resulting institution will be a Federal savings association shall comply with the requirements of 12 U.S.C. 214a and 12 U.S.C. 214c as if the Federal savings association were a state bank. However, for these purposes the references in 12 U.S.C. 214c to "law of the State in which such national banking association is located" and "any State authority" mean "laws and regulations governing Federal savings associations" and "Office of the Comptroller of the Currency" respectively. The national bank also shall provide a notice to the OCC under paragraph (k) of this section.

(2) National bank shareholders who dissent from a plan to merge or consolidate may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 214a as if the Federal savings association were a state bank. The OCC will conduct an appraisal or reappraisal of the value of the national bank shares held by dissenting shareholders in accordance with the provisions of 12 U.S.C. 214a, except that the costs and expenses of any

appraisal or reappraisal may be apportioned and assessed by the Comptroller as he or she may deem equitable against all or some of the parties. In making this determination the Comptroller shall consider whether any party has acted arbitrarily or not in good faith in respect to the rights provided by this paragraphs.

(C)(1) A Federal savings association entering into a merger or consolidation with another Federal savings association when the resulting institution will be the other Federal savings association shall comply with the requirements of paragraph (n) of this section and the procedures of paragraph (o) of this section and shall provide a notice to the OCC under paragraph (k) of this section.

(2) Federal savings association shareholders who dissent from a plan to merge or consolidate may receive in cash the value of their Federal savings association shares if they comply with the requirements of 12 U.S.C. 214a as if the other Federal savings association were a state bank. The OCC will conduct an appraisal or reappraisal of the value of the Federal savings association shares held by dissenting shareholders in accordance with the provisions of 12 U.S.C. 214a, except that the costs and expenses of any appraisal or reappraisal may be apportioned and assessed by the Comptroller as he or she may deem equitable against all or some of the parties. In making this determination the Comptroller shall consider whether any party has acted arbitrarily or not in good faith in respect to the rights provided by this paragraph.

(3) The plan of merger or consolidation must provide the manner of disposing of the shares of the resulting Federal savings association not taken by the dissenting shareholders of the Federal savings association.

(D)(1) A state bank, state savings association, state trust company, or credit union entering into a consolidation or merger with a Federal savings association when the resulting

institution will be a Federal savings association shall follow the procedures for such consolidations or mergers set out in the law of the state or other jurisdiction under which the state bank, state savings association, state trust company, or credit union is organized.

(2) The rights of dissenting shareholders and appraisal of dissenters' shares of stock in the state bank, state savings association, or state trust company, entering into the consolidation or merger shall be determined in the manner prescribed by the law of the state or other jurisdiction under which the state bank, state savings association, or state trust company is organized.

(ii) The consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any participating institution by the resulting institution.

(4) Mergers of a national bank with its nonbank affiliates under 12 U.S.C. 215a–3 resulting in a national bank. (i) With the approval of the OCC, a national bank may merge with one or more of its nonbank affiliates, with the national bank as the resulting institution, in accordance with the provisions of this paragraph, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers. If the national bank is an insured bank, the transaction is also subject to approval by the FDIC under the Bank Merger Act, 12 U.S.C. 1828(c).

(ii) A national bank entering into the merger shall follow the procedures of 12 U.S.C. 215a as if the nonbank affiliate were a state bank, except as otherwise provided herein.

(iii) A nonbank affiliate entering into the merger shall follow the procedures for such mergers set out in the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(iv) The rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank affiliate entering into the merger shall be determined in the manner prescribed by the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(v) The corporate existence of each institution participating in the merger shall be continued in the resulting national bank, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating institutions shall be transferred to the resulting national bank, as set forth in 12 U.S.C. 215a(a), (e), and (f) in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 215a(a), as if the nonbank affiliate were a state bank.

(5) Mergers of an uninsured national bank with its nonbank affiliates under 12 U.S.C. 215a–3 resulting in a nonbank affiliate. (i) With the approval of the OCC, a national bank that is not an insured bank as defined in 12 U.S.C. 1813(h) may merge with one or more of its nonbank affiliates, with the nonbank affiliate as the resulting entity, in accordance with the provisions of this paragraph, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers.

(ii) A national bank entering into the merger shall follow the procedures of 12 U.S.C. 214a, as if the nonbank affiliate were a state bank, except as otherwise provided in this section.

(iii) A nonbank affiliate entering into the merger shall follow the procedures for such mergers set out in the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(iv)(A) National bank shareholders who dissent from an approved plan to merge may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 214a as if the nonbank affiliate were a state bank. The OCC may conduct an appraisal or

reappraisal of dissenters' shares of stock in a national bank involved in the merger if all parties agree that the determination is final and binding on each party and agree on how the total expenses of the OCC in making the appraisal will be divided among the parties and paid to the OCC.

(B) The rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank affiliate involved in the merger shall be determined in the manner prescribed by the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(v) The corporate existence of each entity participating in the merger shall be continued in the resulting nonbank affiliate, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating national bank shall be transferred to the resulting nonbank affiliate as set forth in 12 U.S.C. 214b, in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 214a, as if the nonbank affiliate were a state bank.

(6) Consolidation or merger under 12 U.S.C. 214a of a national bank with a state bank resulting in a state bank as defined in 12 U.S.C. 214(a)—(i) Policy. Prior OCC approval is not required for the merger or consolidation of a national bank with a state bank as defined in 12 U.S.C. 214(a) Termination of a national bank's existence and status as a national banking association is automatic, and its charter cancelled, upon completion of the statutory and regulatory requirements for engaging in the consolidation or merger and consummation of the consolidation or merger.

(ii) Procedures. A national bank desiring to merge or consolidate with a state bank as defined in 12 U.S.C. 214(a) when the resulting institution will be a state bank shall comply with

the requirements and follow the procedures of 12 U.S.C. 214a and 214c and shall provide notice to the OCC under paragraph (k) of this section.

(iii) Dissenters' rights and appraisal procedures. National bank shareholders who dissent from a plan to merge or consolidate may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 214a. The OCC conducts an appraisal or reappraisal of the value of the national bank shares held by dissenting shareholders as provided for in 12 U.S.C. 214a.

(iv) Liquidation account. The consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any participating institution by the resulting institution.

(7) Consolidation or merger of a Federal savings association with a state bank, state savings bank, state savings association, state trust company, or credit union resulting in a state bank, state savings bank, state savings association, state trust company, or credit union—(i) Policy. Prior OCC approval is not required for the merger or consolidation of a Federal savings association with a state bank, state savings bank, state savings association, state trust company, or credit union when the resulting institution will be a state institution or credit union. Termination of a national bank's or Federal savings association's existence and status as a national banking association or Federal savings association is automatic, and its charter cancelled, upon completion of the statutory and regulatory requirements for engaging in the consolidation or merger and consummation of the consolidation or merger.

(ii) Procedures. (A) A Federal savings association desiring to merge or consolidate with a state bank, state savings bank, state savings association, state trust company, or credit union when the resulting institution will be a state institution or credit union shall comply with the

requirements of paragraph (n) of this section and the procedures of paragraph (o) of this section and shall provide notice to the OCC under paragraph (k) of this section.

(B) For purposes of this paragraph (g)(7), a combination in which a state bank, state savings bank, state savings association, state trust company, or credit union acquires all or substantially all of the assets, or assumes all or substantially all of the liabilities, of a Federal savings association shall be treated as a consolidation by the Federal savings association.

(iii) Dissenters' rights and appraisal procedures. (A) Federal savings association shareholders who dissent from a plan to merge or consolidate may receive in cash the value of their Federal savings association shares if they comply with the requirements of 12 U.S.C. 214a as if the Federal savings association were a national bank. The OCC conducts an appraisal or reappraisal of the value of the Federal savings association shares held by dissenting shareholders only if all parties agree that the determination will be final and binding. The parties shall also agree on how the total expenses of the OCC in making the appraisal will be divided among the parties and paid to the OCC.

(B) The plan of merger or consolidation must provide the manner of disposing of the shares of the resulting state institution not taken by the dissenting shareholders of the Federal savings association.

(iv) Liquidation account. The consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any participating institution by the resulting institution.

(h) Interstate combinations under 12 U.S.C. 1831u. A business combination between insured banks with different home states under the authority of 12 U.S.C. 1831u must satisfy the standards and requirements and comply with the procedures of 12 U.S.C. 1831u and either 12

U.S.C. 215, 215a, and 215a–1, as applicable, if the resulting bank is a national bank, or 12 U.S.C. 214a, 214b, and 214c if the resulting bank is a state bank. For purposes of 12 U.S.C. 1831u, the acquisition of a branch without the acquisition of all or substantially all of the assets of a bank is treated as the acquisition of a bank whose home state is the state in which the branch is located.

(i) Expedited review for business reorganizations and streamlined applications. A filing that qualifies as a business reorganization as defined in paragraph (d)(3) of this section, or a filing that qualifies as a streamlined application as described in paragraph (j) of this section, is deemed approved by the OCC as of the 45th day after the application is received by the OCC, or the 15th day after the close of the comment period, whichever is later, unless the OCC notifies the applicant that the filing is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2). An application under this paragraph must contain all necessary information for the OCC to determine if it qualifies as a business reorganization or streamlined application.

(j) Streamlined applications. (1) An applicant may qualify for a streamlined business combination application in the following situations:

(i) At least one party to the transaction is an eligible bank or eligible Federal savings association, and all other parties to the transaction are eligible banks, eligible Federal savings associations, or eligible depository institutions, the resulting national bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the total assets of the target institution are no more than 50 percent of the total assets of the acquiring bank or Federal savings association, as reported in each institution's

Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application;

(ii) The acquiring bank or Federal savings association is an eligible bank or eligible Federal savings association, the target bank or savings association is not an eligible bank, eligible Federal savings association, or an eligible depository institution, the resulting national bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the applicants in a prefiling communication request and obtain approval from the appropriate OCC licensing office to use the streamlined application;

(iii) The acquiring bank or Federal savings association is an eligible bank or eligible Federal savings association, the target bank or savings association is not an eligible bank, eligible Federal savings association, or an eligible depository institution, the resulting bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank or acquiring Federal savings association, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application; or

(iv) In the case of a transaction under paragraph (g)(4) of this section, the acquiring bank is an eligible bank, the resulting national bank will be well capitalized immediately following consummation of the transaction, the applicants in a prefiling communication request and obtain approval from the appropriate OCC licensing office to use the streamlined application, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank, as reported in the bank's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application.

(2) Notwithstanding paragraph (j)(1) of this section, an applicant does not qualify for a streamlined business combination application if the transaction is part of a conversion under part 192 of this chapter.

(3) When a business combination qualifies for a streamlined application, the applicant should consult the Comptroller's Licensing Manual to determine the abbreviated application information required by the OCC. The OCC encourages prefiling communications between the applicants and the appropriate OCC licensing office before filing under paragraph (j) of this section.

(k) Exit notice to OCC—(1) Notice required. As provided in paragraphs (g)(1)(ii), (g)(2)(i)(B), (g)(3)(i)(B)(1), (g)(3)(i)(C)(1), (g)(6)(ii), and (g)(7)(ii) of this section, a national bank or Federal savings association engaging in a consolidation or merger in which it is not the applicant and the resulting institution must file a notice rather than an application to the appropriate OCC licensing office advising of its intention.

(2) Timing of notice. The national bank or Federal savings association shall submit the notice at the time the application to merge or consolidate is filed with the responsible agency under the Bank Merger Act, 12 U.S.C. 1828(c), or if there is no such filing then no later than 30 days prior to the effective date of the merger or consolidation.

(3) Content of notice. The notice shall include the following:

(i)(A) A short description of the material features of the transaction, the identity of the acquiring institution, the identity of the state or Federal regulator to whom the application was made, and the date of the application; or

(B) A copy of a filing made with another Federal or state regulatory agency seeking approval from that agency for the transaction under the Bank Merger Act or other applicable statute;

(ii) The planned consummation date for the transaction;

(iii) Information to demonstrate compliance by the national bank or Federal savings association with applicable requirements to engage in the transactions (e.g., board approval or shareholder or accountholder requirements); and

(iv) If the national bank or Federal savings association submitting the notice maintains a liquidation account established pursuant to part 192 of this chapter, the notice must state that the resulting institution will assume such liquidation account.

(4) Termination of status. The national bank or Federal savings association shall advise the OCC when the transaction is about to be consummated. Termination of a national bank's or Federal savings association's existence and status as a national banking association or Federal savings association is automatic, and its charter cancelled, upon completion of the statutory and regulatory requirements and consummation of the consolidation or merger. When the national bank or Federal savings association files the notice under paragraph(k)(2) of this section, the OCC provides instructions to the national bank or Federal savings association for terminating its status as a national bank or Federal savings, including surrendering its charter to the OCC immediately after consummation of the transaction.

(5) Expiration. If the action contemplated by the notice is not completed within six months after the OCC's receipt of the notice, a new notice must be submitted to the OCC, unless the OCC grants an extension of time.

(l) Mergers and consolidations; transfer of assets and liabilities to the resulting institution. (1) In any consolidation or merger in which the resulting institution is a national bank or Federal savings association, on the effective date of the merger or consolidation, all assets and property (real, personal and mixed, tangible and intangible, choses in action, rights, and credits) then owned by each participating institution or which would inure to any of them, shall, immediately by operation of law and without any conveyance, transfer, or further action, become the property of the resulting national bank or Federal savings association. The resulting national bank or Federal savings association shall be deemed to be a continuation of the entity of each participating institution, the rights and obligations of which shall succeed to such rights and obligations and the duties and liabilities connected therewith.

(2) The authority in paragraph (l)(1) of this section is in addition to any authority granted by applicable statutes for specific transactions and is subject to the National Bank Act, the Home Owners' Loan Act, and other applicable statutes.

(m) Certification of combination; effective date. (1) When a national bank or Federal savings association is the applicant and will be the resulting entity in a consolidation or merger, after receiving approval from the OCC, it shall complete any remaining steps needed to complete the transaction, provide the OCC with a certification that all other required regulatory or shareholder approvals have been obtained, and inform the OCC of the planned consummation date.

(2) When the transaction is consummated, the applicant shall notify the OCC of the consummation date. The OCC will issue a letter certifying that the combination was effective on the date specified in the applicant’s notice.

(n) Authority for and certain limits on business combinations and other transactions by Federal savings associations (1) Federal savings associations may enter into business combinations only in accordance with this section, the Bank Merger Act, and sections 5(d)(3)(A) and 10(s) of the Home Owners' Loan Act.

(2) A Federal savings association may consolidate or merge with another depository institution, a state trust company or a credit union, or may engage in another business combination listed in paragraphs (d)(2)(iv) and (v) of this section, or may engage in an other combination listed in paragraph (d)(10), provided that:

(i) The combination is in compliance with, and receives all approvals required under, any applicable statutes and regulations;

(ii) Any resulting Federal savings association meets the requirements for insurance of accounts; and

(iii) If any combining savings association is a mutual savings association, the resulting institution shall be a mutually held savings association, unless:

(A) The transaction is approved under part 192 governing mutual to stock conversions; or

(B) The transaction involves a mutual holding company reorganization under 12 U.S.C. 1467a(o).

(3) Where the resulting institution is a Federal mutual savings association, the OCC may approve a temporary increase in the number of directors of the resulting institution provided that the association submits a plan for bringing the board of directors into compliance with the requirements of § 5.21(e) within a reasonable period of time.

(4)(i) The Federal savings associations described in paragraph (n)(4)(ii) of this section below must provide affected accountholders with a notice of a proposed account transfer and an

option of retaining the account in the transferring Federal savings association. The notice must allow affected accountholders at least 30 days to consider whether to retain their accounts in the transferring Federal savings association.

(ii) The following savings associations must provide the notices:

(A) A Federal mutual savings association transferring account liabilities to an institution the accounts of which are not insured by the Deposit Insurance Fund or the National Credit Union Share Insurance Fund; and

(B) Any Federal mutual savings association transferring account liabilities to a stock form depository institution.

(o) Procedural requirements for Federal savings association approval of combinations—(1) Board approval. Before a Federal savings association files a notice or application for any consolidation or merger, the combination and combination agreement must be approved by majority vote of the entire board of each constituent Federal savings association in the case of Federal stock savings associations or a two-thirds vote of the entire board of each constituent Federal savings association in the case of Federal mutual savings associations;

(2) Change of name or home office. If the name the resulting Federal savings association or the location of the home office of the resulting Federal savings association will be changed as a result of the business combination, the resulting Federal savings association shall amend its charter accordingly;

(3) Shareholder vote—(i) General rule. Except as otherwise provided in this paragraph (n)(3), an affirmative vote of two-thirds of the outstanding voting stock of any constituent Federal stock savings association shall be required for approval of a consolidation or merger. If any class of shares is entitled to vote as a class pursuant to § 152.4 of this part, an affirmative

vote of a majority of the shares of each voting class and two-thirds of the total voting shares shall be required. The required vote shall be taken at a meeting of the savings association.

(ii) General exception. Stockholders of the resulting Federal stock savings association need not authorize a consolidation or merger if:

(A) It does not involve an interim Federal savings association or an interim state savings association;

(B) The association's charter is not changed;

(C) Each share of stock outstanding immediately prior to the effective date of the consolidation or merger is to be an identical outstanding share or a treasury share of the resulting Federal stock savings association after such effective date; and

(D) Either:

(1) No shares of voting stock of the resulting Federal stock savings association and no securities convertible into such stock are to be issued or delivered under the plan of combination, or

(2) The authorized unissued shares or the treasury shares of voting stock of the resulting Federal stock savings association to be issued or delivered under the plan of combination, plus those initially issuable upon conversion of any securities to be issued or delivered under such plan, do not exceed 15 percent of the total shares of voting stock of such association outstanding immediately prior to the effective date of the consolidation or merger.

(iii) Exceptions for certain combinations involving an interim association. Stockholders of a Federal stock savings association need not authorize by a two-thirds affirmative vote consolidations or mergers involving an interim Federal savings association or interim state savings association when the resulting Federal stock savings association is acquired pursuant to

the regulations of the Board of Governors of the Federal Reserve System at 12 CFR 238.15(e) (relating to the creation of a savings and loan holding company by a savings association). In those cases, an affirmative vote of 50 percent of the shares of the outstanding voting stock of the Federal stock savings association plus one affirmative vote shall be required. If any class of shares is entitled to vote as a class pursuant to § 5.22(g), an affirmative vote of 50 percent of the shares of each voting class plus one affirmative vote shall be required. The required votes shall be taken at a meeting of the association.

(4) Mutual member vote. Notwithstanding any other provision of this section, the OCC may require that a consolidation, merger or other business combination be submitted to the voting members of any mutual savings association participating in the proposed transaction at duly called meetings and that the transaction, to be effective, must be approved by such voting members.

18. Section 5.34 is revised to read as follows:

§ 5.34 Operating subsidiaries of a national bank.

(a) Authority. 12 U.S.C. 24 (Seventh), 24a, 25b, 93a, 3101 et seq.

(b) Licensing requirements. A national bank must file an application or notice as prescribed in this section to acquire or establish an operating subsidiary, or to commence a new activity in an existing operating subsidiary.

(c) Scope. This section sets forth authorized activities and application or notice procedures for national banks engaging in activities through an operating subsidiary. The procedures in this section do not apply to financial subsidiaries authorized under § 5.39. Unless provided otherwise, this section applies to a Federal branch or agency that acquires, establishes, or maintains any subsidiary that a national bank is authorized to acquire or establish under this

section in the same manner and to the same extent as if the Federal branch or agency were a national bank, except that the ownership interest required in paragraphs (e)(2) and (e)(5)(i)(B) of this section shall apply to the parent foreign bank of the Federal branch or agency and not to the Federal branch or agency. The OCC may, at any time, limit a national bank's investment in an operating subsidiary or may limit or refuse to permit any activities in an operating subsidiary for supervisory, legal, or safety and soundness reasons.

(d) Definitions. For purposes of this section:

(1) Authorized product means a product that would be defined as insurance under section 302(c) of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1407) (GLBA) (15 U.S.C. 6712) that, as of January 1, 1999, the OCC had determined in writing that national banks may provide as principal or national banks were in fact lawfully providing the product as principal, and as of that date no court of relevant jurisdiction had, by final judgment, overturned a determination by the OCC that national banks may provide the product as principal. An authorized product does not include title insurance, or an annuity contract the income of which is subject to treatment under section 72 of the Internal Revenue Code of 1986 (26 U.S.C. 72).

(2) Well capitalized means the capital level described in 12 CFR 6.4 or, in the case of a Federal branch or agency, the capital level described in 12 CFR 4.7(b)(1)(iii).

(3) Well managed means, unless otherwise determined in writing by the OCC:

(i) In the case of a national bank:

(A) The national bank has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with its most recent examination; or

(B) In the case of any national bank that has not been examined, the existence and use of managerial resources that the OCC determines are satisfactory.

(ii) In the case of a Federal branch or agency:

(A) The Federal branch or agency has received a composite ROCA supervisory rating (which rates risk management, operational controls, compliance, and asset quality) of 1 or 2 at its most recent examination; or

(B) In the case of a Federal branch or agency that has not been examined, the existence and use of managerial resources that the OCC determines are satisfactory.

(e) Standards and requirements—(1) Authorized activities. (i) A national bank may conduct in an operating subsidiary activities that are permissible for a national bank to engage in directly either as part of, or incidental to, the business of banking, as determined by the OCC, or otherwise under other statutory authority, including:

(A) Providing authorized products as principal; and

(B) Providing title insurance as principal if the national bank or subsidiary thereof was actively and lawfully underwriting title insurance before November 12, 1999, and no affiliate of the national bank (other than a subsidiary) provides insurance as principal. A subsidiary may not provide title insurance as principal if the state had in effect before November 12, 1999, a law which prohibits any person from underwriting title insurance with respect to real property in that state.

(ii) In addition to OCC authorization, before it begins business an operating subsidiary also must comply with other laws applicable to it and its proposed business, including applicable licensing or registration requirements, if any, such as registration requirements under securities laws.

(2) Qualifying subsidiaries. (i) An operating subsidiary in which a national bank may invest includes a corporation, limited liability company, limited partnership, or similar entity if:

(A) The bank has the ability to control the management and operations of the subsidiary, and no other person or entity exercises effective operating control over the subsidiary or has the ability to influence the subsidiary's operations to an extent equal to or greater than that of the bank;

(B) The parent bank owns and controls more than 50 percent of the voting (or similar type of controlling) interest of the operating subsidiary, or the parent bank otherwise controls the operating subsidiary and no other party controls a percentage of the voting (or similar type of controlling) interest of the operating subsidiary greater than the bank's interest; and

(C) The operating subsidiary is consolidated with the bank under generally accepted accounting principles (GAAP).

(ii) However, the following subsidiaries are not operating subsidiaries subject to this section:

(A) A subsidiary in which the bank's investment is made pursuant to specific authorization in a statute or OCC regulation (e.g., a bank service company under 12 U.S.C. 1861 et seq., a financial subsidiary under section 5136A of the Revised Statutes (12 U.S.C. 24a), or a community development corporation subsidiary under 12 U.S.C. 24(Eleventh) and part 24; and

(B) A subsidiary in which the bank has acquired, in good faith, shares through foreclosure on collateral, by way of compromise of a doubtful claim, or to avoid a loss in connection with a debt previously contracted.

(iii) Notwithstanding the requirements of paragraph (e)(2)(i) of this section,

(A) A national bank must have reasonable policies and procedures to preserve the limited liability of the bank and its operating subsidiaries; and

(B) OCC regulations shall not be construed as requiring a national bank and its operating subsidiaries to operate as a single entity.

(3) Examination and supervision. An operating subsidiary conducts activities authorized under this section pursuant to the same authorization, terms and conditions that apply to the conduct of such activities by its parent national bank, unless otherwise specifically provided by statute, regulation, or published OCC policy, including sections 1044 and 1045 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 25b) with respect to the application of state law. If the OCC determines that the operating subsidiary is operating in violation of law, regulation, or written condition, or in an unsafe or unsound manner or otherwise threatens the safety or soundness of the bank, the OCC will direct the bank or operating subsidiary to take appropriate remedial action, which may include requiring the bank to divest or liquidate the operating subsidiary, or discontinue specified activities. OCC authority under this paragraph is subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

(4) Consolidation of figures—(i) National banks. Pertinent book figures of the parent national bank and its operating subsidiary shall be combined for the purpose of applying statutory or regulatory limitations when combination is needed to effect the intent of the statute or regulation, e.g., for purposes of 12 U.S.C. 56, 59, 60, 84, and 371d.

(ii) Federal branches or agencies. Transactions conducted by all of a foreign bank's Federal branches and agencies and state branches and agencies, and their operating subsidiaries, shall be combined for the purpose of applying any limitation or restriction as provided in 12 CFR 28.14.

(5) Procedures—(i) Application required. (A) Except for an operating subsidiary that qualifies for the notice procedures in paragraph (e)(5)(ii) of this section or is exempt from application or notice requirements under paragraph (e)(5)(vi) of this section, a national bank must first submit an application to, and receive prior approval from, the OCC to establish or acquire an operating subsidiary or to perform a new activity in an existing operating subsidiary.

(B) The application must explain, as appropriate, how the bank "controls" the enterprise, describing in full detail structural arrangements where control is based on factors other than bank ownership of more than 50 percent of the voting interest of the subsidiary and the ability to control the management and operations of the subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management. In the case of a limited partnership or limited liability company that does not qualify for the notice procedures set forth in paragraph (e)(5)(ii) of this section, the bank must provide a statement explaining why it is not eligible. The application also must include a complete description of the bank's investment in the subsidiary, the proposed activities of the subsidiary, the organizational structure and management of the subsidiary, the relations between the bank and the subsidiary, and other information necessary to adequately describe the proposal. To the extent that the application relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank must describe the type of insurance activity in which the company is engaged and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable. The application must state whether the operating subsidiary will conduct any activity at a location other than the main office or a previously approved branch of the bank. The OCC may require an applicant to

submit a legal analysis if the proposal is novel, unusually complex, or raises substantial unresolved legal issues. In these cases, the OCC encourages applicants to have a prefiling meeting with the OCC. Any bank receiving approval under this paragraph is deemed to have agreed that the subsidiary will conduct the activity in a manner consistent with published OCC guidance.

(ii) Notice process only for certain qualifying filings. (A) Except for an operating subsidiary that is exempt from application or notice procedures under paragraph (e)(5)(vi) of this section, a national bank that is "well capitalized" and "well managed" may establish or acquire an operating subsidiary, or perform a new activity in an existing operating subsidiary, by providing the appropriate OCC licensing office written notice prior to, or within 10 days after, acquiring or establishing the subsidiary, or commencing the new activity, if:

(1) The activity is listed in paragraph (e)(5)(v) of this section;

(2) The entity is a corporation, limited liability company, or limited partnership; and

(3) The bank:

(i) Has the ability to control the management and operations of the subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management (or, in the case of a limited partnership or a limited liability company, has the ability to control the management and operations of the subsidiary by controlling the selection and termination of senior management), and no other person or entity exercises effective operating control over the subsidiary or has the ability to influence the subsidiary's operations to an extent equal to or greater than the bank's;

(ii) Holds more than 50 percent of the voting, or equivalent, interests in the subsidiary, and, in the case of a limited partnership or limited liability company, the bank or an operating

subsidiary thereof is the sole general partner of the limited partnership or the sole managing member of the limited liability company, provided that under the partnership agreement or limited liability company agreement, limited partners or other limited liability company members have no authority to bind the partnership or limited liability company by virtue solely of their status as limited partners or members; and

(iii) Is required to consolidate its financial statements with those of the subsidiary under generally accepted accounting principles (GAAP).

(B) The written notice must include a complete description of the bank's investment in the subsidiary and of the activity conducted and a representation and undertaking that the activity will be conducted in accordance with OCC policies contained in guidance issued by the OCC regarding the activity. To the extent that the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank must describe the type of insurance activity in which the company is engaged and has present plans to conduct. The bank also must list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable. Any bank receiving approval under this paragraph is deemed to have agreed that the subsidiary will conduct the activity in a manner consistent with published OCC guidance.

(iii) Exceptions to rules of general applicability. Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10, and 5.11 apply.

(iv) OCC review and approval. The OCC reviews a national bank's application to determine whether the proposed activities are legally permissible under Federal banking laws

and to ensure that the proposal is consistent with safe and sound banking practices and OCC policy and does not endanger the safety or soundness of the parent national bank. As part of this process, the OCC may request additional information and analysis from the applicant.

(v) Activities eligible for notice. The following activities qualify for the notice procedures in paragraph (e)(5)(ii) of this section, provided the activity is conducted pursuant to the same terms and conditions as would be applicable if the activity were conducted directly by a national bank:

(A) Holding and managing assets acquired by the parent bank or its operating subsidiaries, including investment assets and property acquired by the bank through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted;

(B) Providing services to or for the bank or its affiliates, including accounting, auditing, appraising, advertising and public relations, and financial advice and consulting;

(C) Making loans or other extensions of credit, and selling money orders, savings bonds, and travelers checks;

(D) Purchasing, selling, servicing, or warehousing loans or other extensions of credit, or interests therein;

(E) Providing courier services between financial institutions;

(F) Providing management consulting, operational advice, and services for other financial institutions;

(G) Providing check guaranty, verification and payment services;

(H) Providing data processing, data warehousing and data transmission products, services, and related activities and facilities, including associated equipment and technology, for the bank or its affiliates;

(I) Acting as investment adviser (including an adviser with investment discretion) or financial adviser or counselor to governmental entities or instrumentalities, businesses, or individuals, including advising registered investment companies and mortgage or real estate investment trusts, furnishing economic forecasts or other economic information, providing investment advice related to futures and options on futures, and providing consumer financial counseling;

(J) Providing tax planning and preparation services;

(K) Providing financial and transactional advice and assistance, including advice and assistance for customers in structuring, arranging, and executing mergers and acquisitions, divestitures, joint ventures, leveraged buyouts, swaps, foreign exchange, derivative transactions, coin and bullion, and capital restructurings;

(L) Underwriting and reinsuring credit related insurance to the extent permitted under section 302 of the GLBA (15 U.S.C. 6712);

(M) Leasing of personal property and acting as an agent or adviser in leases for others;

(N) Providing securities brokerage or acting as a futures commission merchant, and providing related credit and other related services;

(O) Underwriting and dealing, including making a market, in bank permissible securities and purchasing and selling as principal, asset backed obligations;

(P) Acting as an insurance agent or broker, including title insurance to the extent permitted under section 303 of the GLBA (15 U.S.C. 6713);

(Q) Reinsuring mortgage insurance on loans originated, purchased, or serviced by the bank, its subsidiaries, or its affiliates, provided that if the subsidiary enters into a quota share agreement, the subsidiary assumes less than 50 percent of the aggregate insured risk covered by the quota share agreement. A "quota share agreement" is an agreement under which the reinsurer is liable to the primary insurance underwriter for an agreed upon percentage of every claim arising out of the covered book of business ceded by the primary insurance underwriter to the reinsurer;

(R) Acting as a finder pursuant to 12 CFR 7.1002 to the extent permitted by published OCC precedent for national banks;[2]

(S) Offering correspondent services to the extent permitted by published OCC precedent for national banks;

(T) Acting as agent or broker in the sale of fixed or variable annuities;

(U) Offering debt cancellation or debt suspension agreements;

(V) Providing real estate settlement, closing, escrow, and related services; and real estate appraisal services for the subsidiary, parent bank, or other financial institutions;

(W) Acting as a transfer or fiscal agent;

(X) Acting as a digital certification authority to the extent permitted by published OCC precedent for national banks, subject to the terms and conditions contained in that precedent;

(Y) Providing or selling public transportation tickets, event and attraction tickets, gift certificates, prepaid phone cards, promotional and advertising material, postage stamps, and Electronic Benefits Transfer (EBT) script, and similar media, to the extent permitted by

[2] See, e.g., the OCC's monthly publication "Interpretations and Actions." Beginning with the May 1996 issue, the OCC's Web site provides access to electronic versions of "Interpretations and Actions" (www.occ.gov).

published OCC precedent for national banks, subject to the terms and conditions contained in that precedent;

(Z) Providing data processing, and data transmission services, facilities (including equipment, technology, and personnel), databases, advice and access to such services, facilities, databases and advice, for the parent bank and for others, pursuant to 12 CFR 7.5006 to the extent permitted by published OCC precedent for national banks;

(AA) Providing bill presentment, billing, collection, and claims-processing services;

(BB) Providing safekeeping for personal information or valuable confidential trade or business information, such as encryption keys, to the extent permitted by published OCC precedent for national banks;

(CC) Providing payroll processing;

(DD) Providing branch management services;

(EE) Providing merchant processing services except when the activity involves the use of third parties to solicit or underwrite merchants; and

(FF) Performing administrative tasks involved in benefits administration.

(vi) No application or notice required. A national bank may acquire or establish an operating subsidiary, or perform a new activity in an existing operating subsidiary, without filing an application or providing notice to the OCC, if the bank is well managed and well capitalized and the:

(A) Activities of the new subsidiary are limited to those activities previously reported by the bank in connection with the establishment or acquisition of a prior operating subsidiary;

(B) Activities in which the new subsidiary will engage continue to be legally permissible for the subsidiary;

(C) Activities of the new subsidiary will be conducted in accordance with any conditions imposed by the OCC in approving the conduct of these activities for any prior operating subsidiary of the bank; and

(D) The standards set forth in paragraphs (e)(5)(ii)(A)(2) and (3) of this section are satisfied.

(vii) Fiduciary powers. (A) If an operating subsidiary proposes to accept fiduciary appointments for which fiduciary powers are required, such as acting as trustee or executor, then the national bank must have fiduciary powers under 12 U.S.C. 92a and the subsidiary also must have its own fiduciary powers under the law applicable to the subsidiary.

(B) Unless the subsidiary is a registered investment adviser, if an operating subsidiary proposes to exercise investment discretion on behalf of customers or provide investment advice for a fee, the national bank must have prior OCC approval to exercise fiduciary powers pursuant to § 5.26 and 12 CFR part 9.

(viii) Expiration of approval. Approval expires if the national bank has not established or acquired the operating subsidiary, or commenced the new activity in an existing operating subsidiary within 12 months after the date of the approval, unless the OCC shortens or extends the time period.

(6) Grandfathered operating subsidiaries. Notwithstanding the requirements for a qualifying operating subsidiary in paragraph (e)(2) of this section and unless otherwise notified by the OCC with respect to a particular operating subsidiary, an entity that a national bank lawfully acquired or established as an operating subsidiary before April 24, 2008 may continue to operate as a national bank operating subsidiary under this section, provided that the bank and the operating subsidiary were, and continue to be, conducting authorized activities in compliance

with the standards and requirements applicable when the bank established or acquired the operating subsidiary.

(7) Annual Report on Operating Subsidiaries—(i) Filing requirement. Each national bank shall prepare and file with the OCC an Annual Report on Operating Subsidiaries containing the information set forth in paragraph (e)(7)(ii) of this section for each of its operating subsidiaries that:

(A) Is not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)); and

(B) Does business directly with consumers in the United States. For purposes of paragraph (e)(7) of this section, an operating subsidiary, or any subsidiary thereof, does business directly with consumers if, in the ordinary course of its business, it provides products or services to individuals to be used primarily for personal, family, or household purposes.

(ii) Information required. The Annual Report on Operating Subsidiaries must contain the following information for each covered operating subsidiary listed:

(A) The name and charter number of the parent national bank;

(B) The name (include any "dba" (doing business as), abbreviated names, or trade names used to identify the operating subsidiary when it does business directly with consumers), mailing address (include the street address or post office box, city, state, and zip code), e-mail address (if any), and telephone number of the operating subsidiary;

(C) The principal place of business of the operating subsidiary, if different from the address provided pursuant to paragraph (e)(7)(ii)(B) of this section; and

(D) The lines of business in which the operating subsidiary is doing business directly with consumers by designating the appropriate code contained in appendix B (NAICS Activity

Codes for Commonly Reported Activities) to the Instructions for Preparation of Report of Changes in Organizational Structure, Form FR Y–10, a copy of which is set forth on the OCC's Internet Web page at www.occ.gov. If the operating subsidiary is engaged in an activity not set forth in this list, a national bank shall report the code 0000 and provide a brief description of the activity.

(iii) Filing time frames and availability of information. Each national bank's Annual Report on Operating Subsidiaries shall contain information current as of December 31st for the year prior to the year the report is filed. The national bank shall submit its Annual Report on Operating Subsidiaries on or before January 31st each year. The national bank may submit the Annual Report on Operating Subsidiaries electronically or in another format prescribed by the OCC. The OCC will make available to the public the information contained in the Annual Report on Operating Subsidiaries at www.helpwithmybank.gov.

19. Section 5.35 is revised to read as follows:

§ 5.35 Bank service company investments by a national bank or Federal savings association investment.

(a) Authority. 12 U.S.C. 93a, 1462a, 1463, 1464, 1861–1867, 5412(b)(2)(B).

(b) Licensing requirements. Except where otherwise provided, a national bank or Federal savings association shall submit a notice and obtain prior OCC approval to invest in the equity of a bank service company or to perform new activities in an existing bank service company.

(c) Scope. This section describes the procedures and requirements regarding OCC review and approval of a notice by a national bank or Federal savings association to invest in the equity of a bank service company. The OCC may, at any time, limit a national bank’s or Federal savings association’s investment in a bank service company or may limit or refuse to permit any

activities in any bank service company for which a national bank or Federal savings association is the principal investor for supervisory, legal, or safety and soundness reasons.

(d) Definitions—(1) Bank service company means a corporation or limited liability company organized to provide services authorized by the Bank Service Company Act, 12 U.S.C. 1861 et seq., all of whose capital stock is owned by one or more insured depository institutions in the case of a corporation, or all of the members of which are one or more insured depository institutions in the case of a limited liability company.

(2) Limited liability company means any company, partnership, trust, or similar business entity organized under the law of a state (as defined in section 3 of the Federal Deposit Insurance Act) which provides that a member or manager of such company is not personally liable for a debt, obligation, or liability of the company solely by reason of being, or acting as, a member or manager of such company.

(3) Depository institution for purposes of this section, means, except when such term appears in connection with the term 'insured depository institution', an insured bank (as defined in section 3 of the Federal Deposit Insurance Act), a savings association (as defined in section 3 of the Federal Deposit Insurance Act), a financial institution subject to examination by the appropriate Federal banking agency or the National Credit Union Administration Board, or a financial institution the accounts or deposits of which are insured or guaranteed under state law and are eligible to be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Board.

(4) Insured depository institution, for purposes of this section, has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(5) Invest includes making any advance of funds to a bank service company, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered before the payment was made.

(6) Principal investor means the insured depository institution that has the largest amount invested in the equity of a bank service company. In any case where two or more insured depository institutions have equal amounts invested and no other insured depository institution has a larger amount invested, the bank service company shall designate one of those insured depository institutions as its principal investor.

(e) Standards and requirements. A national bank or Federal savings association may invest in a bank service company that conducts activities described in paragraphs (f)(3) and (f)(4) of this section and activities (other than taking deposits) permissible for the national bank or Federal savings association and other insured depository institution shareholders or members of the bank service company.

(f) Procedures—(1) OCC notice and approval required. Except as provided in paragraphs (f)(3) and (f)(4) of this section, a national bank or Federal savings association that intends to invest in the equity of a bank service company, or to perform new activities in an existing bank service company, must submit a notice to and receive prior approval from the OCC. The notice must include the information required by paragraph (g) of this section. The OCC approves or denies a proposed investment within 60 days after the filing is received by the OCC, unless the OCC notifies the bank prior to that date that the filing presents a significant supervisory or compliance concern, or raises a significant legal or policy issue.

(2) Expedited review for certain activities. (i) A notice to invest in the equity of a bank service company, or to perform new activities in an existing bank service company, that meets

the requirements of this paragraph is deemed approved by the OCC as of the 30th day after the notice is received by the OCC, unless the OCC notifies the filer prior to that date that the filing is not eligible for expedited review or the expedited review process is extended. Any bank or savings association making an investment pursuant to this paragraph is deemed to have agreed that the bank service company will conduct the activity in a manner consistent with the published OCC guidance.

(ii) A notice is eligible for expedited review if all of the following requirements are met:

(A) The national bank or Federal savings association is "well capitalized" and "well managed" as defined in § 5.34(d) or § 5.38(d), as applicable; and

(B) The bank service company engages only in activities that are permissible for the bank service company under 12 U.S.C. 1864 and that are listed in § 5.34(e)(5)(v) or § 5.38(e)(5)(v), as applicable.

(3) Investments requiring no approval or notice. A national bank or Federal savings association does not need to submit a notice or obtain OCC approval to invest in a bank service company, or to perform a new activity in an existing bank service company, if the bank service company will provide only the following services only for depository institutions: check and deposit posting and sorting; computation and posting of interest and other credits and charges; preparation and mailing of checks, statements, notices, and similar items; or any other clerical, bookkeeping, accounting, statistical, or similar functions.

(4) Federal Reserve approval. A national bank or Federal savings association also may, with the approval of the Board of Governors of the Federal Reserve System (Federal Reserve Board), invest in the equity of a bank service company that provides any other service (except

deposit taking) that the Federal Reserve Board has determined, by regulation, to be permissible for a bank holding company under 12 U.S.C. 1843(c)(8).

(5) Exceptions to rules of general applicability. Sections 5.8, 5.10, and 5.11 do not apply to a request for approval to invest in a bank service company. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all provisions of §§ 5.8, 5.10, and 5.11 apply.

(g) Required information. A notice required under paragraph (f)(1) of this section must contain the following:

(1) The name and location of the bank service company;

(2) A complete description of the activities the bank service company will conduct and a representation and undertaking that the activities will be conducted in accordance with OCC guidance. To the extent the notice relates to the initial affiliation of the national bank or Federal savings association with a company engaged in insurance activities, the national bank or Federal savings association should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The national bank or Federal savings association also must list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable;

(3) A complete description of the national bank's or Federal savings association's investment in the bank service company and information demonstrating that the national bank or Federal savings association will comply with the investment limitations of paragraph (i) of this section; and

(4) Information demonstrating that the bank service company will perform only those services that each insured depository institution shareholder or member is authorized to perform

under applicable Federal or state law and will perform such services only at locations in a state in which each such shareholder or member is authorized to perform such services unless performing services that are authorized by the Federal Reserve Board under the authority of 12 U.S.C. 1865(b).

(h) Examination and supervision. Each bank service company in which a national bank or Federal savings association is the principal investor is subject to examination and supervision by the OCC in the same manner and to the same extent as that national bank or Federal savings association. OCC authority under this paragraph is subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

(i) Investment limitations. A national bank or Federal savings association may not invest more than 10 percent of its capital and surplus in a bank service company. In addition, the national bank's or Federal savings association's total investments in all bank service companies may not exceed five percent of the national bank's or Federal savings association's total assets.

20. Section 5.36 is amended by:

a. Revising the section heading;

b. In paragraphs (d)(1), (e) introductory text, and (g)(1), by removing the phrase "the appropriate district office" and adding in its place the phrase "the appropriate OCC licensing office";

c. In paragraph (d)(2), remove the phrase "paragraph (c)(1)" and add in its place the phrase "paragraph (d)(1)"; and

d. In paragraph (g)(1), remove the phrase "paragraph (g)(i)" each time it appears and add in its place the phrase "paragraph (g)(1)".

The revision reads as follows:

§ 5.36 Other equity investments by a national bank.

* * * * *

21. Section 5.37 is revised to read as follows:

§ 5.37 Investment in national bank or Federal savings association premises.

(a) Authority. 12 U.S.C. 29, 93a, 317d, 1464(c)(2), 1464(c)(4)(B), 1828(m), and 5412(b)(2)(B).

(b) Scope. This section addresses a national bank's or Federal savings association's investment in banking premises and other premises-related investments, loans, or indebtedness. This section also sets forth the quantitative investment limitations and procedures governing the OCC's review and approval of an application by a national bank or Federal savings association to invest in these premises.

(c) Definitions. The following definitions apply for purposes of this section.

(1) Banking premises includes:

(i) Premises that are owned and occupied (or to be occupied, if under construction) by a national bank or Federal savings association, its respective branches, or its consolidated subsidiaries;

(ii) Capitalized leases and leasehold improvements, vaults, and fixed machinery and equipment;

(iii) Remodeling costs to existing premises;

(iv) Real estate acquired and intended, in good faith, for use in future expansion; or

(v) Parking facilities that are used by customers or employees of the national bank or Federal savings association.

(2) Capital stock means, for national banks and Federal stock savings associations, the amount of common stock outstanding and unimpaired plus the amount of perpetual preferred stock outstanding and unimpaired. With respect to Federal mutual savings associations, "capital stock" should be read to mean the amount of the association's retained earnings.

(3) Capital and surplus means:

(i) A national bank's or Federal savings association's tier 1 and tier 2 capital calculated under 12 CFR part 3, as applicable, as reported in the bank's or savings association's Consolidated Reports of Condition and Income (Call Reports) filed under 12 U.S.C. 161 or 12 U.S.C. 1464(v), respectively; plus

(ii) The balance of a national bank's or Federal savings association's allowance for loan and lease losses not included in the bank's or savings association's tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (c)(3)(i) of this section, as reported in the national bank's or Federal savings association's Call Reports filed under 12 U.S.C. 161 or 1464(v), respectively.

(d) Procedure—(1) Premises application—(i) When required. A national bank or Federal savings association shall submit an application to the appropriate OCC supervisory office to invest in banking premises, or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of the national bank or Federal savings association, or to make loans to or upon the security of the stock of such corporation, if the aggregate of all such investments and loans, together with the indebtedness incurred by any such corporation that is an affiliate of the national bank or Federal savings association, as defined in 12 U.S.C. 221a or 12 U.S.C. 1462, respectively, will exceed the amount of the capital stock of the national bank or

Federal savings association, or, in the case of a Federal mutual savings association the amount of retained earnings.

(ii) Contents of premises application. The application must include:

(A) A description of the national bank's or Federal savings association's present investment in banking premises;

(B) The investment in banking premises that the national bank or Federal savings association intends to make, and the business reason for making the investment; and

(C) The amount by which the national bank's or Federal savings association's aggregate investment will exceed the amount of the national bank's or Federal stock savings association's capital stock, or, in the case of a Federal mutual savings association, the amount of retained earnings.

(2) Approval of premises application. An application from a national bank or Federal savings association to invest in banking premises or in certain banking premises-related investments, loans or indebtedness, as described in paragraph (d)(1)(i) of this section, is deemed approved as of the 30th day after the filing is received by the OCC, unless the OCC notifies the national bank or Federal savings association prior to that date that the filing presents a significant supervisory or compliance concern, or raises a significant legal or policy issue. An approval for a specified amount under this section remains valid up to that amount until the OCC notifies the national bank or Federal savings association otherwise.

(3) Premises notice process—(i) General rule. Notwithstanding paragraph (d)(1)(i) of this section, a national bank or Federal savings association that is rated 1 or 2 under the Uniform Financial Institutions Rating System (CAMELS) may make an aggregate investment in banking premises up to 150 percent of the national bank's or Federal savings association's capital and

surplus without the OCC's prior approval, provided that the national bank or Federal savings association is well capitalized as defined in 12 CFR part 6 and will continue to be well capitalized after the investment or loan is made. However, the national bank or Federal savings association shall notify the appropriate OCC supervisory office in writing of the investment within 30 days after the investment or loan is made. The written notice must include a description of the national bank's or Federal savings association's investment or loan.

(ii) Exception. If a Federal savings association that would otherwise be eligible for the premises notice process described in paragraph (d)(3)(i) of this section proposes to establish or acquire a subsidiary to make an investment in banking premises, or if investing in banking premises would be a new activity for such a subsidiary, the Federal savings association would not be eligible for the premises notice process and would be required to comply with the provisions of § 5.59 in the case of a service corporation, or § 5.38 in the case of an operating subsidiary.

(4) Service corporation. A Federal savings association that invests in banking premises through a service corporation is not subject to the premises application and premises notice requirements of paragraph (d) of this section; however, it must include this investment when calculating the quantitative limitations in paragraph (d) of this section, and must comply with 12 CFR 5.59.

(5) Exceptions to rules of general applicability. Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

22. Section 5.38 is added to read as follows:

§ 5.38 Operating subsidiaries of a Federal savings association.

(a) Authority. 12 U.S.C. 1462a, 1463, 1464, 1465, 1828, 5412(b)(2)(B).

(b) Licensing requirements. When required by section 18(m) of the Federal Deposit Insurance Act, a Federal savings association must file an application as prescribed in this section to acquire or establish an operating subsidiary, or to commence a new activity in an existing operating subsidiary.

(c) Scope. This section sets forth authorized activities and application procedures for Federal savings associations engaging in activities through an operating subsidiary. The OCC may, at any time, limit a Federal savings association's investment in an operating subsidiary or may limit or refuse to permit any activities in an operating subsidiary for supervisory, legal, or safety and soundness reasons.

(d) Definitions. For purposes of this section:

(1) Well capitalized means the capital level described in 12 CFR 6.4.

(2) Well managed means, unless otherwise determined in writing by the OCC:

(i) The Federal savings association has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with its most recent examination; or

(ii) In the case of any Federal savings association that has not been examined, the existence and use of managerial resources that the OCC determines are satisfactory.

(e) Standards and requirements—(1) Authorized activities. (i) A Federal savings association may conduct in an operating subsidiary activities that are permissible for a Federal savings association to engage in directly.

(ii) In addition to OCC authorization, before it begins business an operating subsidiary also must comply with other laws applicable to it and its proposed business, including applicable

licensing or registration requirements, if any, such as registration requirements under securities laws.

(2) Qualifying subsidiaries. (i) An operating subsidiary in which a Federal savings association may invest includes a corporation, limited liability company, limited partnership, or similar entity if:

(A) The savings association has the ability to control the management and operations of the subsidiary, and no other person or entity exercises effective operating control over the subsidiary or has the ability to influence the subsidiary's operations to an extent equal to or greater than that of the savings association;

(B) The parent savings association owns and controls more than 50 percent of the voting (or similar type of controlling) interest of the operating subsidiary, or the parent savings association otherwise controls the operating subsidiary and no other party controls a percentage of the voting (or similar type of controlling) interest of the operating subsidiary greater than the savings association's interest; and

(C) The operating subsidiary is consolidated with the savings association under generally accepted accounting principles (GAAP).

(ii) Subject to the requirements in this section, a Federal savings association may hold another insured depository institution as an operating subsidiary.

(iii) However, the following subsidiaries are not operating subsidiaries subject to this section:

(A) A subsidiary in which the savings association's investment is made pursuant to specific authorization in a statute or OCC regulation (e.g., a service corporation under 12 U.S.C. 1464(c)(4) or a bank service company under 12 U.S.C. 1861 et seq.); and

(B) A subsidiary in which the savings association has acquired, in good faith, shares through foreclosure on collateral, by way of compromise of a doubtful claim, or to avoid a loss in connection with a debt previously contracted.

(iv) Notwithstanding the requirements of paragraph (e)(2)(i) of this section:

(A) a Federal savings association must have reasonable policies and procedures to preserve the limited liability of the savings association and its operating subsidiaries; and

(B) OCC regulations shall not be construed as requiring a Federal savings association and its operating subsidiaries to operate as a single entity.

(3) Examination and supervision. An operating subsidiary conducts activities authorized under this section pursuant to the same authorization, terms and conditions that apply to the conduct of such activities by its parent Federal savings association, unless otherwise specifically provided by statute, regulation, or published OCC policy, including sections 1045 and 1046 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 25b and 1465) with respect to the application of state law. If the OCC determines that the operating subsidiary is operating in violation of law, regulation, or written condition, or in an unsafe or unsound manner or otherwise threatens the safety or soundness of the savings association, the OCC will direct the savings association or operating subsidiary to take appropriate remedial action, which may include requiring the savings association to divest or liquidate the operating subsidiary, or discontinue specified activities. OCC authority under this paragraph is subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

(4) Consolidation of figures. (i) Except as provided in paragraph (e)(4)(ii) of this section, pertinent book figures of the parent Federal savings association and its operating subsidiary shall

be combined for the purpose of applying statutory or regulatory limitations when combination is needed to effect the intent of the statute or regulation, e.g., for purposes of 12 U.S.C. 1464(c) and 1464(u).

(ii) Consolidation for purposes of calculating portfolio assets and qualified thrift investments is subject to 12 U.S.C. 1467a(m)(5).

(5) Procedures—(i) Application required. (A) A Federal savings association must first submit an application to, and receive prior approval from, the OCC to establish or acquire an operating subsidiary, or to perform a new activity in an existing operating subsidiary.

(B) The application must explain, as appropriate, how the savings association "controls" the enterprise, describing in full detail structural arrangements where control is based on factors other than savings association ownership of more than 50 percent of the voting interest of the subsidiary and the ability to control the management and operations of the subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management. In the case of a limited partnership or limited liability company that does not qualify for the expedited review procedure set forth in paragraph (e)(5)(ii) of this section, the savings association must provide a statement explaining why it is not eligible. The application also must include a complete description of the savings association's investment in the subsidiary, the proposed activities of the subsidiary, the organizational structure and management of the subsidiary, the relations between the savings association and the subsidiary, and other information necessary to adequately describe the proposal. To the extent that the application relates to the initial affiliation of the savings association with a company engaged in insurance activities, the savings association must describe the type of insurance activity in which the company is engaged and has present plans to

conduct. The savings association must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable. The application must state whether the operating subsidiary will conduct any activity at a location other than the home office or a previously approved branch of the savings association. The OCC may require an applicant to submit a legal analysis if the proposal is novel, unusually complex, or raises substantial unresolved legal issues. In these cases, the OCC encourages applicants to have a prefiling meeting with the OCC. Any savings association receiving approval under this paragraph is deemed to have agreed that the subsidiary will conduct the activity in a manner consistent with published OCC guidance.

(ii) Expedited review. (A) An application to establish or acquire an operating subsidiary, or to perform a new activity in an existing operating subsidiary, that meets the requirements of this paragraph is deemed approved by the OCC as of the 30th day after the filing is received by the OCC, unless the OCC notifies the applicant prior to that date that the filing is not eligible for expedited review, or the expedited review process is extended under § 5.13(a)(2). Any savings association receiving approval under this paragraph is deemed to have agreed that the subsidiary will conduct the activity in a manner consistent with published OCC guidance.

(B) An application is eligible for expedited review if all of the following requirements are met:

(1) The savings association is "well capitalized" and "well managed";

(2) The activity is listed in paragraph (e)(5)(v) this section;

(3) The entity is a corporation, limited liability company, or limited partnership; and

(4) The savings association:

(i) Has the ability to control the management and operations of the subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management (or, in the case of a limited partnership or a limited liability company, has the ability to control the management and operations of the subsidiary by controlling the selection and termination of senior management), and no other person or entity has the ability to control the management or operations of the subsidiary;

(ii) Holds more than 50 percent of the voting, or equivalent, interests in the subsidiary, and, in the case of a limited partnership or limited liability company, the savings association or an operating subsidiary thereof is the sole general partner of the limited partnership or the sole managing member of the limited liability company, provided that under the partnership agreement or limited liability company agreement, limited partners or other limited liability company members have no authority to bind the partnership or limited liability company by virtue solely of their status as limited partners or members; and

(iii) Is required to consolidate its financial statements with those of the subsidiary under generally accepted accounting principles (GAAP).

An applicant proposing to qualify for expedited review must include in the application all necessary information showing the application meets the requirements.

(iii) Exceptions to rules of general applicability. Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10, and 5.11 apply.

(iv) OCC review and approval. The OCC reviews a Federal savings association’s application to determine whether the proposed activities are legally permissible under Federal

savings association law and to ensure that the proposal is consistent with safe and sound banking practices and OCC policy and does not endanger the safety or soundness of the parent Federal savings association. As part of this process, the OCC may request additional information and analysis from the applicant.

(v) Activities eligible for expedited review. The following activities qualify for the expedited review procedures in paragraph (e)(5)(ii) of this section, provided the activity is conducted pursuant to the same terms and conditions as would be applicable if the activity were conducted directly by a Federal savings association:

(A) Holding and managing assets acquired by the parent savings association or its operating subsidiaries, including investment assets and property acquired by the savings association through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted;

(B) Providing services to or for the savings association or its affiliates, including accounting, auditing, appraising, advertising and public relations, and financial advice and consulting;

(C) Making loans or other extensions of credit, and selling money orders and travelers checks;

(D) Purchasing, selling, servicing, or warehousing loans or other extensions of credit, or interests therein;

(E) Providing management consulting, operational advice, and services for other financial institutions;

(F) Providing check payment services;

(G) Acting as investment adviser (including an adviser with investment discretion) or financial adviser or counselor to governmental entities or instrumentalities, businesses, or individuals, including advising registered investment companies and mortgage or real estate investment trusts;

(H) Providing financial and transactional advice and assistance, including advice and assistance for customers in structuring, arranging, and executing mergers and acquisitions, divestitures, joint ventures, leveraged buyouts, swaps, foreign exchange, derivative transactions, coin and bullion, and capital restructurings;

(I) Underwriting and reinsuring credit life and disability insurance;

(J) Leasing of personal property;

(K) Providing securities brokerage;

(L) Underwriting and dealing, including making a market, in savings association permissible securities and purchasing and selling as principal, asset backed obligations;

(M) Acting as an insurance agent or broker for credit life, disability, and unemployment insurance; single property interest insurance; and title insurance;

(N) Offering correspondent services to the extent permitted by published OCC precedent for Federal savings associations;

(O) Acting as agent or broker in the sale of fixed annuities;

(P) Offering debt cancellation or debt suspension agreements;

(Q) Providing escrow services;

(R) Acting as a transfer agent; and

(S) Providing or selling postage stamps.

(vi) Redesignation. A Federal savings association that proposes to redesignate a service corporation as an operating subsidiary must submit a notification to the OCC at least 30 days prior to the redesignation date. The notification must include a description of how the redesignated service corporation meets all of the requirements of this section to be an operating subsidiary, a resolution of the savings association's board of directors approving the redesignation, and the proposed effective date of the redesignation. The savings association may effect the redesignation on the proposed date unless the OCC notifies the savings association otherwise prior to that date. The OCC may require an application if the redesignation presents policy, supervisory, or legal issues.

(vii) Fiduciary powers. (A) If an operating subsidiary proposes to accept fiduciary appointments for which fiduciary powers are required, such as acting as trustee or executor, then the Federal savings association must have fiduciary powers under 12 U.S.C. 1464(n) and the subsidiary also must have its own fiduciary powers under the law applicable to the subsidiary.

(B) Unless the subsidiary is a registered investment adviser, if an operating subsidiary proposes to exercise investment discretion on behalf of customers or provide investment advice for a fee, the Federal savings association must have prior OCC approval to exercise fiduciary powers pursuant to § 5.26 (or a predecessor provision) and 12 CFR part 150.

(viii) Expiration of approval. Approval expires if the Federal savings association has not established or acquired the operating subsidiary, or commenced the new activity in an existing operating subsidiary within 12 months after the date of the approval, unless the OCC shortens or extends the time period.

(6) Grandfathered operating subsidiaries. Notwithstanding the requirements for a qualifying operating subsidiary in paragraph (e)(2) of this section and unless otherwise notified

by the OCC with respect to a particular operating subsidiary, an entity that a Federal savings association lawfully acquired or established as an operating subsidiary before [INSERT DATE OF FEDERAL REGISTER PUBLICATION OF THIS FINAL RULE], may continue to operate as a Federal savings association operating subsidiary under this section, provided that the savings association and the operating subsidiary were, and continue to be, conducting authorized activities in compliance with the standards and requirements applicable when the savings association established or acquired the operating subsidiary.

(7) Issuances of securities by operating subsidiaries. An operating subsidiary shall not state or imply that the securities it issues are covered by Federal deposit insurance. An operating subsidiary shall not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that the controlling Federal savings association is insolvent or has been placed into receivership. For as long as any securities are outstanding, the controlling Federal savings association must maintain all records generated through each securities issuance in the ordinary course of business, including but not limited to a copy of the prospectus, offering circular, or similar document concerning such issuance, and make such records available for examination by the OCC.

23. Section 5.39 is amended by:

a. Revising the section heading; and

b. In paragraphs (i)(1)(i) and (ii), and (i)(2), removing the phrase “the appropriate district office” and adding in its place the phrase “the appropriate OCC licensing office”.

The revision reads as follows:

§ 5.39 Financial subsidiaries of a national bank.

*** * * * ***

24. Section 5.40 is revised to read as follows:

§ 5.40 Change in location of a main office of a national bank or home office of a Federal savings association.

(a) Authority. 12 U.S.C. 30, 93a, 1462a, 1463, 1464, 1828, 2901-2907 and 5412(b)(2)(B).

(b) Scope. This section describes OCC procedures and approval standards for an application or a notice by a national bank to change the location of its main office or by a Federal savings association to change the location of its home office.[3] A national bank or Federal savings association shall follow the procedures described in paragraph (c) of this section to relocate its main office or home office, as applicable.

(c) Licensing requirements and procedures—(1) Main office or home office relocation to an authorized branch location within city, town, or village limits. A national bank or Federal savings association may change the location of its main office or home office, as applicable, to an authorized branch location (approved or existing branch site) within the limits of the same city, town, or village. The national bank or Federal savings association shall give prior notice to the appropriate OCC licensing office before the relocation. The notice must include the new address of the main office or home office, as applicable, and the effective date of the relocation.

[3] A national bank's main office is the place identified in the bank's original organization certificate under 12 U.S.C. 22 or the subsequent location to which the main office has been changed under this § 5.40, 12 U.S.C. 30(b), or other applicable law, as reflected in the national bank's amended articles of association. A Federal savings association's home office is the office identified as such in the savings association's original charter or the subsequent location to which the home office has been changed under this § 5.40, or other applicable law, as reflected in the savings association's amended charter. These terms are functionally the same but are used in our regulations in order to be consistent with the relevant statutes that govern national banks and Federal savings associations, respectively.

(2) To any other location—(i) National banks. A national bank shall submit an application to the appropriate OCC licensing office and obtain prior OCC approval to relocate its main office to any other location in the city, town, or village in which the main office of the bank is located other than an authorized branch location or to any other location within 30 miles of the limits of such city, town, or village. If relocating the main office outside the limits of its city, town, or village, a national bank shall also obtain the approval of shareholders owning two-thirds of the voting stock of the bank and shall amend its articles of association.

(ii) Federal savings associations. A Federal savings association shall submit an application to the appropriate OCC licensing office and obtain prior OCC approval to relocate its home office to any location other than an authorized branch location within the city, town, or village in which the home office of the savings association is located. If relocating the home office outside the limits of its city, town, or village, a Federal savings association shall obtain any shareholder approval required under its charter for such relocation and shall amend its charter.

(3) Establishment of a branch at site of former main office or home office. A national bank or Federal savings association desiring to establish a branch at its former main office or home office location, as applicable, shall follow the provisions of § 5.30 or § 5.31, respectively.

(4) Expedited review. A main office or home office relocation application submitted by an eligible national bank or eligible Federal savings association under paragraph (c)(2) of this section is deemed approved by the OCC as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC (or in the case of a short-distance relocation the 30th day after the filing is received by the OCC), whichever is later, unless the

OCC notifies the bank or savings association prior to that time that the filing is not eligible for expedited review, or the expedited review period is extended, under § 5.13(a)(2).

(5) Exceptions to rules of general applicability. (i) Sections 5.8, 5.9, 5.10, and 5.11 do not apply to a main office or home office relocation to an authorized branch location within the limits of the city, town, or village as described in paragraph (c)(1) of this section. However, if the OCC concludes that the notice under paragraph (c)(1) of this section presents a significant or novel policy, supervisory, or legal issue, the OCC may determine that any or all parts of §§ 5.8, 5.9, 5.10, and 5.11 apply.

(ii) The comment period on any application filed under paragraph (c)(2) of this section to engage in a short-distance relocation of a main office or home office is 15 days.

(d) Expiration of approval. Approval expires if the national bank or Federal savings association has not opened its main office or home office, as applicable, at the relocated site within 18 months of the date of approval, unless the OCC grants an extension.

25. Section 5.42 is revised to read as follows:

§ 5.42 Corporate title of a national bank or Federal savings association.

(a) Authority. 12 U.S.C. 21a, 30, 93a,1462a, 1463, 1464, 1467a, 2901 et.seq. and, 5412(b)(2)(B).

(b) Scope. This section describes the method by which a national bank or Federal savings association may change its corporate title.

(c) Standards. (1) A national bank or Federal savings association may change its corporate title provided that the new title complies with applicable laws, including 18 U.S.C. 709, regarding false advertising and the misuse of names to indicate a Federal agency, and any applicable OCC guidance.

(2) For a national bank, the new title must include the word "national."

(d) Procedures—(1) Notice process. A national bank or Federal savings association shall promptly notify the appropriate OCC licensing office if it changes its corporate title. The notice must contain the old and new titles and the effective date of the change.

(2) Amendment to articles of association. A national bank whose corporate title is specified in its articles of association shall amend its articles, in accordance with the procedures of 12 U.S.C. 21a, to change its title.

(3) Amendment to charter. A Federal savings association shall change its title by amending its charter in accordance with 12 CFR 5.21 or 5.22, as applicable.

(4) Exceptions to rules of general applicability. Sections 5.8, 5.9, 5.10, 5.11, and 5.13(a) do not apply to a national bank or Federal savings association's change of corporate title. However, if the OCC concludes that the application presents a significant or novel policy, supervisory, or legal issue, the OCC may determine that any or all parts of §§ 5.8, 5.9, 5.10, 5.11, and 5.13(a) apply.

26. Section 5.45 is added to read as follows:

§ 5.45 Increases in permanent capital of a Federal stock savings association.

(a) Authority. 12 U.S.C. 1462a, 1463, 1464, 1467a, 1831o and 5412(b)(2)(B).

(b) Licensing requirements. Generally a Federal savings association is not required to apply for an increase in capital unless the method of increase itself requires a filing (such as issuance of a new class of stock). However, in certain circumstances, a Federal stock savings association is required to submit an application and obtain OCC approval.

(c) Scope. This section describes procedures and standards relating to a transaction resulting in an increase in a Federal stock savings association's permanent capital.

(d) Exceptions to rules of general applicability. Sections 5.8, 5.10, and 5.11 do not apply to increases in a Federal stock savings association's permanent capital.

(e) Definitions. For the purposes of this section the following definitions apply:

(1) Capital plan means a plan describing the manner and schedule by which a Federal savings association will attain specified capital levels or ratios and a capital restoration plan filed with the OCC under 12 U.S.C. 1831o and 12 CFR 6.5.

(2) Capital stock means the total amount of common stock and preferred stock.

(3) Capital surplus means the total of:

(i) The amount paid in on capital stock in excess of the par or stated value;

(ii) Direct capital contributions representing the amounts paid in to the Federal stock savings association other than for capital stock;

(iii) The amount transferred from retained net income; and

(iv) The amount transferred from retained net income reflecting stock dividends.

(4) Permanent capital means the sum of capital stock and capital surplus.

(5) Retained net income means the net income of a specified period less the amount of all dividends and other capital distributions declared in that period.

(f) Policy. In determining whether to approve a proposed increase in a Federal stock savings association's permanent capital, the OCC considers whether the change is:

(1) Consistent with law, regulation, and OCC policy thereunder;

(2) Provides an adequate capital structure; and

(3) If appropriate, complies with the savings association's capital plan.

(g) Procedures—(1) When prior approval is required. A Federal stock savings association must submit an application to the appropriate OCC licensing office and obtain prior OCC approval to increase its permanent capital if the savings association is:

(i) Required to receive OCC approval pursuant to letter, order, directive, written agreement or otherwise;

(ii) Selling common or preferred stock for consideration other than cash; or

(iii) Receiving a material noncash contribution to capital surplus.

(2) Content of application. The application must:

(i) Describe the type and amount of the proposed change in permanent capital and explain the reason for the change;

(ii) In the case of a material noncash contribution to capital, provide a description of the method of valuing the contribution; and

(iii) State if the savings association is subject to a capital plan with the OCC and how the proposed change would conform to a capital plan or if a capital plan is otherwise required in connection with the proposed change in permanent capital.

(3) Expedited review. An eligible savings association's application is deemed approved by the OCC 15 days after the date the OCC receives the application, unless the OCC notifies the savings association prior to that date that the application is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2).

(4) Notice of increase. (i) After a savings association completes an increase in capital it shall submit a notice to the appropriate OCC licensing office. The notice must contain:

(A) The amount, including the par value of the stock, and effective date of the increase;

(B) A certification that the funds have been paid in, if applicable; and

(C) A statement that the savings association has complied with all laws, regulations and conditions imposed by the OCC.

(5) Expiration of approval. Approval expires if a Federal savings association has not completed its change in permanent capital within one year of the date of approval.

(h) Offers and sales of stock. A savings association shall comply with the Securities Offering Disclosure Rules in 12 CFR part 197 for offers and sales of common and preferred stock.

(i) Shareholder approval. A savings association shall obtain the necessary shareholder approval required by statute for any change in its permanent capital.

27. Section 5.46 is revised to read as follows:

§ 5.46 Changes in permanent capital of a national bank.

(a) Authority. 12 U.S.C. 21a, 51a, 51b, 51b-1, 52, 56, 57, 59, 60, and 93a.

(b) Licensing requirements. A national bank shall submit an application and obtain OCC approval to decrease its permanent capital. Generally, a national bank need only submit a notice to increase its permanent capital, although, in certain circumstances, a national bank shall be required to submit an application and obtain OCC approval.

(c) Scope. This section describes procedures and standards relating to a transaction resulting in a change in a national bank's permanent capital.

(d) Exceptions to rules of general applicability. Sections 5.8, 5.10, and 5.11 do not apply to changes in a national bank's permanent capital.

(e) Definitions. For the purposes of this section the following definitions apply:

(1) Capital plan means a plan describing the manner and schedule by which a national bank will attain specified capital levels or ratios and a capital restoration plan filed with the OCC under 12 U.S.C. 1831o and 12 CFR 6.5.

(2) Capital stock means the total amount of common stock and preferred stock.

(3) Capital surplus means the total of:

(i) The amount paid in on capital stock in excess of the par or stated value;

(ii) Direct capital contributions representing the amounts paid in to the national bank other than for capital stock;

(iii) The amount transferred from undivided profits; and

(iv) The amount transferred from undivided profits reflecting stock dividends.

(4) Permanent capital means the sum of capital stock and capital surplus.

(f) Policy. In determining whether to approve a proposed change to a national bank's permanent capital, the OCC considers whether the change is:

(1) Consistent with law, regulation, and OCC policy thereunder;

(2) Provides an adequate capital structure; and

(3) If appropriate, complies with the bank's capital plan.

(g) Increases in permanent capital—(1) Approval—(i) Prior approval not required. If a national bank is not required to file an application and obtain prior approval under paragraph (g)(1)(ii) of this section, the bank need not submit an application. It must submit the notice of capital increase under paragraph (i)(3) of this section. The increase in capital is deemed approved by the OCC as of the date the increase was made, once the bank has filed the notice of capital increase and the OCC certifies the increase, as provided in paragraph (i)(3).

(ii) Prior approval required. A national bank must submit an application under paragraph (i)(1) of this section and obtain prior OCC approval to increase its permanent capital if the bank is:

(A) Required to receive OCC approval pursuant to letter, order, directive, written agreement or otherwise;

(B) Selling common or preferred stock for consideration other than cash; or

(C) Receiving a material noncash contribution to capital surplus.

The bank also must submit the notice of capital increase under paragraph (i)(3) of this section.

(2) Preferred stock. Notwithstanding paragraph (g)(1)(i) of this section, in the case of a sale of preferred stock, the national bank shall also submit provisions in the articles of association concerning preferred stock dividends, voting and conversion rights, retirement of the stock, and rights to exercise control over management to the appropriate OCC licensing office prior to the sale of the preferred stock. The provisions will be deemed approved by the OCC within 15 days of its receipt, unless the OCC notifies the applicant otherwise, including a statement of the reason for the delay.

(h) Decreases in permanent capital. A national bank shall submit an application and obtain prior approval under paragraph (i)(1) or (i)(2) of this section for any reduction of its permanent capital.

(i) Procedures—(1) Prior approval. A national bank proposing to make a change in its permanent capital that requires prior OCC approval under paragraphs (g) or (h) of this section shall submit an application to the appropriate OCC licensing office. The application must:

(i) Describe the type and amount of the proposed change in permanent capital and explain the reason for the change;

(ii) In the case of a reduction in capital, provide a schedule detailing the present and proposed capital structure;

(iii) In the case of a material noncash contribution to capital, provide a description of the method of valuing the contribution; and

(iv) State if the bank is subject to a capital plan with the OCC and how the proposed change would conform to a capital plan or if a capital plan is otherwise required in connection with the proposed change in permanent capital.

(2) Expedited review. An eligible bank's application is deemed approved by the OCC 15 days after the date the OCC receives the application described in paragraph (i)(1) of this section, unless the OCC notifies the bank prior to that date that the application is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2). An eligible bank seeking to decrease its capital may request OCC approval for up to four consecutive quarters. An eligible bank may decrease its capital pursuant to such a plan only if the bank maintains its eligible bank status before and after each decrease in its capital.

(3) Notice of increase. (i) After a bank completes an increase in capital it shall submit a notice to the appropriate OCC licensing office. The notice must be acknowledged before a notary public by the bank's president, vice president, or cashier and contain:

(A) A description of the transaction, unless already provided pursuant to paragraph (i)(1) of this section;

(B) The amount, including the par value of the stock, and effective date of the increase;

(C) A certification that the funds have been paid in, if applicable;

(D) A certified copy of the amendment to the articles of association, if required; and

(E) A statement that the bank has complied with all laws, regulations and conditions imposed by the OCC.

(ii) After it receives the notice of capital increase, the OCC issues a certification specifying the amount of the increase and the effective date (i.e., the date on which the increase occurred). In the case of a capital increase for which prior approval was not required pursuant to paragraph (g)(1)(i), the increase is deemed certified by the OCC seven days after receipt of the notice if the OCC has not issued a certification prior to that date.

(4) Notice of decrease. A national bank that decreases its capital in accordance with paragraphs (i)(1) or (i)(2) of this section shall notify the appropriate OCC licensing office following the completion of the transaction.

(5) Expiration of approval. Approval expires if a national bank has not completed its change in permanent capital within one year of the date of approval.

(j) Offers and sales of stock. A national bank shall comply with the Securities Offering Disclosure Rules in 12 CFR part 16 for offers and sales of common and preferred stock.

(k) Shareholder approval. A national bank shall obtain the necessary shareholder approval required by statute for any change in its permanent capital.

§ 5.47 [Amended]

28. Section 5.47 is amended in paragraph (g)(2)(ii) by redesignating footnote 2 as footnote 4.

29. Section 5.48 is revised to read as follows:

§ 5.48 Voluntary liquidation of a national bank or Federal savings association.

(a) Authority. 12 U.S.C. 93a, 181, 182, 1463, 1464, and 5412(b)(1)(B).

(b) Licensing requirements. A national bank or a Federal savings association considering going into voluntary liquidation shall provide preliminary notice to the OCC. The bank or savings association shall also file a notice with the OCC once a liquidation plan is definite. The bank or savings association may not begin liquidation unless the OCC has notified it that the OCC does not object to the liquidation plan.

(c) Exceptions to rules of general applicability. Sections 5.8, 5.10, and 5.11 do not apply to a voluntary liquidation. However, if the OCC concludes that the notice presents significant or novel policy, supervisory or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

(d) Standards—(1) In general. In reviewing a proposed liquidation plan, the OCC will consider:

(i) The purpose of the liquidation;

(ii) Its impact on the safety and soundness of the national bank or Federal savings association; and

(iii) Its impact on the bank's or savings association's depositors, other creditors, and customers.

(2) National banks. For national banks, the OCC also will review liquidation plans for compliance with 12 U.S.C. 181 and 182.

(3) Federal mutual savings associations. For Federal mutual savings associations, the OCC also will assess the advisability of, and alternatives to, liquidation and the effect of liquidation on all concerned.

(e) Procedure—(1) Preliminary notice of voluntary liquidation. A national bank or Federal savings association that is considering going into voluntary liquidation shall provide preliminary notice to the appropriate OCC licensing office.

(2) Submission of liquidation plan and nonobjection. (i) After a national bank or Federal savings association provides preliminary notice under paragraph (e)(1) of this section, if the bank or savings association plans to proceed with liquidation, it shall submit a voluntary liquidation plan to the OCC. A liquidation plan may be effected in whole or part through purchase and assumption transactions.

(ii) The national bank or Federal savings association must receive the OCC's supervisory non-objection to the liquidation plan before beginning the liquidation.

(3) Notice upon commencing liquidation—(i) In general. When the board of directors and the shareholders of a solvent national bank or Federal savings association, or in the case of a Federal mutual savings association, the board of directors and the members, have voted to voluntarily liquidate, the bank or savings association shall:

(A) File a notice with the appropriate OCC licensing office; and

(B) provide notice to depositors, other known creditors, and known claimants of the bank or savings association.

(ii) National banks. A vote to liquidate a national bank must comply with 12 U.S.C. 181. In addition, a national bank shall publish notice in accordance with 12 U.S.C. 182.

(iii) Federal savings associations. A Federal savings association shall publish public notice if so directed by the OCC.

(4) Report of condition. The national bank's or Federal savings association's liquidating agent or committee shall submit a report to the appropriate OCC licensing office at the start of

liquidation showing the bank's or savings association's balance sheet as of the start of liquidation. The liquidating national bank or Federal savings association shall submit reports of the condition of its commercial, trust, and other departments to the appropriate OCC licensing office by filing the quarterly Consolidated Reports of Condition and Income (Call Reports).

(5) Report of progress. The national bank's or Federal savings association's liquidating agent or committee shall submit a "Report of Progress of Liquidation" annually to the appropriate OCC licensing office until the liquidation is complete.

(6) Final report. The national bank's or Federal savings association's liquidating agent or committee shall submit a final report at the conclusion of liquidation showing that all creditors have been satisfied, remaining assets have been distributed to shareholders, resolutions to dissolve the bank or savings association have been adopted, and the bank or savings association has been dissolved. The national bank or Federal savings association also shall return its charter certificate to the OCC.

(f) Expedited liquidations in connection with acquisitions—(1) In general. When an acquiring depository institution in a business combination purchases all the assets, and assumes all the liabilities, including all contingent liabilities, of a target national bank or Federal savings association, the target national bank or Federal savings association may be dissolved immediately after the combination. However, if any liabilities will remain in the target national bank or Federal savings association, then the standard liquidation procedures apply. This paragraph (f) does not apply to dissolutions of Federal mutual savings associations, which are subject to the standard liquidation procedures.

(2) Procedure. After its board of directors and shareholders have voted to liquidate and the national bank or Federal savings association has notified the appropriate OCC licensing

office of its plans, the bank or savings association may surrender its charter and dissolve immediately, if:

(i) The acquiring depository institution certifies to the OCC that it has purchased all the assets and assumed all the liabilities, including all contingent liabilities, of the national bank or Federal savings association in liquidation; and

(ii) The acquiring depository institution and the national bank or Federal savings association in liquidation have published notice that the bank or savings association will dissolve after the purchase and assumption to the acquiror. This notice shall be included in the notice and publication for the purchase and assumption required under the Bank Merger Act, 12 U.S.C. 1828(c).

30. Section 5.50 is revised to read as follows:

§ 5.50 Change in control of a national bank or Federal savings association; reporting of stock loans.

(a) Authority. 12 U.S.C. 93a, 1817(j), and 1831aa.

(b) Licensing requirements. Any person seeking to acquire control of a national bank or Federal savings association shall provide 60 days prior written notice of a change in control to the OCC, except where otherwise provided in this section.

(c) Scope—(1) In general. This section describes the procedures and standards governing OCC review of notices for a change in control of a national bank or Federal savings association and reports of stock loans.

(2) Exempt transactions. The following transactions are not subject to the requirements of this section:

(i) The acquisition of additional shares of a national bank or Federal savings association by a person who:

(A) Has, continuously since March 9, 1979, (or since that institution commenced business, if later) held power to vote 25 percent or more of the voting securities of that bank or Federal savings association; or

(B) Under paragraph (f)(2)(ii) of this section, would be presumed to have controlled that bank or Federal savings association continuously since March 9, 1979, if the transaction will not result in that person's direct or indirect ownership or power to vote 25 percent or more of any class of voting securities of the national bank or Federal savings association; or, in other cases, where the OCC determines that the person has controlled the bank or savings association continuously since March 9, 1979;

(ii) Unless the OCC otherwise provides in writing, the acquisition of additional shares of a national bank or Federal savings association by a person who has lawfully acquired and maintained continuous control of the bank or Federal savings association under paragraph (f) of this section after complying with the procedures and filing the notice required by this section;

(iii) A transaction subject to approval under section 3 of the Bank Holding Company Act, 12 U.S.C. 1842, section 18(c) of Federal Deposit Insurance Act, 12 U.S.C. 1828(c), or section 10 of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1467a;

(iv) Any transaction described in section 2(a)(5) or 3(a) (A) or (B) of the Bank Holding Company Act, 12 U.S.C. 1841(a)(5) and 1842(a) (A) and (B), by a person described in those provisions;

(v) A customary one-time proxy solicitation or receipt of pro rata stock dividends; and

(vi) The acquisition of shares of a foreign bank that has a Federally licensed branch in the United States. This exemption does not extend to the reports and information required under paragraph (i) of this section.

(3) Prior notice exemption. The following transactions are not subject to the prior notice requirements of this section but are otherwise subject to this section, including filing a notice and paying the appropriate filing fee, within 90 calendar days after the transaction occurs:

(i) The acquisition of control as a result of acquisition of voting shares of a national bank or Federal savings association through testate or intestate succession;

(ii) The acquisition of control as a result of acquisition of voting shares of a national bank or Federal savings association as a bona fide gift;

(iii) The acquisition of voting shares of a national bank or Federal savings association resulting from a redemption of voting securities;

(iv) The acquisition of control of a national bank or Federal savings association as a result of actions by third parties (including the sale of securities) that are not within the control of the acquiror; and

(v) The acquisition of control as a result of the acquisition of voting shares of a national bank or Federal savings association in satisfaction of a debt previously contracted in good faith.

(A) "Good faith" means that a person must either make, renew, or acquire a loan secured by voting securities of a national bank or Federal savings association in advance of any knowledge of a default or of the substantial likelihood that a default is forthcoming. A person who purchases a previously defaulted loan, or a loan for which there is a substantial likelihood of default, secured by voting securities of a national bank or Federal savings association may not rely on this paragraph (c)(3)(v) to foreclose on that loan, seize or purchase the underlying

collateral, and acquire control of the national bank or Federal savings association without complying with the prior notice requirements of this section.

(B) To ensure compliance with this section, the acquiror of a defaulted loan secured by a controlling amount of a national bank's or a Federal savings association's voting securities shall file a notice prior to the time the loan is acquired unless the acquiror can demonstrate to the satisfaction of the OCC that the voting securities are not the anticipated source of repayment for the loan.

(d) Definitions. As used in this section:

(1) Acquire when used in connection with the acquisition of stock of a national bank or Federal savings association means obtaining ownership, control, power to vote, or sole power of disposition of stock, directly or indirectly or through one or more transactions or subsidiaries, through purchase, assignment, transfer, pledge, exchange, succession, or other disposition of voting stock, including:

(i) An increase in percentage ownership resulting from a redemption, repurchase, reverse stock split or a similar transaction involving other securities of the same class, and

(ii) The acquisition of stock by a group of persons and/or companies acting in concert, which shall be deemed to occur upon formation of such group.

(2) Acting in concert means:

(i) Knowing participation in a joint activity or parallel action towards a common goal of acquiring control whether or not pursuant to an express agreement; or

(ii) A combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement, or other arrangement, whether written or otherwise.

(3) Company means any corporation, partnership, trust, association, joint venture, pool, syndicate, unincorporated organization, joint-stock company or similar organization.

(4) Control means the power, directly or indirectly, to direct the management or policies of a national bank or Federal savings association or to vote 25 percent or more of any class of voting securities of a national bank or Federal savings association.

(5) Controlling shareholder means any person who directly or indirectly or acting in concert with one or more persons or companies, or together with members of his or her immediate family, owns, controls, or holds with power to vote 10 percent or more of the voting stock of a company or controls in any manner the election or appointment of a majority of the company's board of directors.

(6) Federal savings association means a Federal savings association or a Federal savings bank chartered under section 5 of the HOLA.

(7) Immediate family includes a person's spouse, father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, children, stepchildren, grandparent, grandchildren, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and the spouse of any of the forgoing.

(8) Insured depository institution means an insured depository institution as defined in 12 U.S.C. 1813(c)(2).

(9) Management official means any president, chief executive officer, chief operating officer, vice president, director, partner, or trustee, or any other person who performs or has a representative or nominee performing similar policymaking functions, including executive officers of principal business units or divisions or subsidiaries who perform policymaking functions, for a national bank, savings association, or a company, whether or not incorporated.

(10) Notice means a filing by a person in accordance with paragraph (f) of this section.

(11) Person means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity, and includes voting trusts and voting agreements and any group of persons acting in concert.

(12) Similar organization for purposes of paragraph (d)(3) of this section means a combination of parties with the potential for or practical likelihood of continuing rather than temporary existence, where the parties thereto have knowingly and voluntarily associated for a common purpose pursuant to identifiable and binding relationships which govern the parties with respect to either:

(i) The transferability and voting of any stock or other indicia of participation in another entity, or

(ii) Achievement of a common or shared objective, such as to collectively manage or control another entity.

(13) Stock means common or preferred stock, general or limited partnership shares or interests, or similar interests.

(14) Voting securities means:

(i) Shares of stock, if the shares or interests, by statute, charter, or in any manner, allow the holder to vote for or select directors (or persons exercising similar functions) of the issuing national bank or Federal savings association, or to vote on or to direct the conduct of the operations or other significant policies of the issuing national bank or Federal savings association. However, preferred stock or similar interests are not voting securities if:

(A) Any voting rights associated with the shares or interests are limited solely to voting rights customarily provided by statute regarding matters that would significantly affect the rights or preference of the security or other interest. This includes the issuance of additional amounts of classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing national bank, or the payment of dividends by the issuing national bank or Federal savings association when preferred dividends are in arrears;

(B) The shares or interests are a passive investment or financing device and do not otherwise provide the holder with control over the issuing national bank or Federal savings association; and

(C) The shares or interests do not allow the holder by statute, charter, or in any manner, to select or to vote for the selection of directors (or persons exercising similar functions) of the issuing national bank or Federal savings association.

(ii) Securities, other instruments, or similar interests that are immediately convertible, at the option of the owner or holder thereof, into voting securities.

(e) Policy—(1) In general. The OCC seeks to enhance and maintain public confidence in the banking system by preventing a change in control of a national bank or Federal savings association that could have serious adverse effects on a national bank's or Federal savings association's financial stability or management resources, the interests of the bank's or Federal savings association's customers, the Deposit Insurance Fund, or competition.

(2) Acquisitions subject to the Bank Holding Company Act. (i) If corporations, partnerships, certain trusts, associations, and similar organizations, that are not already bank holding companies, are not required to secure prior Federal Reserve Board approval to acquire control of a bank under section 3 of the Bank Holding Company Act, 12 U.S.C. 1842, other than

indirectly through the acquisition of shares of a bank holding company, they are subject to the notice requirements of this section.

(ii) Certain transactions, including foreclosures by depository institutions and other institutional lenders, fiduciary acquisitions by depository institutions, and increases of majority holdings by bank holding companies, are described in sections 2(a)(5)(D) and 3(a) (A) and (B) of the Bank Holding Company Act, 12 U.S.C. 1841(a)(5)(D) and 12 U.S.C. 1842(a) (A) and (B), but do not require the Federal Reserve Board's prior approval. For purposes of this section, they are considered subject to section 3 of the Bank Holding Company Act, 12 U.S.C. 1842, and do not require either a prior or subsequent notice to the OCC under this section.

(3) Assessing financial condition. In assessing the financial condition of the acquiring person, the OCC weighs any debt servicing requirements in light of the acquiring person's overall financial strength; the institution's earnings performance, asset condition, capital adequacy, and future prospects; and the likelihood of the acquiring party making unreasonable demands on the resources of the institution.

(f) Procedures—(1) Exceptions to rules of general applicability. Sections 5.8(a), 5.9, 5.10, 5.11, and 5.13(a) through (f) do not apply to filings under this section. When complying with § 5.8(b) no address is required for a notice filed by one or more individuals under this section.

(2) Who must file. (i) Any person seeking to acquire the power, directly or indirectly, to direct the management or policies, or to vote 25 percent or more of a class of voting securities of a national bank or Federal savings association, shall file a notice with the OCC 60 days prior to the proposed acquisition, unless the acquisition is exempt under paragraph (c)(2) of this section.

(ii) The following persons shall be presumed to be acting in concert for purposes of this section:

(A) A company and any controlling shareholder, partner, trustee or management official of such company if both the company and the person own stock in the national bank or Federal savings association;

(B) A person and the members of the person's immediate family;

(C) Companies under common control;

(D) Persons that have made, or propose to make, a joint filing under section 13 or 14 of the Securities Exchange Act of 1934, and the rules thereunder promulgated by the Securities and Exchange Commission;

(E) A person or company will be presumed to be acting in concert with any trust for which such person or company serves as trustee, except that a tax-qualified employee stock benefit plan as defined in § 192.2(a)(39) of this chapter shall not be presumed to be acting in concert with its trustee or person acting in a similar fiduciary capacity solely for the purposes of determining whether to combine the holdings of a plan and its trustee or fiduciary; and

(F) Persons that are parties to any agreement, contract, understanding, relationship, or other arrangement, whether written or otherwise, regarding the acquisition, voting or transfer of control of voting securities of a national bank or Federal savings association, other than through a revocable proxy in connection with a proxy solicitation for the purposes of conducting business at a regular or special meeting of the institution, if the proxy terminates within a reasonable period after the meeting.

(iii) The OCC presumes, unless rebutted, that an acquisition or other disposition of voting securities through which any person proposes to acquire ownership of, or the power to vote, 10

percent or more of a class of voting securities of a national bank or Federal savings association is an acquisition by a person of the power to direct the bank's or savings association’s management or policies if:

(A) The securities to be acquired or voted are subject to the registration requirements of section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78l; or

(B) Immediately after the transaction no other person will own or have the power to vote a greater proportion of that class of voting securities.

(iv) The OCC will consider a rebuttal of the presumption of control where the person or company intends to have no more than one representative on the board of directors of the national bank or Federal savings association.

(v) The presumption of control may not be rebutted if the total equity investment by the person or company in the national bank or Federal savings association, including 15 percent or more of any class of voting securities, equals or exceeds one third of the total equity of the national bank or Federal savings association.

(vi) Other transactions resulting in a person's control of less than 25 percent of a class of voting securities of a national bank or Federal savings association are not deemed by the OCC to result in control for purposes of this section.

(vii) If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of 10 percent or more of a class of a national bank's or Federal savings association’s voting securities, and either the acquisitions are of a class of securities subject to the registration requirements of section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78l, or immediately after the transaction no other shareholder of the national bank or

Federal savings association would own or have the power to vote a greater percentage of the class, each of the acquiring persons shall either file a notice or rebut the presumption of control.

(viii) An acquiring person may seek to rebut a presumption established in paragraph (f)(2)(ii) or (iii) of this section by presenting relevant information in writing to the appropriate OCC licensing office. The OCC shall respond in writing to any person that seeks to rebut the presumption of control or the presumption of concerted action. No rebuttal filing is effective unless the OCC indicates in writing that the information submitted has been found to be sufficient to rebut the presumption of control.

(3) Filings. (i) The OCC does not accept a notice of a change in control unless it is technically complete, i.e., the information provided is responsive to every item listed in the notice form and is accompanied by the appropriate fee.

(A) The notice must contain the information required under 12 U.S.C. 1817(j)(6)(A), and the information prescribed in the Interagency Biographical and Financial Report. This form is available on the OCC's Internet Web page, www.occ.gov. The OCC may waive any of the informational requirements of the notice if the OCC determines that it is in the public interest.

(B) When the acquiring person is an individual, or group of individuals acting in concert, the requirement to provide personal financial data may be satisfied with a current statement of assets and liabilities and an income summary, together with a statement of any material changes since the date of the statement or summary. However, the OCC may require additional information, if appropriate.

(ii) The OCC has 60 days from the date it declares the notice to be technically complete to review the notice.

(A) When the OCC declares a notice technically complete, the appropriate OCC licensing office sends a letter of acknowledgment to the applicant indicating the technically complete date.

(B) As set forth in paragraph (g) of this section, the applicant shall publish an announcement within 10 days of filing the notice with the OCC. The publication of the announcement triggers a 20-day public comment period. The OCC may waive or shorten the public comment period if an emergency exists. The OCC also may shorten the comment period for other good cause. The OCC may act on a proposed change in control prior to the expiration of the public comment period if the OCC makes a written determination that an emergency exists.

(C) An applicant shall notify the OCC immediately of any material changes in a notice submitted to the OCC, including changes in financial or other conditions that may affect the OCC's decision on the filing.

(iii) Within the 60-day period, the OCC may inform the applicant that the acquisition has been disapproved, has not been disapproved, or that the OCC will extend the 60-day review period for up to an additional 30 days. The period or the OCC’s review of a notice may be further extended not to exceed two additional times for not more than 45 days each time if:

(A) The OCC determines that any acquiring party has not furnished all the information required under this part;

(B) In the OCC’s judgment, any material information submitted is substantially inaccurate;

(C) The OCC has been unable to complete an investigation of each acquirer because of any delay caused by, or the inadequate cooperation of, such acquirer; or

(D) The OCC determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31 of the United States Code.

(iv) The applicant may request a hearing by the OCC within 10 days of receipt of a disapproval (see 12 CFR part 19, subpart H, for hearing initiation procedures). Following final agency action under 12 CFR part 19, further review by the courts is available. (See 12 U.S.C. 1817(j)(5).)

(4) Conditional actions. The OCC may impose conditions on its action not to disapprove a notice to assure satisfaction of the relevant statutory criteria for non-objection to a notice.

(5) Disapproval of notice. The OCC may disapprove a notice if it finds that any of the following factors exist:

(i) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States;

(ii) The effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(iii) Either the financial condition of any acquiring person or the future prospects of the institution is such as might jeopardize the financial stability of the bank or Federal savings association or prejudice the interests of the depositors of the bank or Federal savings association;

(iv) The competence, experience, or integrity of any acquiring person, or of any of the proposed management personnel, indicates that it would not be in the interest of the depositors of the bank or Federal savings association, or in the interest of the public, to permit that person to control the bank or Federal savings association;

(v) An acquiring person neglects, fails, or refuses to furnish the OCC all the information it requires; or

(vi) The OCC determines that the proposed transaction would result in an adverse effect on the Deposit Insurance Fund.

(6) Disapproval notification. If the OCC disapproves a notice, it will notify the proposed acquiring person in writing within three days after the decision containing a statement of the basis for disapproval.

(g) Disclosure—(1) Announcement. The applicant shall publish an announcement in a newspaper of general circulation in the community where the affected national bank or Federal savings association is located within 10 days of filing. The OCC may authorize a delayed announcement if an immediate announcement would not be in the public interest.

(i) In addition to the information required by § 5.8(b), the announcement must include the name of the national bank or Federal savings association named in the notice and the comment period (i.e., 20 days from the date of the announcement). The announcement also must state that the public portion of the notice is available upon request.

(ii) Notwithstanding any other provisions of this paragraph (g), if the OCC determines in writing that an emergency exists and that the announcement requirements of this paragraph (g) would seriously threaten the safety and soundness of the national bank or Federal savings association to be acquired, including situations where the OCC must act immediately in order to

prevent the probable failure of a national bank or Federal savings association, the OCC may waive or shorten the publication requirement.

(2) Release of information. (i) Upon the request of any person, the OCC releases the information provided in the public portion of the notice and makes it available for public inspection and copying as soon as possible after a notice has been filed. In certain circumstances the OCC may determine that the release of the information would not be in the public interest. In addition, the OCC makes a public announcement of a technically complete notice, the disposition of the notice, and the consummation date of the transaction, if applicable, in the OCC's "Weekly Bulletin."

(ii) The OCC handles requests for the non-public portion of the notice as requests under the Freedom of Information Act, 5 U.S.C. 552, and other applicable law.

(h) Reporting requirement. After the consummation of the change in control, the national bank or Federal savings association shall notify the OCC in writing of any changes or replacements of its chief executive officer or of any director occurring during the 12-month period beginning on the date of consummation. This notice must be filed within 10 days of such change or replacement and must include a statement of the past and current business and professional affiliations of the new chief executive officers or directors.

(i) Reporting of stock loans—(1) Requirements. (i) Any foreign bank, or any affiliate thereof, shall file a consolidated report with the appropriate OCC supervisory office of the national bank or Federal savings association if the foreign bank or any affiliate thereof, has credit outstanding to any person or group of persons that, in the aggregate, is secured, directly or indirectly, by 25 percent or more of any class of voting securities of the same national bank or Federal savings association.

(ii) The foreign bank, or any affiliate thereof, shall also file a copy of the report with its appropriate OCC supervisory office if that office is different from the national bank's or Federal savings association's appropriate OCC supervisory office. If the foreign bank, or any affiliate thereof, is not supervised by the OCC, it shall file a copy of the report filed with the OCC with its appropriate Federal banking agency.

(iii) Any shares of the national bank or Federal savings association held by the foreign bank, or any affiliate thereof, as principal must be included in the calculation of the number of shares in which the foreign bank or any affiliate thereof has a security interest for purposes of paragraph (h)(1)(i) of this section.

(2) Definitions. For purposes of this paragraph (i):

(i) Foreign bank and affiliate have the same meanings as in section 1 of the International Banking Act of 1978, 12 U.S.C. 3101.

(ii) Credit outstanding includes any loan or extension of credit; the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit; and any other type of transaction that extends credit or financing to a person or group of persons.

(iii) Group of persons includes any number of persons that a foreign bank, or an affiliate thereof, has reason to believe:

(A) Are acting together, in concert, or with one another to acquire or control shares of the same insured national bank or Federal savings association, including an acquisition of shares of the same national bank or Federal savings association at approximately the same time under substantially the same terms; or

(B) Have made, or propose to make, a joint filing under 15 U.S.C. 78m regarding ownership of the shares of the same depository institution.

(3) Exceptions. Compliance with paragraph (i)(1) of this section is not required if:

(i) The person or group of persons referred to in paragraph (h)(1) of this section has disclosed the amount borrowed and the security interest therein to the appropriate OCC licensing office in connection with a notice filed under this section or any other application filed with the appropriate OCC licensing office as a substitute for a notice under this section, such as for a national bank or Federal savings association charter; or

(ii) The transaction involves a person or group of persons that has been the owner or owners of record of the stock for a period of one year or more or, if the transaction involves stock issued by a newly chartered bank or Federal savings association, before the bank's or Federal savings association's opening.

(4) Report requirements. (i) The consolidated report must indicate the number and percentage of shares securing each applicable extension of credit, the identity of the borrower, and the number of shares held as principal by the foreign bank and any affiliate thereof.

(ii) The foreign bank and all affiliates thereof shall file the consolidated report in writing within 30 days of the date on which the foreign bank or affiliate thereof first believes that the security for any outstanding credit consists of 25 percent or more of any class of voting securities of a national bank or Federal savings association.

(5) Other reporting requirements. A foreign bank or any affiliate thereof, supervised by the OCC and required to report credit outstanding secured by the shares of a depository institution to another Federal banking agency also shall file a copy of the report with its appropriate OCC supervisory office.

31. Section 5.51 is revised to read as follows:

§ 5.51 Changes in directors and senior executive officers of a national bank or Federal savings association.

(a) Authority. 12 U.S.C. 1831i and 12 U.S.C. 5412(b)(2)(B).

(b) Scope. This section describes the circumstances when a national bank or a Federal savings association must notify the OCC of a change in its directors and senior executive officers, and the OCC's authority to disapprove those notices.

(c) Definitions—(1) Director means an individual who serves on the board of directors of a national bank or a Federal savings association, except:

(i) A director of a foreign bank that operates a Federal branch; and

(ii) An advisory director who does not have the authority to vote on matters before the board of directors or any committee of the board of directors and provides solely general policy advice to the board of directors or any committee.

(2) Federal savings association means a Federal savings association or Federal savings bank chartered under 12 U.S.C. 1464.

(3) National bank includes a Federal branch for purposes of this section only.

(4) Senior executive officer means the president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer, and any other individual the OCC identifies in writing to the national bank or Federal savings association who exercises significant influence over, or participates in, major policy making decisions of the national bank or Federal savings association without regard to title, salary, or compensation. The term also includes employees of entities retained by a national bank or Federal savings association to perform such functions in lieu of directly hiring the individuals, and, with respect

to a Federal branch operated by a foreign bank, the individual functioning as the chief managing official of the Federal branch.

(5) Technically complete notice means a notice that provides all the information requested in paragraph (e)(2) of this section, including complete explanations where material issues arise regarding the competence, experience, character, or integrity of proposed directors or senior executive officers, and any additional information that the OCC may request following a determination that the notice was not technically complete.

(6) Technically complete notice date means the date on which the OCC has received a technically complete notice.

(7) Troubled condition means a national bank or Federal savings association that

(i) Has a composite rating of 4 or 5 under the Uniform Financial Institutions Rating System (CAMELS);

(ii) Is subject to a cease and desist order, a consent order, or a formal written agreement, unless otherwise informed in writing by the OCC; or

(iii) Is informed in writing by the OCC that, based on information pertaining to such national bank or Federal savings association, it has been designated in "troubled condition" for purposes of this section.

(d) Prior notice. A national bank or Federal savings association shall provide written notice to the OCC at least 90 calendar days before adding or replacing any member of its board of directors, employing any individual as a senior executive officer of the national bank or Federal savings association, or changing the responsibilities of any senior executive officer so that the individual would assume a different senior executive officer position, if:

(1) The national bank or Federal savings association is not in compliance with minimum capital requirements, as prescribed in 12 CFR part 3 or is otherwise in troubled condition; or

(2) The OCC determines, in writing, in connection with the review by the agency of the plan required under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o), or otherwise, that such prior notice is appropriate.

(e) Procedures—(1) Filing notice. A national bank or Federal savings association shall file a notice with its appropriate supervisory office. When a national bank or Federal savings association files a notice, the individual to whom the filing pertains shall attest to the validity of the information pertaining to that individual. The 90–day review period begins on the technically complete notice date.

(2) Content of notice. (i) The notice must include:

(A) The information required under 12 U.S.C. 1817(j)(6)(A), and the information prescribed in the Interagency Notice of Change in Director or Senior Executive Officer, the biographical and certification portions of the Interagency Biographical and Financial Report ("IBFR"), and unless otherwise determined by the OCC in writing, the financial portion of the IBFR. These forms are available from the OCC;

(B) Legible fingerprints of the individual, except that fingerprints are not required for any individual who, within the three years immediately preceding the initial submission date of the notice currently under review, has been the subject of a notice filed with the OCC or the OTS pursuant to 12 U.S.C. 1831i, or this section, and has previously submitted fingerprints; and

(C) Such other information required by the OCC.

(ii) Modification of content requirements. The OCC may require or accept other information in place of the content requirements in paragraph (e)(2)(i) of this section.

(3) Requests for additional information. (i) Following receipt of a technically complete notice, the OCC may request additional information. Such request must be in writing, must explain why the information is needed, and must specify a time period during which the information must be provided.

(ii) If the national bank or Federal savings association cannot provide the information requested by the OCC within the time specified in paragraph (e)(3)(i) of this section, the national bank or Federal savings association may request in writing that the OCC suspend processing of the notice. The OCC will advise the national bank or Federal savings association in writing whether the suspension request is granted and, if granted, the length of the suspension.

(iii) If the national bank or Federal savings association fails to provide the requested information within the time specified in paragraphs (e)(3)(i) or (ii) of this section, the OCC may deem the filing abandoned under § 5.13(c) or may review the notice based on the information provided.

(4) Notice of disapproval. The OCC may disapprove an individual proposed as a member of the board of directors or as a senior executive officer if the OCC determines on the basis of the individual's competence, experience, character, or integrity that it would not be in the best interests of the depositors of the national bank or Federal savings association or the public to permit the individual to be employed by, or associated with, the national bank or Federal savings association. The OCC must send a written notice of disapproval to both the national bank or Federal savings association and the individual stating the basis for disapproval.

(5) Notice of intent not to disapprove. An individual proposed as a member of the board of directors or as a senior executive officer may begin service before the expiration of the review period if the OCC notifies the individual and the national bank or Federal savings association in

writing that the OCC does not disapprove the proposed director or senior executive officer and all other applicable legal requirements are satisfied.

(6) Waiver of prior notice—(i) Waiver request. (A) A national bank or Federal savings association may send a letter to the appropriate supervisory office requesting a waiver of the prior notice requirement.

(B) The OCC may grant the waiver if it issues a written finding that:

(1) Delay could adversely affect the safety and soundness of the national bank or Federal savings association;

(2) Delay would not be in the public interest; or

(3) Other extraordinary circumstances justify waiver of prior notice.

(C) The OCC will determine the length of the waiver on a case-by-case basis. All waivers that the OCC grants under this paragraph (e)(6) are subject to the condition that the national bank or Federal savings association shall file a technically complete notice under this section within the time period specified by the OCC.

(D) Subject to paragraph (e)(6)(i)(C) of this section, the proposed individual may assume the position on an interim basis until the earliest of the following events:

(1) The individual and the national bank or the Federal savings association receive a notice of intent not to disapprove, at which time the individual may assume the position on a permanent basis, provided all other applicable legal requirements are satisfied;

(2) The individual and the national bank or the Federal savings association receive a notice of disapproval within 90 calendar days after the submission of a technically complete notice. In this event the individual shall immediately resign from the position upon receipt of the

notice of disapproval and may assume the position on a permanent basis only if the notice of disapproval is reversed on appeal and all other applicable legal requirements are satisfied; or

(3) The OCC does not act within 90 calendar days after the submission of a technically complete notice. In this event, the individual may assume the position on a permanent basis 91 calendar days after the submission of a technically complete notice.

(E) If the technically complete notice is not filed within the time period specified in the waiver, the proposed individual shall immediately resign his or her position. Thereafter, the individual may assume the position only after a technically complete notice has been filed, all other applicable requirements are satisfied, and:

(1) The national bank or the Federal savings association receives a notice of intent not to disapprove;

(2) The review period expires; or

(3) A notice of disapproval has been overturned on appeal as set forth in paragraph (f) of this section.

(F) Notwithstanding the grant of a waiver, the OCC has authority to issue a notice of disapproval within 30 days of the expiration of such waiver.

(ii) Automatic waiver. An individual who has been elected to the board of directors of a national bank or Federal savings association may serve as a director on an interim basis before a notice has been filed under this section, provided the individual was not nominated by management, and the national bank or Federal savings association submits a notice under this section not later than seven days after the individual has been notified of the election. The individual may serve on an interim basis until the occurrence of the earliest of the events described in paragraphs (e)(6)(i)(D)(1), (2), or (3) of this section.

(7) Commencement of service. An individual proposed as a member of the board of directors or as a senior executive officer who satisfies all other applicable legal requirements may assume the office on a permanent basis:

(i) Prior to the expiration of the review period, only if the OCC notifies the national bank or Federal savings association in writing that the OCC does not disapprove the proposed director or senior executive officer pursuant to paragraph (e)(5) of this section; or

(ii) Following the expiration of the review period, unless:

(A) The OCC issues a written notice of disapproval during the review period; or

(B) The national bank or Federal savings association does not provide additional information within the time period required by the OCC pursuant to paragraph (e)(3) of this section and the OCC deems the notice to be abandoned pursuant to § 5.13(c).

(8) Exceptions to rules of general applicability. Sections 5.8, 5.10, 5.11, and 5.13(a) through (f) do not apply to a notice for a change in directors and senior executive officers, except that § 5.13(c) shall apply to the extent provided for in paragraphs (e)(3)(iii) and (e)(7) of this section.

(f) Appeal. (1) If the national bank or Federal savings association, the proposed individual, or both, disagree with a disapproval, they may seek review by appealing the disapproval to the Comptroller, or an authorized delegate, within 15 days of the receipt of the notice of disapproval. The national bank or Federal savings association or the individual may appeal on the grounds that the reasons for disapproval are contrary to fact or insufficient to justify disapproval. The appellant shall submit all documents and written arguments that the appellant wishes to be considered in support of the appeal.

(2) The Comptroller, or an authorized delegate, may designate an appellate official who was not previously involved in the decision leading to the appeal at issue. The Comptroller, an authorized delegate, or the appellate official considers all information submitted with the original notice, the material before the OCC official who made the initial decision, and any information submitted by the appellant at the time of the appeal.

(3) The Comptroller, an authorized delegate, or the appellate official shall independently determine whether the reasons given for the disapproval are contrary to fact or insufficient to justify the disapproval. If either is determined to be the case, the Comptroller, an authorized delegate, or the appellate official may reverse the disapproval.

(4) Upon completion of the review, the Comptroller, an authorized delegate, or the appellate official shall notify the appellant in writing of the decision. If the original decision is reversed, the individual may assume the position in the national bank or Federal savings association for which he or she was proposed.

32. Section 5.52 is revised to read as follows:

§ 5.52 Change of address of a national bank or Federal savings association.

(a) Authority. 12 U.S.C. 93a, 161, 481, 1462a, 1463, 1464 and 5412(b)(2)(B).

(b) Scope. This section describes the obligation of a national bank or a Federal savings association to notify the OCC of any change in its address.

(c) Notice process. (1) Any national bank with a change in the address of its main office or in its post office box or a Federal savings association with a change in the address of its home office or post office box shall send a written notice to the appropriate OCC licensing office.

(2) No notice is required if the change in address results from a transaction approved under this part or if notice has been provided pursuant to § 5.40(b) with respect to the relocation of a main office or home office to a branch location in the same city, town or village.

(d) Exceptions to rules of general applicability. Sections 5.8, 5.9, 5.10, 5.11, and 5.13 do not apply to changes in a national bank's or Federal savings association's address.

33. Section 5.53 is revised to read as follows:

§ 5.53 Substantial asset change by a national bank or Federal savings association.

(a) Authority. 12 U.S.C. 93a, 1818, 1462a, 1463, 1464, 1467a, and 5412(b)(2)(B).

(b) Scope. This section requires a national bank or a Federal savings association to obtain the approval of the OCC for a substantial asset change.

(c) Definition—(1) In general. Except as provide in paragraph (c)(2) of this section, substantial asset change means:

(i) The sale or other disposition of all, or substantially all, of the national bank's or Federal savings association's assets in a transaction or a series of transactions;

(ii) After having sold or disposed of all, or substantially all, of its assets, subsequent purchases or other acquisitions or other expansions of the national bank's or Federal savings association's operations;

(iii) Any other purchases, acquisitions or other expansions of operations that are part of a plan to increase the size of the national bank or Federal savings association by more than 25 percent in a one year period; or

(iv) Any other material increase or decrease in the size of the national bank or Federal savings association or a material alteration in the composition of the types of assets or liabilities

of the national bank or Federal savings association (including the entry or exit of business lines), on a case-by-case basis, as determined by the OCC.

(2) Exceptions. The term "substantial asset change" does not include, and this section does not apply, to a change in composition of all, or substantially all, of a bank's or savings association's assets:

(i) That the bank or savings association undertakes in response to direction from the OCC (e.g., in an enforcement action pursuant to 12 U.S.C. 1818);

(ii) That is part of a voluntary liquidation under 12 CFR 5.48, if the bank or savings association in liquidation has obtained the OCC's non-objection to its plan of liquidation under 12 CFR 5.48 and has stipulated in its notice of liquidation to the OCC that its liquidation will be completed, the bank or savings association dissolved and its charter returned to the OCC within one year of the date it filed the notice of liquidation, unless the OCC extends the time period;

(iii) That occurs as a result of a bank's or savings association's ordinary and ongoing business of originating and securitizing loans; or

(iv) That are subject to OCC approval under another application to the OCC.

(d) Procedures—(1) Consultation. A national bank or Federal savings association considering a transaction or series of transactions that may constitute a material change under paragraph (c)(1)(iv) of this section must consult with the appropriate OCC supervisory office for a determination whether the OCC will require an application under this section. In determining whether to require an application, the OCC considers the size and nature of the transaction and the condition of the institutions involved.

(2) Approval requirement. A national bank or Federal savings association must file an application and obtain the prior written approval of the OCC before engaging in a substantial asset change.

(3) Factors—(i) In general. (A) In determining whether to approve an application under paragraph (d)(1) of this section, the OCC considers the following factors:

(1) The capital level of any resulting national bank or Federal savings association;

(2) The conformity of the transaction to applicable law, regulation, and supervisory policies;

(3) The purpose of the transaction;

(4) The impact of the transaction on safety and soundness of the national bank or Federal savings association; and

(5) The effect of the transaction on the national bank or Federal savings association's shareholders, depositors, other creditors, and customers.

(B) The OCC may deny the application if the transaction would have a negative effect in any of these respects.

(ii) Additional factors. The OCC's review of any substantial asset change that involves the purchase or other acquisition or other expansions of the bank's or savings association's operations will include, in addition to the foregoing factors, the factors governing the organization of a bank or savings association under § 5.20.

(e) Exceptions to rules of general applicability. Sections 5.8, 5.10, and 5.11 do not apply with respect to applications filed pursuant to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all of the provisions of §§ 5.8, 5.10, and 5.11 apply.

34. Section 5.55 is added to subpart D to read as follows:

§ 5.55 Capital distributions by Federal savings associations.

(a) Authority. 12 U.S.C. 1462a, 1463, 1464, 1467a, 1831o, and 5412(b)(2)(B).

(b) Licensing requirements. A Federal savings association must file an application or notice before making a capital distribution, as provided in this section.

(c) Scope. This section applies to all capital distributions by a Federal savings association and sets forth the procedures and standards relating to a capital distribution.

(d) Definitions. The following definitions apply to this section:

(1) Affiliate means an affiliate, as defined under regulations of the Board of Governors of the Federal Reserve System regarding transactions with affiliates, 12 CFR part 223 (Regulation W).

(2) Capital means total capital, as computed under 12 CFR part 3.

(3) Capital distribution means:

(i) A distribution of cash or other property to owners of a Federal savings association made on account of their ownership, but excludes:

(A) Any dividend consisting only of the shares of the savings association or rights to purchase the shares; or

(B) If the savings association is a Federal mutual savings association, any payment that the savings association is required to make under the terms of a deposit instrument and any other amount paid on deposits that the OCC determines is not a distribution for the purposes of this section;

(ii) A Federal savings association's payment to repurchase, redeem, retire or otherwise acquire any of its shares or other ownership interests; any payment to repurchase, redeem, retire,

or otherwise acquire debt instruments included in its total capital under 12 CFR part 3; and any extension of credit to finance an affiliate's acquisition of the savings association's shares or interests;

(iii) Any direct or indirect payment of cash or other property to owners or affiliates made in connection with a corporate restructuring. This includes the Federal savings association's payment of cash or property to shareholders of another association or to shareholders of its holding company to acquire ownership in that association, other than by a distribution of shares;

(iv) Any other distribution charged against a Federal savings association's capital accounts if the savings association would not be well capitalized, as set forth in 12 CFR 6.4, following the distribution; and

(v) Any transaction that the OCC determines, by order or regulation, to be in substance a distribution of capital.

(4) Net income means a Federal savings association's net income computed in accordance with generally accepted accounting principles (GAAP).

(5) Retained net income means a Federal savings association's net income for a specified period less total capital distributions declared in that period.

(6) Shares means common and preferred stock, and any options, warrants, or other rights for the acquisition of such stock. The term "share" also includes convertible securities upon their conversion into common or preferred stock. The term does not include convertible debt securities prior to their conversion into common or preferred stock or other securities that are not equity securities at the time of a capital distribution.

(e) Filing requirements—(1) Application required. A Federal savings association must file an application with the OCC if:

(i) The savings association is not an eligible savings association;

(ii) The total amount of all of the savings association's capital distributions (including the proposed capital distribution) for the applicable calendar year exceeds its net income for that year to date plus retained net income for the preceding two years;

(iii) The savings association would not be at least adequately capitalized, as set forth in 12 CFR 6.4,following the distribution; or

(iv) The savings association's proposed capital distribution would violate a prohibition contained in any applicable statute, regulation, or agreement between the savings association and the OCC or the OTS, or violate a condition imposed on the savings association in an application or notice approved by the OCC or the OTS.

(2) Notice required. Unless it is required to file an application under paragraph (e)(1) of this section, a Federal savings association that is an eligible savings association must file a notice with the OCC if:

(i) The savings association would not remain well capitalized, as set forth under 12 CFR 6.4, or would otherwise not remain an eligible savings association following the distribution;

(ii) The savings association's proposed capital distribution would reduce the amount of or retire any part of its common or preferred stock or retire any part of debt instruments such as notes or debentures included in capital under 12 CFR part 3 (other than regular payments required under a debt instrument approved under § 5.56);

(iii) The savings association's proposed capital distribution is payable in property other than cash;

(iv) The savings association is a direct or indirect subsidiary of a mutual savings and loan holding company; or

(v) The savings association is a direct or indirect subsidiary of a company that is not a savings and loan holding company.

(3) No prior notice required. A Federal savings association does not need to file a notice or an application with the OCC before making a capital distribution if the Federal savings association is not required to file an application under paragraph (e)(1) or a notice under paragraph (e)(2) of this section.

(4) Informational copy of notice required. If the Federal savings association is a subsidiary of a savings and loan holding company that is filing a notice with the Board of Governors of the Federal Reserve System (Board) for a dividend solely under 12 U.S.C. 1467a(f) and not also under 12 U.S.C. 1467a(o)(11), and neither an application under paragraph (e)(1) nor a notice under paragraph (e)(2) of this section is required, then the savings association must provide an informational copy to the OCC of the notice filed with the Board, at the same time the notice is filed with the Board.

(f) Filing format—(1) Contents. The notice or application must:

(i) Be in narrative form;

(ii) Include all relevant information concerning the proposed capital distribution, including the amount, timing, and type of distribution; and

(iii) Demonstrate compliance with paragraph (h) of this section.

(2) Schedules. The notice or application may include a schedule proposing capital distributions over a specified period, not to exceed 12 months.

(3) Combined filings. A Federal savings association may combine the notice or application required under paragraph (e) of this section with any other notice or application, if the capital distribution is a part of, or is proposed in connection with, another transaction

requiring a notice or application under this chapter. If submitting a combined filing, the Federal savings association must state that the related notice or application is intended to serve as a notice or application under this section.

(g) Filing procedures—(1) Application. When a Federal savings association is required to file an application under paragraph (e)(1) of this section, it must file the application at least 30 days before the proposed declaration of dividend or approval of the proposed capital distribution by its board of directors. The Federal savings association shall not effect the proposed declaration of dividend or approval of the proposed capital distribution unless it has received prior written approval of the OCC.

(2) Prior notice with expedited review. A Federal savings association that is an eligible savings association and that is required to file a notice under paragraph (e)(2) must file the notice at least 30 days before the proposed declaration of dividend or approval of the proposed capital distribution by its board of directors. The notice is deemed approved by the OCC upon the expiration of 30 days after the filing date of the notice unless, before the expiration of that time period, the OCC notifies the Federal savings association that:

(i) Additional information is required to supplement the notice;

(ii) The notice is not eligible for expedited review, or the expedited reviewed process is extended, under 5.13(a)(2); or

(iii) The notice is disapproved.

(h) OCC review of capital distributions. The OCC reviews applications and notices submitted pursuant to paragraphs (g)(1) and (g)(2) of this section. The OCC may disapprove the notice or deny the application in whole or in part, if it makes any of the following determinations:

(1) The Federal savings association will be undercapitalized, significantly undercapitalized, or critically undercapitalized as set forth in 12 CFR 6.4, as applicable, following the capital distribution. If so, the OCC will determine if the capital distribution is permitted under 12 U.S.C. 1831o(d)(1)(B).

(2) The proposed capital distribution raises safety or soundness concerns.

(3) The proposed capital distribution violates a prohibition contained in any statute, regulation, agreement between the Federal savings association and the OCC or the OTS, or a condition imposed on the Federal savings association in an application or notice approved by the OCC or the OTS. If so, the OCC will determine whether it may permit the capital distribution notwithstanding the prohibition or condition.

(i) Exceptions to rules of general applicability. Sections 5.8, 5.10, and 5.11 do not apply to capital distributions made by Federal savings associations.

35. Section 5.56 is added to subpart D to read as follows:

§ 5.56 Inclusion of subordinated debt securities and mandatorily redeemable preferred stock as Federal savings association supplementary (tier 2) capital.

(a) Scope and definitions. (1) A Federal savings association must comply with this section in order to include subordinated debt securities or mandatorily redeemable preferred stock ("covered securities") in tier 2 capital under 12 CFR 3.20(d) and to prepay covered securities included in tier 2 capital. A savings association that does not include covered securities in tier 2 capital is not required to comply with this section. Covered securities not included in tier 2 capital are subject to the requirements of § 163.80 of this chapter.

(2) For purposes of this section, mandatorily redeemable preferred stock means mandatorily redeemable preferred stock that was issued before July 23, 1985 or issued pursuant

to regulations and memoranda of the Federal Home Loan Bank Board and approved in writing by the Federal Savings and Loan Insurance Corporation for inclusion as regulatory capital before or after issuance.

(b) Application and notice procedures—(1) Application or notice to include covered securities in tier 2 capital—(i) Application. Unless a Federal savings association is an eligible savings association filing a notice under paragraph (b)(1)(ii) of this section, it must file an application seeking the OCC's approval of the inclusion of covered securities in tier 2 capital. The savings association may file its application before or after it issues covered securities, but may not include covered securities in tier 2 capital until the OCC approves the application.

(ii) Notice with expedited review. An eligible savings association must file a notice seeking the OCC's approval of the inclusion of covered securities in tier 2 capital. The savings association may file its notice before or after it issues covered securities, but may not include covered securities in tier 2 capital until the OCC approves the notice. The OCC is deemed to have approved the notice upon the expiration of 30 days after the filing date of the notice unless, before the expiration of that time period, the OCC notifies the Federal savings association that

(A) Additional information is required to supplement the notice;

(B) The notice is not eligible for expedited review, or the expedited reviewed process is extended, under § 5.13(a)(2); or

(C) The OCC denies the notice.

(iii) Securities offering rules. A savings association also must comply with the securities offering rules at 12 CFR part 197 by filing an offering circular for a proposed issuance of covered securities, unless the offering qualifies for an exemption under that part.

(2) Application required to prepay covered securities included in tier 2 capital—(i) In general. A Federal savings association must file an application to, and receive prior approval from, the OCC before prepaying covered securities included in tier 2 capital. For purposes of this requirement, prepayment includes acceleration of a covered security, repurchase of a covered security, redemption of a covered security prior to maturity, and exercising a call option in connection with a covered security.

(ii) Prepayment in the form of a call option. (A) If the prepayment will be in the form of a call option, the application must include:

(1) A statement explaining why the Federal savings association believes that following the proposed prepayment the savings association would continue to hold an amount of capital commensurate with its risk; or

(2) A description of the replacement capital instrument that meets the criteria for tier 1 or tier 2 capital under 12 CFR 3.20, including the amount of such instrument, and the time frame for issuance.

(B) Notwithstanding paragraph (b)(1)(ii) of this section, if the OCC conditions approval of prepayment in the form of a call option on a requirement that a Federal savings association must replace the covered security with a covered security of an equivalent amount that satisfies the requirements for a tier 1 or tier 2 instrument, the savings association must file an application to issue the replacement covered security and must receive prior OCC approval.

(c) General requirements. A covered security issued under this section must satisfy the requirements for tier 2 capital in 12 CFR 3.20(d).

(d) Securities requirements for inclusion in tier 2 capital. To be included in tier 2 capital, covered securities must satisfy the requirements in 12 CFR 3.20(d). In addition, such covered securities must meet the following requirements:

(1) Form. (i) Each certificate evidencing a covered security must:

(A) Bear the following legend on its face, in bold type: "This security is not a savings account or deposit and it is not insured by the United States or any agency or fund of the United States;"

(B) State that the security is subordinated on liquidation, as to principal, interest, and premium, to all claims against the savings association that have the same priority as savings accounts or a higher priority;

(C) State that the security is not secured by the savings association's assets or the assets of any affiliate of the savings association. An affiliate means any person or company that controls, is controlled by, or is under common control with the savings association;

(D) State that the security is not eligible collateral for a loan by the savings association;

(E) State the prohibition on the payment of dividends or interest at 12 U.S.C. 1828(b) and, in the case of subordinated debt securities, state the prohibition on the payment of principal and interest at 12 U.S.C. 1831o(h), 12 CFR 3.11, and any other relevant restrictions;

(F) For subordinated debt securities, state or refer to a document stating the terms under which the savings association may prepay the obligation; and

(G) Where applicable, state or refer to a document stating that the savings association must obtain OCC's prior approval before the acceleration of payment of principal or interest on subordinated debt securities, redemption of subordinated debt securities prior to maturity,

repurchase of subordinated debt securities, or exercising a call option in connection with a subordinated debt security.

(ii) A Federal savings association must include such additional statements as the OCC may prescribe for certificates, purchase agreements, indentures, and other related documents.

(2) Indenture. (i) Except as provided in paragraph (d)(2)(ii) of this section, a Federal savings association must use an indenture for subordinated debt securities. If the aggregate amount of subordinated debt securities publicly offered (excluding sales in a non-public offering as defined in 12 CFR 197.4) and sold in any consecutive 12-month or 36-month period exceeds $5,000,000 or $10,000,000 respectively (or such lesser amount that the Securities and Exchange Commission shall establish by rule or regulation under 15 U.S.C. 77ddd), the indenture must provide for the appointment of a trustee other than the savings association or an affiliate of the savings association (as defined in paragraph (d)(1)(i)(C) of this section) and for collective enforcement of the security holders' rights and remedies.

(ii) A Federal savings association is not required to use an indenture if the subordinated debt securities are sold only to accredited investors, as that term is defined in 15 U.S.C. 77d(6). A savings association must have an indenture that meets the requirements of paragraph (d)(2)(i) of this section in place before any debt securities for which an exemption from the indenture requirement is claimed, are transferred to any non-accredited investor. If a savings association relies on this exemption from the indenture requirement, it must place a legend on the debt securities indicating that an indenture must be in place before the debt securities are transferred to any non-accredited investor.

(e) Review by the OCC. (1) In reviewing notices and applications under this section, the OCC will consider whether:

(i) The issuance of the covered securities is authorized under applicable laws and regulations and is consistent with the savings association's charter and bylaws;

(ii) The savings association is at least adequately capitalized under 12 CFR 6.4 and meets the regulatory capital requirements at 12 CFR 3.10;

(iii) The savings association is or will be able to service the covered securities;

(iv) The covered securities are consistent with the requirements of this section;

(v) The covered securities and related transactions sufficiently transfer risk from the Deposit Insurance Fund; and

(vi) The OCC has no objection to the issuance based on the savings association's overall policies, condition, and operations.

(2) The OCC's approval is conditioned upon no material changes to the information disclosed in the application or notice submitted to the OCC. The OCC may impose such additional requirements or conditions as it may deem necessary to protect purchasers, the savings association, the OCC, or the Deposit Insurance Fund.

(f) Amendments. If a Federal savings association amends the covered securities or related documents following the completion of the OCC's review, it must obtain the OCC's approval under this section before it may include the amended securities in tier 2 capital.

(g) Sale of covered securities. The Federal savings association must complete the sale of covered securities within one year after the OCC's approval under this section. A savings association may request an extension of the offering period by filing a written request with the OCC. The savings association must demonstrate good cause for the extension and file the request at least 30 days before the expiration of the offering period or any extension of the offering period.

(h) Issuance of a replacement regulatory capital instrument in connection with exercising a call option. Pursuant to 12 CFR 3.20(d)(1)(v)(C), the OCC may require a Federal savings association seeking prior approval to exercise a call option in connection with a covered security included in tier 2 capital to issue a replacement covered security of an equivalent amount that qualifies as tier 1 or tier 2 capital under 12 CFR 3.20. If the OCC imposes such a requirement, the savings association must complete the sale of such covered prior to, or immediately after, the prepayment.[5]

(i) Reports. A Federal savings association must file the following information with the OCC within 30 days after the savings association completes the sale of covered securities includable as tier 2 capital. If the savings association filed its application or notice following the completion of the sale, it must submit this information with its application or notice:

(1) A written report indicating the number of purchasers, the total dollar amount of securities sold, the net proceeds received by the savings association from the issuance, and the amount of covered securities, net of all expenses, to be included as tier 2 capital;

(2) Three copies of an executed form of the securities and a copy of any related documents governing the issuance or administration of the securities; and

(3) A certification by the appropriate executive officer indicating that the savings association complied with all applicable laws and regulations in connection with the offering, issuance, and sale of the securities.

36. Section 5.58 is added to subpart D to read as follows:

§ 5.58 Pass-through investments by a Federal savings association.

[5] A Federal savings association may replace tier 2 capital instruments concurrent with the redemption of existing tier 2 capital instruments.

(a) Authority. 12 U.S.C. 1462a, 1463, 1464, 1828, 5412(b)(2)(B).

(b) Scope. Federal savings associations are permitted to make various types of equity investments pursuant to 12 U.S.C. 1464 and other statutes, including pass-through investments authorized under 12 CFR 160.32(a). These investments are in addition to those subject to §§ 5.35, 5.37, 5.38, and 5.59. This section describes the procedure governing the filing of the application or notice that the OCC requires in connection with certain of these investments. The OCC may review other permissible equity investments on a case-by-case basis.

(c) Licensing requirements. A Federal savings association must file a notice or application as prescribed in this section to make a pass-through investment authorized under 12 CFR 160.32(a).

(d) Definitions. For purposes of this section:

(1) Enterprise means any corporation, limited liability company, partnership, trust, or similar business entity.

(2) Well capitalized means the capital level described in 12 CFR 6.4.

(3) Well managed has the meaning set forth in § 5.38(d)(2) for Federal savings associations.

(e) Pass-through investments; notice procedure. A Federal savings association may make a pass-through investment, directly or through its operating subsidiary, in an enterprise that engages in the activities described in paragraph (e)(2) of this section by filing a written notice. The Federal savings association must file this written notice with the appropriate OCC licensing office no later than 10 days after making the investment. The written notice must:

(1) Describe the structure of the investment and the activity or activities conducted by the enterprise in which the Federal savings association is investing. To the extent the notice relates to

the initial affiliation of the Federal savings association with a company engaged in insurance activities, the savings association should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The Federal savings association must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable;

(2) State:

(i) Which paragraphs of § 5.38(e)(5)(v) describe the activity; or

(ii) State that, and describe how, the activity is substantively the same as that contained in published OCC precedent for Federal savings associations, including published former OTS precedent, approving a pass-through investment by a Federal savings association or its operating subsidiary, state that the activity will be conducted in accordance with the same terms and conditions applicable to the activity covered by the precedent, and provide the citation to the applicable precedent;

(3) Certify that the Federal savings association is well managed and well capitalized at the time of the investment;

(4) Describe how the Federal savings association has the ability to prevent the enterprise from engaging in an activity that is not set forth in § 5.38(e)(5)(v) or not contained in published OCC precedent for Federal savings associations, including published former OTS precedent, approving a pass-through investment by a Federal savings association or its operating subsidiary, or how the savings association otherwise has the ability to withdraw its investment;

(5) Describe how the investment is convenient and useful to the Federal savings association in carrying out its business and not a mere passive investment unrelated to the savings association's banking business;

(6) Certify that the Federal savings association's loss exposure is limited as a legal matter and that the savings association does not have unlimited liability for the obligations of the enterprise; and

(7) Certify that the enterprise in which the Federal savings association is investing agrees to be subject to OCC supervision and examination, subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

(f) Pass-through investments; application procedure—(1) Investments not qualifying for notice procedure. A Federal savings association must file an application and obtain prior approval before making or acquiring, either directly or through an operating subsidiary, a pass-through investment in an enterprise if the pass-through investment does not qualify for the notice procedure set forth in paragraph (e) of this section because the savings association is unable to make the representation required by paragraph (e)(2) or the certification required by paragraph (e)(3) of this section. The application must include the information required in paragraphs (e)(1) and (e)(4) through (e)(7) of this section and paragraphs (e)(2) or (e)(3) of this section, as appropriate. If the Federal savings association is unable to make the representation set forth in paragraph (e)(2) of this section, the savings association’s application must explain why the activity in which the enterprise engages is a permissible activity for a Federal savings association and why the applicant should be permitted to hold a pass-through investment in an enterprise engaged in that activity. A Federal savings association may not make a pass-through investment if it is unable to make the representations and certifications specified in paragraphs (e)(1) and (e)(4) through (e)(7) of this section.

(2) Investments requiring a filing under 12 U.S.C. 1828(m). Notwithstanding any other provision in this section, if an enterprise in which a Federal savings association proposes to invest would be a subsidiary of the Federal savings association for purposes of 12 U.S.C. 1828(m) and the enterprise would not be an operating subsidiary or a service corporation, the Federal savings association must file an application with the OCC under this paragraph (f)(2) at least 30 days prior to making the investment and obtain prior approval from the OCC before making the investment. The application must include the information required in paragraphs (e)(1) and (e)(4) through (e)(7) of this section and paragraphs (e)(2) or (e)(3) of this section, if applicable. If the Federal savings association is unable to make the representation set forth in paragraph (e)(2) of this section, the savings association's application must explain why the activity in which the enterprise engages is a permissible activity for a Federal savings association and why the applicant should be permitted to hold a pass-through investment in an enterprise engaged in that activity. A Federal savings association may not make a pass-through investment if it is unable to make the representations and certifications specified in paragraphs (e)(1) and (e)(4) through (e)(7) of this section.

(g) Pass-through investments in entities holding assets in satisfaction of debts previously contracted. Certain pass-through investments may be eligible for expedited treatment where the Federal savings association's investment is in an entity holding assets in satisfaction of debts previously contracted or the savings association acquires shares of a company in satisfaction of debts previously contracted.

(1) Notice required. A Federal savings association that is well capitalized and well managed may acquire a pass-through investment, directly or through its operating subsidiary, in an enterprise that engages in the activities of holding and managing assets acquired by the parent

savings association through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted, by filing a written notice in accordance with this paragraph (g)(1)(i). The activities of the enterprise must be conducted pursuant to the same terms and conditions as would be applicable if the activity were conducted directly by a Federal savings association. The Federal savings association must file the written notice with the appropriate OCC licensing office no later than 10 days after making the pass-through investment. This notice must include a complete description of the Federal savings association's investment in the enterprise and the activities conducted, a description of how the savings association plans to divest the pass-through investment or the underlying assets within applicable statutory time frames, and a representation and undertaking that the savings association will conduct the activities in accordance with OCC policies contained in guidance issued by the OCC regarding the activities. Any Federal savings association receiving approval under this paragraph (g)(1)(i) is deemed to have agreed that the enterprise will conduct the activity in a manner consistent with published OCC guidance.

(2) No notice or application required. A Federal savings association is not required to file a notice or application under this § 5.58 if it acquires a non-controlling investment in shares of a company through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted.

(h) Additional exception to filing requirement. A Federal savings association may make a pass-through investment without filing a notice or application to the OCC if all of the following conditions are met:

(1) The investment is in an investment company the portfolio of which consists exclusively of assets that the Federal savings association may hold directly;

(2) The Federal savings association is not investing more than 10 percent of its total capital in one company;

(3) The book value of the Federal savings association's aggregate non-controlling investments does not exceed 25 percent of its total capital after making the investment;

(4) The investment would not give Federal savings association direct or indirect control of the company; and

(5) The Federal savings association's liability is limited to the amount of its investment.

(i) Exceptions to rules of general applicability. Sections 5.8, 5.9, 5.10, and 5.11 of this part do not apply to filings for pass-through investments.

37. Section 5.59 is added to subpart D to read as follows:

§ 5.59 Service corporations of Federal savings associations.

(a) Authority. 12 U.S.C. 1462a, 1463, 1464, 1828, 5412(b)(2)(B).

(b) Licensing requirements. When required by section 18(m) of the Federal Deposit Insurance Act, a Federal savings association must file an application as prescribed in this section to:

(1) Acquire or establish a service corporation; or

(2) Commence a new activity in an existing service corporation subsidiary.

(c) Scope. This section sets forth the OCC's requirements regarding service corporations of Federal savings associations, and sets forth procedures governing OCC review and approval of filings by Federal savings associations to establish or acquire service corporations and filings by Federal savings associations to conduct new activities in existing service corporation subsidiaries, pursuant to the authority provided in section 5(c)(4)(B) of the Home Owners' Loan Act, 12 U.S.C. 1464(c)(4)(B).

(d) Definitions—(1) Control has the meaning set forth at 12 U.S.C. 1841 and the Federal Reserve Board's regulations thereunder, at 12 CFR part 225.

(2) GAAP-consolidated subsidiary means a service corporation in which a Federal savings association has a direct or indirect ownership interest and whose assets are consolidated with those of the savings association for purposes of reporting under generally accepted accounting principles (GAAP).

(3) Ownership interest means any equity interest in a business organization, including stock, limited or general partnership interests, or shares in a limited liability company.

(4) Service corporation means any entity that satisfies all of the requirements for service corporations in 12 U.S.C. 1464(c)(4)(B) and this part, and that is designated by the investing Federal savings association as a service corporation pursuant to this section. A service corporation may be a first-tier service corporation of a Federal savings association or may be a lower-tier service corporation.

(5) Service corporation subsidiary means a service corporation of a Federal savings association that is controlled by that savings association.

(e) Standards and requirements—(1) Ownership. Only Federal or state-chartered savings associations with home offices in the state where the relevant Federal savings association has its home office may have an ownership interest in a first-tier service corporation. A Federal savings association need not have any minimum percentage ownership interest or have control of a service corporation in order to designate an entity as a service corporation.

(2) Geographic restrictions. A first-tier service corporation must be organized under the laws of the state where the relevant Federal savings association's home office is located.

(3) Authorized activities. A service corporation may engage in any of the designated permissible service corporation activities listed in paragraph (f) of this section, subject to any applicable filing requirement under paragraph (h) of this section. In addition, a Federal savings association may request OCC approval for a service corporation to engage in any other activity reasonably related to the activities of financial institutions.

(4) Investment limitations. A Federal savings association's investment in service corporations is subject to the limitations set forth in paragraph (g) of this section. The assets of a Federal savings association's service corporations are not subject to the investment limitations applicable to the savings association under section 5(c) of the HOLA.

(5) Form of organization. A service corporation may be organized as a corporation, or may be organized in any other organizational form that provides the same protections as the corporate form of organization, including limited liability.

(6) Qualified thrift lender test. In accordance with 12 U.S.C. 1467a(m)(5), a Federal savings association may determine whether to consolidate the assets of a particular service corporation for purposes of calculating qualified thrift investments. If a service corporation's assets are not consolidated with the assets of the Federal savings association for that purpose, the savings association's investment in the service corporation will be considered in calculating the savings association's qualified thrift investments.

(7) Supervisory, legal or safety or soundness considerations. (i) Each service corporation must be well managed and operate safely and soundly. In addition, each service corporation must pursue financial policies that are safe and consistent with the purposes of savings associations. Each service corporation must maintain sufficient liquidity to ensure its safe and sound operation.

(ii) The OCC may, at any time, limit a Federal savings association's investment in a service corporation, or limit or refuse to permit any activity of a service corporation, for supervisory, legal, or safety or soundness reasons.

(8) Separate corporate identity. Federal savings associations and service corporations thereof must be operated in a manner that demonstrates to the public that each maintains a separate corporate existence. Each must operate so that:

(i) Their respective business transactions, accounts, and records are not intermingled;

(ii) Each observes the formalities of their separate corporate procedures;

(iii) Each is held out to the public as a separate enterprise; and

(iv) Unless the parent Federal savings association has guaranteed a loan to the service corporation, all borrowings by the service corporation indicate that the savings association is not liable.

(9) Issuances of securities by service corporations. A service corporation shall not state or imply that the securities it issues are covered by Federal deposit insurance. A service corporation subsidiary shall not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that the controlling Federal savings association is insolvent or has been placed into receivership. For as long as any securities are outstanding, the controlling Federal savings association must maintain all records generated through each securities issuance in the ordinary course of business, including but not limited to a copy of the prospectus, offering circular, or similar document concerning such issuance, and make such records available for examination by the OCC.

(10) Certain pre-existing non-controlling investments. A Federal savings association that made a non-controlling investment in a service corporation before [INSERT DATE OF

FEDERAL REGISTER PUBLICATION OF THIS FINAL RULE], but did not submit a filing under 12 U.S.C. 1828(m) with respect to such service corporation investment, is not required to file a service corporation application with respect to such investment pursuant to paragraph (b), provided that the Federal savings association does not acquire additional stock or similar interests in the service corporation, and the service corporation does not engage in any activities in which it was not engaged as of [INSERT DATE OF FEDERAL REGISTER PUBLICATION OF THIS FINAL RULE].

(f) Authorized service corporation activities. Subject to the prior filing requirements set forth in paragraph (h) of this section and the provisions of paragraph (e)(3) of this section, a service corporation may engage in the following activities:

(1) Any activity that all Federal savings associations may conduct directly.

(2) Business and professional services. Service corporations may engage in the following activities only when such activities are limited to financial documents or financial clients or are generally finance-related:

(i) Accounting or internal audit;

(ii) Advertising, market research and other marketing;

(iii) Clerical;

(iv) Consulting;

(v) Courier;

(vi) Data processing;

(vii) Data storage facilities operation and related services;

(viii) Office supplies, furniture, and equipment purchasing and distribution;

(ix) Personnel benefit program development or administration;

(x) Printing and selling forms that require Magnetic Ink Character Recognition (MICR) encoding;

(xi) Relocation of personnel;

(xii) Research studies and surveys;

(xiii) Software development and systems integration; and

(xiv) Remote service unit operation, leasing, ownership or establishment.

(3) Credit-related activities. (i) Abstracting;

(ii) Acquiring and leasing personal property;

(iii) Appraising;

(iv) Collection agency;

(v) Credit analysis;

(vi) Check or credit card guaranty and verification;

(vii) Escrow agent or trustee (under deeds of trust, including executing and delivery of conveyances, reconveyances and transfers of title); and

(viii) Loan inspection.

(4) Consumer services. (i) Financial advice or consulting;

(ii) Foreign currency exchange;

(iii) Home ownership counseling;

(iv) Income tax return preparation;

(v) Postal services;

(vi) Stored value instrument sales;

(vii) Welfare benefit distribution;

(viii) Check printing and related services; and

(ix) Remote service unit operation, leasing, ownership, or establishment.

(5) Real estate related services. (i) Acquiring real estate for prompt development or subdivision, for construction of improvements, for resale or leasing to others for such construction, or for use as manufactured home sites, in accordance with a prudent program of property development;

(ii) Acquiring improved real estate or manufactured homes to be held for rental or resale, for remodeling, renovating or demolishing and rebuilding for resale or rental, or to be used for offices and related facilities of a stockholder of the service corporation;

(iii) Maintaining and managing real estate; and

(iv) Real estate brokerage for property owned by a savings association that owns capital stock of the service corporation, or a lower-tier service corporation in which the service corporation invests.

(6) Securities activities, liquidity management, and coins. (i) Execution of transactions in securities on an agency or riskless principal basis solely upon the order and for the account of customers or the provision of investment advice. The service corporation must register with the Securities and Exchange Commission and state securities regulators, as required by applicable Federal and state law and regulations;

(ii) Liquidity management;

(iii) Issuing notes, bonds, debentures, or other obligations or securities; and

(iv) Purchase or sale of coins issued by the U.S. Treasury.

(7) Investments. (i) Tax-exempt bonds used to finance residential real property for family units;

(ii) Tax-exempt obligations of public housing agencies used to finance housing projects with rental assistance subsidies;

(iii) Small business investment companies and new markets venture capital companies licensed by the U.S. Small Business Administration;

(iv) Rural business investment companies licensed by the U.S. Department of Agriculture; and

(v) Investing in savings accounts of an investing thrift.

(8) Community development investments. Community and economic development or public welfare investments that are permissible under part 24 of this chapter.

(9) Charitable activities. Establishing or acquiring a corporation that is recognized by the Internal Revenue Service as organized for charitable purposes under 26 U.S.C. 501(c)(3) of the Internal Revenue Code and making a reasonable contribution to capitalize it, provided that the corporation engages exclusively in activities designed to promote the well-being of communities in which the owners of the service corporation operate.

(10) Activities conducted as agent. Activities conducted on behalf of a customer on other than an "as principal" basis.

(11) Incidental activities. Activities reasonably incident to those listed in paragraphs (f)(1) through (f)(10) of this section if the service corporation engages in those activities.

(g) Limitations on investments in service corporations—(1) In general. Under the authority of section 5(c)(4)(B) of the HOLA, a Federal savings association may invest up to 3 percent of its assets in the capital stock, obligations, and other securities of service corporations. Any investment that would cause a Federal savings association's investment in service corporations, in the aggregate, to exceed 2 percent of assets, or made while the savings

association's investments in service corporations exceeds 2 percent of assets, must serve primarily community, inner city, or community and economic development or public welfare purposes consistent with § 24.6 of this chapter. A Federal savings association must designate the investments serving those purposes.

(2) Loans. In addition to the amounts that a Federal savings association may invest under paragraph (g)(1) of this section, and to the extent that a Federal savings association has authority under other provisions of section 5(c) of the HOLA and parts 5 and 160 of this chapter, and available capacity within any applicable investment limits, a Federal savings association may make loans to any service corporation subject to the following conditions:

(i) Loans to service corporations other than a GAAP-consolidated subsidiary are subject to the lending limits in part 32 of this chapter.

(ii) The OCC may limit the amount of loans to any service corporation where safety and soundness considerations warrant such action.

(3) Definition. For purposes of this paragraph, the terms "loans" and "obligations" include all loans and other debt instruments (except accounts payable incurred in the ordinary course of business and paid within 60 days) and all guarantees or take-out commitments of such loans or debt instruments.

(4) GAAP-consolidated subsidiaries. Both debt and equity investments in service corporations that are GAAP-consolidated subsidiaries are considered investments in subsidiaries for purposes of 12 CFR part 3.

(h) Filing requirements—(1) Application. (i) When required by section 18(m) of the Federal Deposit Insurance Act, a Federal savings association must file an application at least 30 days before:

(A) Acquiring or establishing a service corporation; or

(B) Commencing a new activity in an existing service corporation subsidiary.

(ii) The application must include a complete description of the savings association's investment in the service corporation, the proposed activities of the service corporation, the organizational structure and management of the service corporation, the relations between the savings association and the service corporation, and other information necessary to adequately describe the proposal. If the service corporation proposes to engage in insurance activities, the savings association must describe the type of insurance activity in which the service corporation proposes to engage. The savings association must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the service corporation holds a resident license or charter, as applicable. The OCC may require an applicant to submit a legal analysis if the proposal is novel, unusually complex, or raises substantial unresolved legal issues. In these cases, the OCC encourages applicants to have a prefiling meeting with the OCC. Any savings association receiving approval under this paragraph is deemed to have agreed that the service corporation will conduct the activity in a manner consistent with published OCC guidance.

(2) Expedited review. (i) An application to establish or acquire a service corporation, or to perform a new activity in an existing service corporation subsidiary, that meets the requirements of this paragraph is deemed approved by the OCC as of the 30th day after the filing is received by the OCC, unless the OCC notifies the applicant prior to that date that the filing is not eligible for expedited review under 5.13(a)(2). Any savings association receiving approval under this paragraph is deemed to have agreed that the service corporation will conduct the activity in a manner consistent with published OCC guidance.

(ii) An application is eligible for expedited review if the following requirements are met:

(A) The savings association is "well capitalized" and "well managed"; and

(B) The service corporation engages only in one or more of the preapproved activities listed in § 5.59(f).

(3) OCC review and approval. The OCC reviews a Federal savings association's application to determine whether the proposal is legally permissible and to ensure that the proposal is consistent with the requirements of this section, safe and sound banking practices and OCC policy and does not endanger the safety or soundness of the parent Federal savings association. As part of this process, the OCC may request additional information and analysis from the applicant.

(4) Redesignation. A Federal savings association that proposes to redesignate an operating subsidiary as a service corporation must submit a notification to the OCC at least 30 days prior to the redesignation date. The notification must include a description of how the redesignated entity will meet all of the requirements of this section, a resolution of the savings association's board of directors approving the redesignation, and the proposed effective date of the redesignation. The savings association may effect the redesignation on the proposed date unless the OCC notifies the savings association otherwise prior to that date. The OCC may require an application if the redesignation presents policy, supervisory, or legal issues.

(5) Exception to rules of general applicability. Sections 5.8, 5.10 and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10, and 5.11 apply.

(i) Exercise of salvage powers through service corporations. (1) In accordance with this section, a Federal savings association may exercise its salvage power to make a contribution or a loan (including a guarantee of a loan made by any other person) to a service corporation ("salvage investment") that exceeds the maximum amount otherwise permitted under law or regulation. A Federal savings association must notify the appropriate supervisory office at least 30 days before making such a salvage investment. The notification must demonstrate:

(i) The salvage investment protects the savings association's interest in the service corporation;

(ii) The salvage investment is consistent with safety and soundness; and

(iii) The savings association considered alternatives to the salvage investment and determined that such alternatives would not adequately satisfy paragraphs (i)(1)(i) and (ii) of this section.

(2) If the OCC notifies the Federal savings association within 30 days of the filing of the notification that the notification presents supervisory concerns, or raises significant issues of law or policy, the Federal savings association must apply for and receive the OCC's prior written approval before making the salvage investment.

(3) If a service corporation is a GAAP-consolidated subsidiary, the salvage investment will be considered an investment in a subsidiary for purposes of 12 CFR part 3.

(j) Failure to comply with the requirements applicable to service corporations. If a service corporation fails to meet any of the requirements of this section, the Federal savings association must notify the appropriate OCC licensing office. Unless the Federal savings association is otherwise advised by the OCC, if the service corporation cannot comply with the requirements of this section within 90 days of failing to meet such requirements, or otherwise

resolve such failure to comply with this section, the Federal savings association must promptly dispose of its investment in the service corporation.

38. The heading of subpart E of part 5 is revised to read as follows:

Subpart E—Payment of Dividends by National Banks

§ 5.64 [Amended]

39. Paragraph (c)(3) of § 5.64 is amended by removing the phrase "the appropriate district office" and adding in its place the phrase "the appropriate OCC supervisory office".

PART 7—ACTIVITIES AND OPERATIONS

40. The authority citation for part 7 is revised as set forth below.

Authority: 12 U.S.C. 1 et seq., 25b, 29, 71, 71a, 92, 92a, 93, 93a, 371, 371d, 481, 484, 1818, 1464(a), 1464(c)(4)(B), 1828(m), and 5412(b)(2)(B).

41. The heading of part 7 is revised to read as set forth above.

42. The heading of subpart A to part 7 is revised to read as follows:

Subpart A—National Bank and Federal Savings Association Powers

43. Section 7.1000 is revised to read as follows:

§ 7.1000 National bank or Federal savings association ownership of property.

(a) Investment in real estate necessary for the transaction of business—(1) In general. A national bank or Federal savings association may invest in real estate that is necessary for the transaction of its business.

(2) Type of real estate. Real estate investments permissible under this section include:

(i) Premises that are owned and occupied (or to be occupied, if under construction) by the national bank or Federal savings association, or its respective branches or consolidated subsidiaries;

(ii) Real estate acquired and intended, in good faith, for use in future expansion;

(iii) Parking facilities that are used by customers or employees of the national bank or Federal savings association, or its respective branches or consolidated subsidiaries;

(iv) Residential property for the use of officers or employees of the national bank or Federal savings association who are:

(A) Located in remote areas where suitable housing at a reasonable price is not readily available; or

(B) Temporarily assigned to a foreign country, including foreign nationals temporarily assigned to the United States; and

(v) Property for the use of national bank or Federal savings association officers, employees, or customers, or for the temporary lodging of such persons in areas where suitable commercial lodging is not readily available, provided that the purchase and operation of the property qualifies as a deductible business expense for Federal tax purposes.

(3) Permissible means of holding. (i) A national bank or Federal savings association may acquire and hold real estate under this paragraph (a) by any reasonable and prudent means, including ownership in fee, a leasehold estate, or in an interest in a cooperative. The national bank or Federal savings association may hold this real estate directly or through one or more subsidiaries. The national bank or Federal savings association may organize a banking premises subsidiary as a corporation, partnership, or similar entity (e.g., a limited liability company).

(ii) A Federal savings association also may acquire and hold banking premises through a service corporation in accordance with 12 CFR 5.59.

(b) Fixed assets. A national bank or Federal savings association may own fixed assets necessary for the transaction of its business, such as fixtures, furniture, and data processing

equipment.

(c) Investment in banking premises—(1) Investment limitation. Twelve CFR 5.37(d)(1)(i) and (d)(3)(i) provide quantitative investment limitations that govern when OCC approval is required for a national bank or Federal savings association to invest in banking premises.

(2) Premises approval. (i) A national bank or Federal savings association shall seek approval from the OCC in accordance with 12 CFR 5.37(d).

(ii) A Federal savings association that invests in banking premises through a service corporation shall comply with the quantitative limitations in 12 CFR 5.37(d) and, to the extent applicable, 12 CFR 5.59.

(3) Option to purchase. An unexercised option to purchase banking premises or stock in a corporation holding banking premises is not an investment in banking premises. However, a national bank or Federal savings association seeking to exercise such an option must comply with the requirements in 12 CFR 5.37(d).

(d) Future national bank or Federal savings association expansion. A national bank or Federal savings association normally should use real estate acquired for future national bank or Federal savings association expansion within five years. After holding such real estate for one year, the national bank or Federal savings association shall state, by resolution of its board of directors or an appropriately authorized bank or savings association official or subcommittee of the board, definite plans for its use. The resolution or other official action must be available for inspection by OCC examiners.

(e) Transition. If, on [INSERT DATE OF FEDERAL REGISTER PUBLICATION OF THIS FINAL RULE], a Federal savings association holds an investment in real estate, fixed

assets, banking premises, or other real property that complies with the legal requirements in effect prior to [INSERT DATE OF FEDERAL REGISTER PUBLICATION OF THIS FINAL RULE], but would violate any provision of this section or § 5.37, the savings association may continue to hold such investment in accordance with the prior legal requirements. However, a Federal savings association that holds such an investment shall not modify, expand or improve this investment, except for routine maintenance, without the prior approval of the appropriate OCC supervisory office.

44. The section heading for § 7.1003 is revised to read as follows:

§ 7.1003 Money lent by a national bank at banking offices or at facilities other than banking offices.

* * * * *

45. The section heading for § 7.1004 is revised to read as follows:

§ 7.1004 Loans originating at facilities other than banking offices of a national bank.

* * * * *

46. The section heading for § 7.1005 is revised to read as follows:

§ 7.1005 Credit decisions at other than banking offices of a national bank.

*** * * * ***

47. The section heading for § 7.1006 is revised to read as follows:

§ 7.1006 Loan agreement providing for a national bank share in profits, income, or earnings or for stock warrants.

* * * * *

48. The section heading for § 7.1007 is revised to read as follows:

§ 7.1007 National Bank Acceptances.

* * * * *

49. The section heading for § 7.1008 is revised to read as follows:

§ 7.1008 Preparation by a national bank of income tax returns for customers or public.

* * * * *

50. The section heading for § 7.1012 is revised to read as follows:

§ 7.1012 Establishment, operation, or use of a messenger service by a national bank.

*** * * * ***

51. The section heading for § 7.1014 is revised to read as follows:

§ 7.1014 Sale of money orders at nonbanking outlets by a national bank.

*** * * * ***

52. The section heading for § 7.1015 is revised to read as follows:

§ 7.1015 National bank receipt of stock from a small business investment company.

* * * * *

53. The section heading for § 7.1016 is revised to read as follows:

§ 7.1016 Independent undertakings issued by a national bank to pay against documents.

* * * * *

54. The section heading for § 7.1018 is revised to read as follows:

§ 7.1018 National bank automatic payment plan accounts.

* * * * *

55. The section heading for § 7.1020 is revised to read as follows:

§ 7.1020 Purchase of open accounts by a national bank.

* * * * *

56. The heading of subpart B of part 7 is revised to read as follows:

Subpart B—National Bank Corporate Practices

§ 7.2000 [Amended]

57. Footnote 2 in § 7.2000 is amended by removing "(202) 874-4700" and adding in its place "(202) 649-6700".

58. The heading of subpart C of part 7 is revised to read as follows:

Subpart C—Operations

59. The section heading for § 7.3000 is revised to read as follows:

§ 7.3000 National bank hours and closings.

* * * * *

60. Section 7.3001 is revised to read as follows:

§ 7.3001 Sharing national bank or Federal association space and employees.

(a) Sharing space. A national bank or Federal savings association may:

(1) Lease excess space on national bank or Federal savings association premises to one or more other businesses (including other financial institutions);

(2) Share space jointly held with one or more other businesses; or

(3) Offer its services in space owned by or leased to other businesses.

(b) Sharing employees. When sharing space with other businesses as described in paragraph (a) of this section, a national bank or Federal savings association may provide, under one or more written agreements between the national bank or Federal savings association, the other businesses, and their employees, that:

(1) A national bank or Federal savings association employee may act as agent for the other business; or

(2) An employee of the other business may act as agent for the national bank or Federal savings association.

(c) Supervisory conditions. When a national bank or Federal savings association engages in arrangements of the types listed in paragraphs (a) and (b) of this section, the national bank or Federal savings association shall ensure that:

(1) The other business is conspicuously, accurately, and separately identified;

(2) Shared employees clearly and fully disclose the nature of their agency relationship to customers of the national bank or Federal savings association and of the other businesses so that customers will know the identity of the national bank, Federal savings association, or other business that is providing the product or service;

(3) The arrangement does not constitute a joint venture or partnership with the other business under applicable state law;

(4) All aspects of the relationship between the national bank or Federal savings association and the other business are conducted at arm's length, unless a special arrangement is warranted because the other business is a subsidiary of the national bank or Federal savings association;

(5) Security issues arising from the activities of the other business on the premises are addressed;

(6) The activities of the other business do not adversely affect the safety and soundness of the national bank or Federal savings association;

(7) The shared employees or the entity for which they perform services are duly licensed or meet qualification requirements of applicable statutes and regulations pertaining to agents or employees of such other business; and

(8) The assets and records of the parties are segregated.

(d) Other legal requirements. When entering into arrangements of the types described in paragraphs (a) and (b) of this section, and in conducting operations pursuant to those arrangements, a national bank or Federal savings association must ensure that each arrangement complies with all applicable laws and regulations. If the arrangement involves an affiliate or a shareholder, director, officer or employee of the national bank or Federal savings association:

(1) The national bank or Federal savings association must ensure compliance with all applicable statutory and regulatory provisions governing national bank or Federal savings association transactions with these persons or entities;

(2) The parties must comply with all applicable fiduciary duties; and

(3) The parties, if they are in competition with each other, must consider limitations, if any, imposed by applicable antitrust laws.

(e) Transition. If, on [INSERT DATE OF FEDERAL REGISTER PUBLICATION OF THIS FINAL RULE], a Federal savings association shares space or employees with another business under an agreement that complies with the legal requirements that were in effect prior to [INSERT DATE OF FEDERAL REGISTER PUBLICATION OF THIS FINAL RULE], but which would violate any provision of this section, the Federal savings association may continue sharing under the existing agreement but it may not amend, renew, or extend the agreement without prior approval of the appropriate OCC supervisory office.

61. The section heading for § 7.4000 is revised to read as follows:

§ 7.4000 Visitorial powers with respect to national banks.

* * * * *

62. The section heading for § 7.4001 is revised to read as follows:

§ 7.4001 Charging interest by national banks at rates permitted competing institutions; charging interest to corporate borrowers.

* * * * *

§ 7.4003 [Amended]

63. Section 7.4003 is amended by:

a. Removing the word "and" before the phrase "automated device for receiving deposits"; and

b. Adding the phrase ", personal computer, telephone, and other similar electronic devices" after the phrase "automated device for receiving deposits".

64. The section heading for § 7.4005 is revised to read as follows:

§ 7.4005 Combination of national bank loan production office, deposit production office, and remote service unit.

* * * * *

65. The section heading for § 7.4007 is revised to read as follows:

§ 7.4007 Deposit-taking by national banks.

* * * * *

66. The section heading for § 7.4008 is revised to read as follows:

§ 7.4008 Lending by national banks.

* * * * *

67. The heading of subpart E to part 7 is revised to read as follows:

Subpart E—National Bank Electronic Activities

PART 14—CONSUMER PROTECTION IN SALES OF INSURANCE

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

Authority: 12 U.S.C. 1 et seq., 24(Seventh), 92, 93a, 1462a, 1463, 1464, 1818, 1831x, and 5412(b)(2)(B).

69. Section 14.10(b) is amended by removing the phrase "§ 159.3(h) of this chapter" and adding in its place the phrase "§ 5.38(e)(3) of this chapter".

PART 24—COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

70. The authority citation for part 24 continues to read as follows:

Authority: 12 U.S.C. 24 (Eleventh), 93a, 481, and 1818.

§ 24.5 [Amended]

71. Section 24.5(a)(2) is amended by removing "(202) 874-4652" and adding in its place "(202) 649-5709 ".

72. Appendix 1 to part 24 is revised to read as follows:

Appendix 1 To Part 24—CD-1—National Bank Community Development (Part 24) Investments

Comptroller of the Currency
Administrator of National Banks

CD-1 – National Bank Community Development (Part 24) Investments

For Official Use Only

OMB Number
1557-0194

A national bank or national bank subsidiary may make an investment directly or in directly designed primarily to promote the public welfare under the community development investment authority in 12 USC 24(Eleventh) and its implementing regulation 12 CFR 24 (Part 24). Part 24 contains the OCC standards for determining whether an investment is designed to promote the public welfare and procedures that apply to those investments. National banks must submit the completed form to provide an after-the-fact notice or to request prior approval of a public welfare investment to the Community Affairs Department, Office of the Comptroller of the Currency, Washington, DC 20219. Please contact the Community Affairs Department at (202) 649-6420 or CommunityAffairs@occ.treas.gov for more information.

PLEASE PROVIDE THE FOLLOWING INFORMATION ABOUT THE INVESTING BANK.

Bank name:	Mailing address *(street or P.O. box):*
Bank charter number:	City, State, ZIP Code:
Telephone number:	Fax number:
E-mail address:	URL:

CONTACT FOR INFORMATION:

Name of bank contact responsible for form's information:	Name of bank contact responsible for CD investment (if different):
Mailing address *(street or P.O. box):*	Mailing address *(street or P.O. box)*:
City, State, ZIP Code:	City, State, ZIP Code:
Telephone number:	Telephone number:
Fax number:	Fax number:
E-mail address:	E-mail address:

PLEASE INDICATE THE PROCESS THE BANK REQUESTS BY CHECKING THE APPROPRIATE BOX, BELOW.

After-the-fact notice (12 CFR 24.5(a)) - complete sections 1 and 2. ☐

Prior approval (12 CFR 24.5(b)) - complete section 2. ☐

Section 1 – After-The-Fact Notice Only (12 CFR 24.5(a))

A bank may provide an after-the-fact notice of its Part 24 investment if the bank responds affirmatively to all of the following requirements.

The bank is "well-capitalized," as defined in 12 CFR 24.2(i). Yes ☐ No ☐

The bank has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System. Yes ☐ No ☐

The bank's most recent Community Reinvestment Act rating is satisfactory or outstanding. Yes ☐ No ☐

The bank is not under a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive.

Yes ☐ No ☐

Including this investment, the bank's aggregate outstanding investments and commitments under Part 24 do not exceed 5 percent of its capital and surplus, unless the OCC has provided written approval of a written request by the bank allowing the bank to provide after-the-fact notices for investments that would raise the aggregate amount of the bank's Part 24 investments beyond 5 percent of its capital and surplus.

Yes ☐ No ☐

The investment does not involve properties carried on the bank's books as "other real estate owned." Yes ☐ No ☐

The OCC has not determined, in published guidance, that the investment is inappropriate for the after-the-fact notification.

Yes ☐ No ☐

Has the bank responded affirmatively to all of the above requirements in order to provide an after-the-fact notice of its Part 24 investment? [The OCC may have provided written notification that the bank may submit Part 24 after-the-fact notices. If so, please provide the date or a copy of the OCC's written notification.]

Yes ☐ (The bank may make an investment authorized by 12 USC 24(Eleventh) and this part and notify the OCC within 10 working days by submitting a completed after-the-fact notice.)

No ☐ (The bank must seek prior OCC approval of its investment and submit a completed investment proposal before making the investment.)

(To complete the after-the-fact notice process or to request prior OCC approval, please proceed to section 2 of this form.)

Section 2 — All Requests

1. **Please indicate how the bank's investment is consistent with Part 24 requirements for public welfare investments, under 12 CFR 24.3.**

   a. Check at least one of the following that applies to the bank's investment:

   The investment primarily benefits low- and moderate-income individuals. ☐

   The investment primarily benefits low- and moderate-income areas. ☐

   The investment primarily benefits other areas targeted by a governmental entity for redevelopment. ☐

   The investment would receive consideration under 12 CFR 25.23 as a "qualified investment" for purposes of the Community Reinvestment Act. ☐

2. ***Please indicate how the bank's investment is consistent with Part 24 requirements for investment limits under 12 CFR 24.4 by responding to the following questions.***

   a. Dollar amount of the bank's investment that is the subject of this submission: _____

   b. Percentage of the bank's capital and surplus represented by the bank's investment that is the subject of this submission: _____%.

   c. Percentage of the bank's capital and surplus represented by the aggregate outstanding Part 24 investments and commitments, including this investment: _____%.

   d. Does this investment expose the bank to unlimited liability?

   Yes ☐ (This investment cannot be made under Part 24.)

   No ☐

3. ***Please attach a brief description of the bank's investment. (See 12 CFR 24.5(a)(3)(i) and (b)(2)(i)). Include the following information in the description.***

   a. The name of the community and economic development entity (CEDE) into which the bank's investment has been (or will be) made.

   b. The type of bank investment (equity, debt, or other).

   c. The activity or activities of the CEDE in which the bank has invested (or will invest). (*See* examples of qualifying investment activities described in 12 CFR 24.6 (a), (b), (c), and (d).)

   d. How the investment is structured so that it does not expose the bank to unlimited liability, such as by describing the structure of the CEDE (*e.g.*, CDC subsidiary, multi-bank CDC, multi-investor CDC, limited partnership, limited liability company, community development bank, community development financial institution, community development entity, community development venture capital fund, community development lending consortia, community development closed-end mutual funds, non-diversified closed-end investment companies, or any other CEDE) and by providing any other relevant information.

   e. The geographic area served by the CEDE.

f. The total funding or other support by community development partners involved in the project (*e.g.*, government or public agencies, nonprofits, other investors), if known.

g. Supplemental information (*e.g.*, prospectus, annual report, Web address that contains information about the CEDE in which the investment is or will be made), if available.

4. Evidence of qualification is readily available for examination purposes.

The bank maintains information concerning this investment in a form readily accessible and available for examination that supports the certifications contained in this form and demonstrates that the investment meets the standards set out in 12 CFR 24.3, including, where applicable, the criteria of 12 CFR 25.23.

Yes ☐ No ☐

5. Certification

The undersigned hereby certifies that the foregoing information in this form is accurate and complete. It is further certified that the undersigned is authorized to file this form on Part 24 investments for the bank.

Name: _____

Title: _____

Signature: _____

Date: _____

THE SPACE BELOW MAY BE USED TO DESCRIBE THE BANK'S CD INVESTMENT AS REQUESTED IN SECTION 2. QUESTION 3

PART 32—LENDING LIMITS

§ 32.1 Authority, purpose and scope.

73. The authority citation for part 32 is revised to read as follows:

Authority: 12 U.S.C. 1 et seq., 12 U.S.C. 84, 93a, 1462a, 1463, 1464(u), 5412(b)(2)(B), and 15 U.S.C. 1639h.

74. Section 32.2(g)(1)(iv) is amended by removing "paragraph (cc)" and adding in its place "paragraph (ee)".

75. Section 32.3(d)(2) is revised to read as follows:

§ 32.3 Lending limits.

* * * * * *

(d) * * *

(2) Loans by savings associations to develop domestic residential housing units. (i) Subject to paragraph (d)(2)(ii) of this section, a savings association may make loans to one borrower to develop domestic residential housing units, not to exceed the lesser of $30,000,000 or 30 percent of the savings association's unimpaired capital and unimpaired surplus, including all loans and extensions of credit subject to paragraph (a) of this section, provided that:

(A) The savings association is, and continues to be, in compliance with 12 CFR part 3, part 390, subpart Z, or part 324, as applicable;

(B) Upon application by a savings association under paragraph (d)(2)(iv) of this section, the appropriate Federal banking agency permits, subject to conditions it may impose, the savings association to use the higher limit set forth under this paragraph (d)(2)(i);

(C) The loans and extensions of credit made under this paragraph (d)(2)(i) to all borrowers do not, in aggregate, exceed 150 percent of the savings association's unimpaired capital and unimpaired surplus; and

(D) The loans and extensions of credit made under this paragraph (d)(2)(i) comply with the applicable loan-to-value requirements.

(ii) The authority of a savings association to make a loan or extension of credit under the exception in paragraph (d)(2)(i) of this section ceases immediately upon the association's failure to comply with any one of the requirements set forth in paragraph (d)(2)(i) of this section or any condition(s) set forth in an order issued by the appropriate Federal banking agency under paragraphs (d)(2)(i)(B) and (d)(2)(iv) of this section.

(iii) As used in this section, the term "to develop" includes each of the various phases necessary to produce housing units as an end product, such as acquisition, development and construction; development and construction; construction; rehabilitation; and conversion; and the term "domestic" includes units within the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Pacific Islands;

(iv) Procedures—(A) Federal savings associations. (1) Application. A Federal savings association must submit an application to, and receive approval from, the appropriate OCC supervisory office before using the higher limit set forth under paragraph (d)(2)(i) of this section. The supervisory office may approve a completed application if it finds that approval is consistent with safety and soundness. To be deemed complete, the application must include:

(i) If applicable, certification that the savings association is an "eligible savings association";

(ii) A demonstration that the savings association meets the requirements of paragraphs (d)(2)(i)(A), (C), and (D) of this section;

(iii) A copy of a written resolution by a majority of the savings association's board of directors approving the use of the limits provided in paragraphs (d)(2)(i) of this section, and confirming the terms and conditions for use of this lending authority; and

(iv) A description of how the board will exercise its continuing responsibility to oversee the use of this lending authority.

(2) Expedited review. An application by an eligible savings association is deemed approved as of the 30th day after the application is received by the OCC, unless before that date the OCC informs the savings association it must obtain prior written approval from the OCC.

(B) State savings associations. A state savings association shall seek approval to use the higher limit set forth under paragraph (d)(2)(i) of this section from its appropriate Federal banking agency, under the rules and procedures established by the appropriate Federal banking agency.

* * * * *

76. Section 32.7(b) introductory text is amended by removing the phrase "An eligible bank or eligible savings association" and adding in its place the phrase "An eligible national bank or eligible savings association".

PART 34—REAL ESTATE LENDING AND APPRAISALS

77. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 et seq., 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j-3, 1828(o), 3331 et seq., and 5412(b)(2)(B).

§ 34.84 [Removed]

78. Section 34.84 is removed.

PART 100—RULES APPLICABLE TO SAVINGS ASSOCIATIONS

79. The authority citation for part 100 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 5412(b)(2)(B), 5414(b)(2).

§ 100.1 [Amended]

80. Section 100.1 is amended by removing the phrase "The regulations set forth in parts 100 through 197 of this chapter I" and adding in its place the phrase "The regulations set forth in parts 1 through 197 of this chapter I".

§ 100.2 [Amended]

81. Section 100.2 is amended by removing the phrase "any provision of parts 100 through 197" and adding in its place the phrase "any provision of parts 1 through 197 of this chapter I, as applicable, with respect to Federal savings associations".

Part 116 [Removed]

82. Part 116 is removed.

PART 143—FEDERAL SAVINGS ASSOCIATIONS—GRANDFATHERED AUTHORITY

83. The authority citation for part 143 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901 et seq., 5412(b)(2)(B).

84. The heading of part 143 is revised to read as set forth above.

§§ 143.1 through 143.11 and 143.14 [Removed]

85. Sections 143.1 through 143.11 are removed.

§ 143.14 [Removed]

86. Section 143.14 is removed.

PART 144—FEDERAL MUTUAL SAVINGS ASSOCIATIONS—COMMUNICATION BETWEEN MEMBERS

87. The authority citation for part 144 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901 et seq., 5412(b)(2)(B).

88. The heading of part 144 is revised to read as set forth above.

§§ 144.1, 144.2, 144 through 144.7, and Part 144 Undesignated Center Headings [Removed]

89. Sections 144.1, 144.2, 144.4 through 144.7, and the undesignated center headings "Charter", "Bylaws", and "Availability" are removed.

PART 145—FEDERAL SAVINGS ASSOCIATIONS—OPERATIONS

90. The authority citation for part 145 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828. 5412(b)(2)(B).

§ 145.91 [Removed]

91. Section 145.91 is removed.

§ 145.92 [Amended]

92. Section 145.92(b) is amended by removing the phrase "at §§ 145.93 and 145.95 of this chapter" and adding in its place the phrase "at § 5.31 of this chapter".

§§ 145.93, 145.95 and 145.96 [Removed]

93. Sections 145.93, 145.95 and 145.96 are removed.

Part 146 [Removed]

94. Part 146 is removed.

PART 150—FIDUCIARY POWERS OF FEDERAL SAVINGS ASSOCIATIONS

95. The authority citation for part 150 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 5412(b)(2)(B).

96. Section 150.70 is revised to read as follows:

§ 150.70 Must I obtain OCC approval or file a notice before I exercise fiduciary powers?

Except for fiduciary activities subject solely to subpart E, you should refer to 12 CFR 5.26 to determine if you must obtain OCC approval or file a notice with the OCC before you exercise fiduciary powers. A Federal savings association may not exercise fiduciary powers unless it obtains prior approval from the OCC to the extent required under 12 CFR 5.26.

§§ 150.80, 150.90, 150.100, 150.110, 150.120, and 150.125 [Removed]

97. Sections 150.80, 150.90, 150.100, 150.110, 150.120, and 150.125 are removed.

§ 150.130 [Amended]

98. Paragraph (a) of § 150.130 is amended by removing the phrase "in subpart A of this part" and adding in its place the phrase "in § 5.26 of this chapter".

Part 152 [Removed]

99. Part 152 is removed.

Part 159 [Removed]

100. Part 159 is removed.

PART 160—LENDING AND INVESTMENT

101. The authority citation for part 160 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1701j-3, 1828, 3803, 3806, 5412(b)(2)(B); 42 U.S.C. 4106

§ 160.30 [Amended]

102. Footnote 16 to § 160.30 is amended by removing the phrase "part 159 of this chapter" and adding in its place "§ 5.59 of this chapter".

103. Section 160.32 is amended by:

a. Revising paragraph (b); and

b. Removing paragraph (c).

The revision reads as follows:

§ 160.32 Pass-through investments.

* * * * *

(b) Your pass-through investments are subject to the requirements and filing procedures of 12 CFR 5.58.

104. Section 160.35(d)(3) is amended by revising the second sentence to read as follows:

§ 160.35 Adjustments to home loans.

* * * * *

(d) * * *

(3) * * * If the OCC provides such notice to the Federal savings association, the Federal savings association may not use that index unless it applies for and receives the OCC's prior written approval.

§ 160.37 [Removed]

105. Section 160.37 is removed.

PART 161—DEFINITIONS FOR REGULATIONS AFFECTING ALL SAVINGS ASSOCIATIONS

106. The authority citation for part 161 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 5412(b)(2)(B).

107. Section 161.45 is revised to read as follows:

§ 161.45 Service corporation.

The term service corporation has the meaning set forth in § 5.59(d)(4) of this chapter.

PART 162—REGULATORY REPORTING STANDARDS

108. The authority citation for part 162 continues to read as follows:

Authority: 12 U.S.C. 1463, 5412(b)(2)(B).

§ 162.4 [Amended]

109. Section 162.4(b) is amended by removing the phrase ", as defined at § 116.5(c) of this chapter" and adding in its place the phrase "under the Uniform Financial Institutions Rating System".

PART 163—SAVINGS ASSOCIATIONS—OPERATIONS

110. The authority citation for part 163 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1817, 1820, 1828, 1831o, 3806, 5101 et seq., 5412(b)(2)(B); 31 U.S.C. 5318; 42 U.S.C. 4106.

§ 163.1 [Removed]

111. Section 163.1 is removed.

§ 163.22 [Removed]

112. Section 163.22 is removed.

§ 163.81 [Removed]

113. Section 163.81 is removed.

Subpart E [Removed and Reserved]

114. Subpart E of part 163 is removed and reserved.

Subpart H [Removed]

115. Subpart H of part 163 is removed.

Part 174 [Removed]

116. Part 174 is removed.

PART 192—CONVERSIONS FROM MUTUAL TO STOCK FORM

117. The authority citation for part 192 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901, 5412(b)(2)(B); 15 U.S.C. 78c, 78l, 78m, 78n, 78w.

118. Section 192.25 is amended by:

a. Revising the definition of Acting in concert; and

b. Amending the definition of Control by removing the phrase "in part 174 of this chapter" and adding in its place the phrase "in § 5.50 of this chapter".

The revision reads as follows:

§ 192.25 What definitions apply to this part?

* * * * *

Acting in concert has the same meaning as in § 5.50(d)(2) of this chapter. The rebuttable presumptions of § 5.50(f)(2) of this chapter, other than § 5.50(f)(2)(ii)(A) and (B) of this chapter, apply to the share purchase limitations at §§ 192.355 through 192.395.

* * * * *

§ 192.180 [Amended]

119. Section § 192.180 is amended in paragraph (a) by removing the phrase "in subpart B of part 116 of this chapter" and adding in its place "in § 5.8 of this chapter".

§ 192.185 [Amended]

120. Section 192.185 is amended by removing the phrase "in subpart C of part 116 of this chapter" and adding in its place "in § 5.10 of this chapter".

§ 192.430 [Amended]

121. Section 192.430 is amended in paragraphs (a) and (c) by:

a. Removing the phrase “part 152 of this chapter” and adding in its place “§ 5.22 of this chapter”; and

b. Removing the sentence “See 12 CFR 152.4(b)(8).” and adding in its place “See § 5.22(g)(7).”.

§ 192.510 [Amended]

122. Paragraph (c)(1) of § 192.510, is amended by removing the phrase “at part 163, subpart E of this chapter” and adding in its place “at § 5.55 of this chapter”.

§ 192.520 [Amended]

123. Paragraph (c) of § 192.520, is amended by removing the phrase “under part 163, subpart E of this chapter” and adding in its place “under § 5.55 of this chapter”.

§ 192.525 [Amended]

124. Section 192.525 is amended by:

a. In paragraph (b), removing the phrase “under §§ 174.4(a) and (b) of this chapter” and adding in its place “ under § 5.50 of this chapter”; and

b. In paragraph (c)(5), removing the phrase “under part 174 of this chapter” and adding in its place “under § 5.50 of this chapter”.

§ 192.660 [Amended]

125. Paragraph (g)(2) of § 192.660 is amended by removing the phrase “under part 174 of this chapter” and adding in its place “under § 5.50 of this chapter”.

PART 193—ACCOUNTING REQUIREMENTS

126. The authority citation for part 193 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 5412(b)(2)(B); 15 U.S.C. 78c(b), 78m, 78n, 78w.

§ 193.101 [Amended]

127. In paragraph (c) of § 193.101, remove the phrase “and § 163.81 of this chapter” and add in its place the phrase “and § 5.56 of this chapter”.

Dated: May 5, 2015

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Thomas J. Curry,
Comptroller of the Currency.

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