



Office of the
Comptroller of the Currency

COMPTROLLER'S LICENSING MANUAL

ARTICLES OF ASSOCIATION, CHARTER, AND BYLAW AMENDMENTS

FEBRUARY 2022

Contents

- Introduction..... 1**
- Key Policies..... 2**
- Notice/Application Process 3**
 - National Banks 3
 - Articles of Association Amendments 3
 - Bylaw Amendments..... 4
 - Federal Savings Associations 4
 - Information Filed With the OCC..... 4
 - Charter Amendments..... 5
 - Preapproved Charter or Charter Amendments..... 6
 - Charter Amendment Application..... 6
 - Charter Amendment Notice..... 7
 - Bylaw Amendments..... 8
 - Preapproved Bylaws or Bylaw Amendments..... 8
 - Bylaw Amendment Application..... 8
 - Optional Bylaw Amendments..... 9
 - Covered Savings Associations..... 10
- Specific Requirements 10**
 - National Banks 10
 - Corporate Governance Provisions..... 10
 - Anti-Takeover Provisions..... 11
 - Federal Savings Associations 11
 - Corporate Governance Election and Notice Procedures..... 11
 - Anti-Takeover Provisions..... 12
 - Annual Meeting and Fiscal Year End Closing Date: Bylaw Considerations..... 13
 - Existing Federal Savings Associations..... 13
- Appendix: Legal Requirements 14**
- Glossary..... 18**
- References..... 20**
- Table of Updates Since Publication 23**

Introduction

This booklet of the *Comptroller's Licensing Manual* provides guidance concerning the licensing procedures of the Office of the Comptroller of the Currency (OCC) for applications and notices relating to articles of association, charter, and bylaw amendments. The decision criteria and other requirements referred to in this guidance document reflect provisions in existing statutes and regulations. The relevant statutes and regulations are listed at the end of this booklet or referenced as applicable throughout the document.¹

When a national bank or federal savings association (FSA) (collectively, banks) is chartered, or a financial institution converts to a national bank or FSA from another form of charter, the shareholders or members of the institution approve the national bank's articles of association or the FSA's charter. These documents establish the basic framework for the bank's corporate existence and outline the general legal parameters the bank must follow, which may vary from bank to bank but must always be in conformance with applicable law. The OCC reviews these corporate documents when processing the charter or conversion application.

A bank's board of directors approves the bank's bylaws, which define certain corporate governance procedures the bank will follow. For mutual FSAs and stock FSAs, members and shareholders, respectively, may also approve or amend bylaws. Covered savings associations (CSA) must comply with the rules applicable to FSAs.

This booklet of the *Comptroller's Licensing Manual* provides the OCC's policies and procedures regarding articles of association amendments for national banks, charter amendments for FSAs, and bylaw amendments for both national banks and FSAs.

Refer to other booklets of the *Comptroller's Licensing Manual*, as applicable:

- [“Branches and Relocations”](#) (regarding main office or home office relocations)
- [“Changes of Corporate Title and Address”](#)
- [“Charters”](#)
- [“Conversions to Federal Charter”](#)
- [“General Policies and Procedures”](#) (for a discussion of general filing instructions)

¹ This booklet also may include procedures that banks must follow in connection with filing applications and notices for articles of association, charter, and bylaw amendments. Such procedures are not substantive rules that establish decision criteria. Rather, they are steps a bank must take in connection with the filing of an application or notice to allow the OCC to assess whether a bank has met the substantive requirements for the articles of association, charter, and bylaw amendment in existing statutes and regulations. Consistent with the Administrative Procedure Act, the OCC may issue guidance concerning licensing that contains binding procedural steps a bank must take to allow the OCC to assess a bank's application or notice. Refer to 5 USC 553(b)(A).

Key Policies

A national bank may amend its articles of association consistent with 12 USC 21a, as outlined in the “Notice/Application Process” section of this booklet.² The bank may add additional articles or amendments to the articles of association provided they are not contrary to law. Amendments to a bank’s articles of association must be filed with the OCC.

Generally, a national bank does not need to seek OCC review or approval for bylaw amendments, and a bank’s bylaw amendments need not be filed with the OCC. The bank should ensure that bylaw amendments are legal and consistent with the bank’s articles of association, as well as with applicable laws and regulations.

An FSA’s charter or bylaws may be amended pursuant to the requirements of 12 CFR 5.21 and 5.22.³ In addition to providing the standards governing charters and bylaws, 12 CFR 5.21 and 5.22 specify the applicable filing requirements and include the permissible language for the charter and bylaws of mutual and stock FSAs, respectively.

² A national bank initially adopts the articles of association at the time of organization. Refer to 12 USC 21 and 12 CFR 5.20(e)(1)(iii)(A).

³ An FSA initially adopts the charter and bylaws at the time of organization. Refer to 12 CFR 5.20(e)(1)(iii)(A).

Notice/Application Process

National Banks

Articles of Association Amendments

A national bank may amend its articles of association if approved by shareholders owning a majority of the voting shares of the bank, unless a higher percentage is required.⁴ A proposed amendment requiring shareholder approval may be obtained at a duly called shareholders' meeting. The bank must give shareholders at least 10 days' prior notice of a meeting by first-class mail, unless shareholders have waived the right to notice.⁵

Amendments to the capital stock section of the articles of association authorizing one or more classes of preferred stock must be approved by a majority of a bank's shareholders.⁶ In the case of a shareholder vote to approve such amendments, the bank must give shareholders at least five days' notice of the shareholder meeting by registered or certified mail.⁷ However, two-thirds of the shareholders must approve amendments to the capital stock article to either increase or decrease the authorized number of common shares of the bank.⁸

Whenever changes are made in a bank's articles of association, the bank must send the OCC the amendment with a corporate resolution certifying shareholder action. The bank should send the certified copy to the appropriate OCC licensing office for preservation in the agency's records.⁹

The OCC's website includes model [articles of association](#) that national banks can refer to when drafting, reviewing, and amending their articles of association. The language in the model articles is recommended, but not required. The model articles do not address every situation but have been drafted to incorporate compliance with applicable laws and regulations.

⁴ Refer to 12 USC 21a.

⁵ Refer to 12 USC 21a. Pursuant to 12 CFR 7.2003, the OCC may waive a shareholder notice if a determination is made that an emergency exists. A sole shareholder of a bank may waive notice of the shareholder meeting. The articles, bylaws, or laws applicable to a national bank may require a longer period of notice.

⁶ Refer to 12 USC 51a.

⁷ Ibid.

⁸ Refer to 12 USC 57 and 59.

⁹ Refer to 12 USC 21a.

Bylaw Amendments

A national bank can amend its bylaws at any regular or special meeting of the board of directors by a majority vote of the directors. The bylaws and any amendments are generally not required to be filed with the OCC,¹⁰ and a bank is not required to seek OCC approval of the bylaws. However, should it come to the OCC's attention that a bank's bylaws are inconsistent with a law, regulation, or the bank's articles of association, or the bylaws promote unsafe or unsound operation of the bank, the OCC will consider appropriate supervisory action to address any concerns.

The OCC's website includes model [bylaws](#) that a bank can use as a reference when drafting, reviewing, and amending its bylaws. As with the model articles of association, national banks are not required to use the model bylaws, but they provide well-established guidance.

Federal Savings Associations

The language and content in the charter and bylaws of an FSA must comply with applicable OCC regulations.¹¹ An FSA must file either an application or notice with the OCC to amend its charter or bylaws; however, if an FSA adopts, without change, the OCC's model or optional bylaws, no filing is required. Refer to the OCC's website for a model [charter](#) and [bylaws](#) for a mutual FSA, and a model [charter](#) and [bylaws](#) for a stock FSA.

For amendments that require application filings instead of notices, the OCC notifies the FSA within 30 days of receipt of the application whether the agency requires additional information to make a decision. The OCC's request will note a due date for the FSA's response. If the FSA cannot submit the additional information before the requested date, the FSA should contact the OCC as soon as possible. The OCC can deny the application if the FSA does not provide the additional information. Refer to 12 CFR 5, subpart A, for additional rules, policies, and procedures for applications.

Information Filed With the OCC

When submitting an application or notice to the OCC regarding an amendment to the charter or bylaws, an FSA should provide the following:

- Information to demonstrate whether the filing is an application or a notice, and the reason for that conclusion.
- A copy of the proposed charter or bylaw amendment with a second copy marked to show how the proposed amendment varies from the current charter or bylaws.
- A statement or certification that the proposed amendment has been approved by a majority of the board of directors.

¹⁰ The OCC may review the bylaws when processing applications to charter a de novo national bank or to convert an existing financial institution to a federal charter.

¹¹ Refer to 12 CFR 5.21 for requirements for mutual FSAs and 12 CFR 5.22 for requirements for stock FSAs.

- A discussion of the basis or reason for the amendment, including a conclusion of whether the amendment is consistent with the model charter or bylaws; if it is not, how it is inconsistent.
- A statement on whether the proposed amendment will be or has been approved by the shareholders or members, and, if applicable, the date of the shareholders' or members' meeting.
- If requested by the OCC, a legal opinion confirming that the proposed amendment complies with all laws and regulations.
- If a non-preapproved anti-takeover amendment is proposed for an FSA stock charter, the legal opinion required by 12 CFR 5.22(h) must be provided as to whether the proposed charter amendment is valid under the applicable state law.

For charter amendments of either a mutual or stock FSA, the OCC requests that the FSA provide the OCC with sufficient information to verify that (1) the FSA has complied with applicable requirements for providing notice of the members' or shareholders' meeting; (2) proxy materials provided to the members or shareholders complied with applicable requirements; and (3) members or shareholders approved the amendment by the required vote.

Following shareholder or member approval, the FSA must submit a certified copy of the charter amendment to the OCC. An FSA that amends its charter can request that the OCC reissue the charter to include all amendments. Such requests for reissuance should be filed with the appropriate OCC licensing office and contain the required signatures as well as any, supporting documents needed to demonstrate that the amendments were properly adopted.¹²

Charter Amendments

Charter amendments of a mutual FSA must be approved by a majority of the board of directors¹³ and approved by the association's members at a legal meeting.¹⁴ The FSA must post a notice of the meeting in each of the FSA's offices during the 14 days immediately before the meeting.¹⁵ In addition, the mutual FSA must notify its members of a members' meeting in one of the following ways:

- Publish notice of the meeting for two successive weeks immediately before the week when the meeting will be held.
- Mail notice of the meeting to each member at least 15 and not more than 45 days before the meeting. If provided for in the bylaws, a member may waive delivery of the notice.

¹² Refer to 12 CFR 5.21(h) for mutual FSAs and 12 CFR 5.22(i) for stock FSAs.

¹³ Refer to 12 CFR 5.21(f)(1).

¹⁴ Refer to 12 CFR 5.21(e), "Charter Form," section 9, "Amendment of Charter."

¹⁵ Refer to 12 CFR 5.21(j)(2).

Charter amendments of a stock FSA must be approved by a majority of the board of directors¹⁶ and approved by a majority of the total voters eligible to vote at a legal meeting of the FSA's shareholders, unless a higher vote is otherwise required.¹⁷ The stock FSA must notify its shareholders of a shareholders' meeting by written notice not fewer than 20 or more than 50 days before the date of the meeting, either personally or by mail. A stock FSA that is owned by a single shareholder is not subject to the shareholder notice requirement.¹⁸

Preapproved Charter or Charter Amendments

If an FSA adopts the standard form of charter¹⁹ or any of the optional charter amendments without change,²⁰ the charter or charter amendments shall be effective and deemed approved at the time of adoption if the amendment is filed with the appropriate OCC licensing office within 30 days after adoption, and the FSA follows the requirements of its charter and applicable law in adopting such a charter or amendments. Applications for the organization of a de novo FSA and for an initial FSA charter are subject to the applicable time periods for such applications.²¹

The FSA adopting or amending its charter with the standard or optional provisions should submit the following information to the OCC within the 30-day period after adoption:

- The OCC's "[Notice for Charter and Bylaw Amendments](#)."
- A copy of the amendment.
- Certification by the FSA evidencing adoption of the proposed amendment by the board of directors and the date and vote of adoption by the members or stockholders, as applicable.

Charter Amendment Application

An FSA must file an [application](#) with the OCC if the FSA proposes to adopt a charter that differs from the standard form or any of the optional charter amendments.

¹⁶ Refer to 12 CFR 5.22(f)(1).

¹⁷ Refer to 12 CFR 5.22(e), "Charter Form," section 8, "Amendment of Charter."

¹⁸ Refer to 12 CFR 5.22(k)(2).

¹⁹ Refer to 12 CFR 5.21(e) for mutual FSAs and 12 CFR 5.22(e) for stock FSAs.

²⁰ Refer to 12 CFR 5.21(g) for mutual FSAs and 12 CFR 5.22(g) for stock FSAs.

²¹ Refer to 12 CFR 5.20.

Expedited Review

The charter amendment is deemed approved as of the 30th day after filing, unless the OCC notifies the FSA that the amendment is denied or not subject to expedited review, provided the association follows the requirements of its charter in adopting the amendment.

Amendments Not Subject to Expedited Review

An application would be exempt from expedited review if a charter amendment for either a stock or mutual FSA would render more difficult or discourage:

- a merger.
- a tender offer (applicable to a stock FSA).
- a proxy contest.
- the assumption of control by a mutual account holder of a mutual FSA.
- the assumption of control by a holder of a block of an FSA's stock.
- the removal of incumbent management.²²

An application to the OCC would also be exempt from expedited review if the proposed amendment involves a significant issue of law or policy.

The OCC generally does not require an FSA to submit a legal opinion with the application for a charter amendment.²³ However, the OCC can request a legal opinion if there are any concerns about whether a proposed amendment complies with applicable laws or regulations. The opinion should address the permissibility of the amendment under the laws the FSA has elected to follow for corporate governance.

If the OCC approves the charter amendment, it must be submitted to the FSA's members or shareholders for their approval pursuant to the requirements of the FSA's charter and applicable regulations.

Charter Amendment Notice

If a proposed charter amendment does not require an application and the OCC's prior approval, and the amendment is permissible under all applicable laws, rules, and regulations,²⁴ an FSA must submit the proposed amendment to the appropriate OCC licensing office within 30 days after adoption.

²² Refer to 12 CFR 5.21(f)(2)(i)(B) for mutual FSAs and 12 CFR 5.22(f)(2)(i)(B) for stock FSAs.

²³ A legal opinion is required if the proposed amendment is subject to 12 CFR 5.22(h).

²⁴ Refer to 12 CFR 5.21(f)(2)(ii) for mutual FSAs and 12 CFR 5.22(f)(2)(ii) for stock FSAs.

Bylaw Amendments

Bylaw amendments of either a mutual or stock FSA must be approved by either a majority vote of the board of directors or a majority of the votes cast by members or shareholders of the FSA at a duly called legal meeting.

The required provisions of a mutual FSA's bylaws are set forth in 12 CFR 5.21(j). The regulation requires that these bylaws contain provisions that comply with all the requirements listed in 12 CFR 5.21(j) and that are not otherwise inconsistent with the listed provisions, the mutual FSA's charter, and applicable laws and regulations. With the prior approval of the OCC, however, a mutual FSA may adopt a bylaw provision that is not consistent with the provisions listed in the applicable regulations.

The required provisions of a stock FSA's bylaws are set forth in 12 CFR 5.22(j) through (n). A bylaw provision for a stock FSA that is not consistent with the provisions listed in these sections can be adopted only with the approval of the OCC.

Preapproved Bylaws or Bylaw Amendments

No filing is required if an FSA proposes to adopt or amend a bylaw provision to conform, without change, to the model or optional bylaws. Bylaw amendments that do not require an application shall be effective at the time of adoption, provided the FSA follows the requirements of its charter and bylaws in adopting such an amendment.²⁵

An application also is not required to adopt or amend bylaws to make a corporate governance election under 12 CFR 5.21(j)(3)(ii) (for mutual FSAs) or 12 CFR 5.22(j)(2)(ii) (for stock FSAs). However, the FSA must send a notice with a copy of the bylaws to the OCC within 30 days after adoption. Please refer to the Specific Requirements section of this booklet for additional information on corporate governance provisions.

Bylaw Amendment Application

A stock or mutual FSA must file an application with the OCC if the proposed amendment is inconsistent with the language in the OCC's model or optional bylaws and is not a bylaw making a corporate governance election.

Expedited Review

The bylaw amendment that is eligible for expedited review is deemed approved as of the 30th day after filing, unless the OCC notifies the FSA that the amendment is denied or is not subject to expedited review, provided the association follows the requirements of its charter in adopting the amendment.

²⁵ Refer to 12 CFR 5.21(j)(3)(iii) for mutual FSAs and 12 CFR 5.22(j)(2)(iii) for stock FSAs.

Amendments Not Subject to Expedited Review

An application would be exempt from expedited review if the bylaw amendment would render more difficult or discourage:

- a merger.
- a tender offer (applicable to a stock FSA).
- a proxy contest.
- the assumption of control by a mutual account holder of a mutual FSA.
- the assumption of control by a holder of a block of an FSA's stock.
- the removal of incumbent management.²⁶

An application also would be exempt from expedited review if the proposed amendment involves a significant issue of law or policy, including indemnification, conflicts of interest, and limitations on director or officer liability. In addition, an application is exempt from expedited review if the proposed amendment is inconsistent with the requirements of 12 CFR 5.21(j) (for mutual FSAs) or 12 CFR 5.22(k) through (n) (for stock FSAs); applicable laws, rules, or regulations; or the FSA's charter.

Effectiveness

A bylaw amendment that requires an application and OCC approval is effective after approval by the OCC and adoption by the FSA, provided that the FSA follows the requirements of its charter and bylaws in adopting the amendment.²⁷

Optional Bylaw Amendments²⁸

Bylaw Provision on Integrity of Directors

The bylaws for a mutual or stock FSA may include an optional bylaw provision on integrity. The OCC has approved the following bylaw provision, which shall be effective at the time of adoption, and requires no filing.

A person is not qualified to serve as a director if the person: (1) is under indictment for, or has ever been convicted of, a criminal offense involving dishonesty or breach of trust and the penalty for such offense could be imprisonment for more than one year; or (2) is a person against whom a banking agency has within the past 10 years issued a cease-and-desist order for conduct involving dishonesty or breach of trust and that order is final and subject to appeal; or (3) has been found either by a regulatory agency whose decision is final and not subject to appeal or by a court to have (i) breached a fiduciary duty involving personal profit

²⁶ Refer to 12 CFR 5.21(f)(2)(i)(B) for mutual FSAs and 12 CFR 5.22(f)(2)(i)(B) for stock FSAs.

²⁷ Refer to 12 CFR 5.21(j)(4) for mutual FSAs and 12 CFR 5.22(j)(3) for stock FSAs.

²⁸ Optional bylaws for mutual and stock FSAs are included in the model bylaws on the OCC's website.

or (ii) committed a willful violation of any law, rule, or regulation governing banking, securities, commodities or insurance, or any final cease-and-desist order issued by a banking, securities, commodities, or insurance regulatory agency.

Bylaw Provision on Indemnification

The bylaws for a mutual or stock FSA may include an optional bylaw provision on indemnification, provided the provision complies with the requirements of 12 CFR 7.2014, 12 CFR 359, and the Federal Deposit Insurance Act (12 USC 1828(k)). No filing with the OCC is required to adopt this bylaw provision.

Bylaw Provision on Age Limitations

The bylaws for a mutual or a stock FSA may include an optional bylaw provision on age limitations, provided the provision complies with all federal laws, rules, and regulations.²⁹ No filing with the OCC is required to adopt this bylaw provision.

Covered Savings Associations

A CSA has the same rights and privileges as a national bank and is subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations. However, a CSA retains its FSA charter and is treated as an FSA for purposes of governance.³⁰ A CSA must comply with the charter and bylaw requirements applicable to FSAs.

Specific Requirements

National Banks

Corporate Governance Provisions

The corporate governance provisions in a national bank's articles of association and bylaws and the bank's conduct of its corporate governance affairs must comply with applicable federal banking statutes and regulations and safe and sound banking practices.³¹ A national bank may elect to follow the corporate governance provisions of the law of any state in which the main office or any branch of the bank is located, the law of any state in which a bank's holding company is located, the Delaware General Corporation Law, or the Model Business Corporation Act, as amended, to the extent the corporate governance provisions are not inconsistent with applicable federal banking statutes or regulations, or bank safety and soundness. If a national bank elects to follow such a body of law for its corporate

²⁹ Bylaws on age limitations must comply with all federal laws, such as the Age Discrimination in Employment Act and the Employee Retirement Income Security Act.

³⁰ Refer to 12 USC 1464a(d) and 12 CFR 101.4(a)(2).

³¹ Refer to 12 CFR 7.2000(a).

governance, then the national bank must designate in its bylaws the body of law selected for its corporate governance provisions.³² A bank that previously elected to follow the corporate governance provisions of the law of the state in which its holding company is incorporated may continue to use those provisions, even after the bank is no longer controlled by that holding company.³³

Anti-Takeover Provisions

The state corporate governance provisions a national bank may elect to follow may include anti-takeover provisions. Thus, a national bank may adopt anti-takeover provisions included in state corporate governance law if the provisions are not inconsistent with federal banking statutes or regulations and not inconsistent with bank safety and soundness.³⁴ The OCC has determined that several common anti-takeover provisions are generally not inconsistent with federal banking statutes or regulations.³⁵ However, in some circumstances, their adoption may be inconsistent with federal banking statutes or regulations or with bank safety and soundness.³⁶ The OCC determined that two types of common state anti-takeover provisions are inconsistent with federal banking statutes or regulations because they conflict with specific provisions in federal law.³⁷ A bank considering electing to follow a state anti-takeover provision as a part of its corporate governance should review 12 CFR 7.2001.

Federal Savings Associations

Corporate Governance Election and Notice Procedures

A mutual FSA can elect to follow the corporate governance procedures of the laws of the state where the FSA's home office or any branch of the association is located, provided that they are not inconsistent with applicable federal statutes, regulations, and safety and soundness, and the procedures do not include anti-takeover provisions or provisions that involve significant issues of law or policy. If a mutual FSA makes this election, it must designate in its bylaws the provision or provisions from the body of law selected for its corporate governance procedures. The bylaws, with the corporate governance election, are effective upon adoption. The mutual FSA must file a copy of such bylaws with the OCC

³² Refer to 12 CFR 7.2000(b).

³³ Refer to 12 CFR 7.2000(c).

³⁴ Refer to 12 CFR 7.2001.

³⁵ Refer to 12 CFR 7.2001(b).

³⁶ Refer to 12 CFR 7.2001(d) and 7.2001(e).

³⁷ Refer to 12 CFR 7.2001(c).

within 30 days after adoption. The filing must indicate, where not obvious, why the bylaw provision or provisions meet the requirements for adoption.³⁸

A stock FSA may elect to follow the corporate governance procedures of the laws of the state where the FSA's home office or any branch of the association is located; the laws of the state where the stock FSA's holding company, if any, is incorporated or chartered; the Delaware General Corporation Law; or the Model Business Corporation Act. These procedures must not be inconsistent with applicable federal statutes, regulations, and safety and soundness, and the procedures must not include anti-takeover provisions or provisions that involve significant issues of law or policy. A stock savings FSA that has elected to follow the corporate governance provisions of the law of the state in which its holding company is incorporated may continue to use those provisions even if the FSA is no longer controlled by that holding company. All other filing requirements and procedures for adoption are the same as those for mutual FSAs.³⁹

Anti-Takeover Provisions

An anti-takeover provision is any amendment to an FSA's charter or bylaws that renders more difficult or discourages (1) a merger, tender offer, or proxy contest; (2) the assumption of control by a holder of a block of the FSA's stock or an accountholder of a mutual FSA; or (3) the removal of incumbent management.

If a mutual FSA converts to a stock FSA, the resulting FSA can amend its charter to incorporate the anti-takeover provisions set forth in 12 CFR 5.22(g)(7). These provisions can be applicable for no more than five years after the conversion from mutual to stock form. The provisions limit the ability of any person to acquire more than 10 percent of any class of equity security of the FSA during the effective term of the provision, prohibit cumulative voting, and provide that special shareholder meetings may be called only by the board of directors. There are certain allowable exceptions to the 10 percent limit, such as the formation of a holding company, the purchase by underwriters in connection with a public offering for the issuance of new shares of stock of the FSA, or the purchase of less than 25 percent of the FSA's stock by a tax-qualified employee benefit plan.

In addition, as provided in 12 CFR 5.22(h), the OCC can approve an anti-takeover charter amendment not listed in 12 CFR 5.22(g), regarding the acquisition by any person or persons of the stock FSA's equity securities. The FSA shall file as part of its application for approval an opinion, acceptable to the OCC, of counsel independent from the FSA that a corporation chartered by the state in which the principal office of the FSA is located would be permitted to adopt the proposed charter provision. The provision must be consistent with applicable statutes, regulations, and OCC policies.⁴⁰ Further, any provision that would render a change in control of the FSA more difficult and would require for any corporate action (other than

³⁸ Referto 12 CFR 5.21(j)(3)(ii).

³⁹ Referto 12 CFR 5.22(j)(2)(ii).

⁴⁰ Referto 12 CFR 5.22(h).

the removal of directors) the affirmative vote of a larger percentage of shareholders than is required by 12 CFR 5.22(h) 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 the provision. The OCC generally does not approve supermajority provisions that require approval of more than 80 percent of the voting shares.

Annual Meeting and Fiscal Year End Closing Date: Bylaw Considerations

A change in the fiscal year end for either a mutual or stock FSA may require an amendment to the annual meeting provision of the FSA's bylaws. An annual meeting of the members of a mutual FSA and an annual meeting of the shareholders of a stock FSA shall be held within 150 days after the end of the FSA's fiscal year. Therefore, a change in the fiscal year may require a change in the date of the annual meeting. See 12 CFR 5.21(j)(2)(i) and 5.22(k)(1)(i).

Existing Federal Savings Associations

FSAs in existence before September 15, 1983, might have charters that were valid at that time but do not conform to the current model charter provisions. These FSAs can retain their old charters, such as Charter B, B(Rev), K(Rev), N(Rev), and L for mutual FSAs, and Charter S or T for stock FSAs. The OCC expects that an FSA proposing to adopt a new charter, or a portion thereof, will modify its charter to adopt the current model charter provisions in their entirety. This restatement of the charter prevents the intermingling of old and new charter provisions.

Each FSA can adopt its own form of bylaws. However, they must contain provisions that comply with all requirements under 12 CFR 5.21(j) for mutual FSAs and 12 CFR 5.22(j) through (n) for stock FSAs, and that are not otherwise inconsistent with the provisions of the applicable bylaw regulations, the association's charter, and all other applicable laws, rules, and regulations. An FSA can adopt a bylaw provision that is not consistent with the provisions of the applicable bylaw regulations with the OCC's approval.

Appendix: Legal Requirements

This appendix contains some common legal requirements that may affect amendments to the provisions of articles of association, charters, or bylaws.

National Bank Articles of Association

Articles of association for national banks generally must include the following provisions.

1. The name of the bank must include the word “national” (12 USC 22 and 30, and 12 CFR 5.42).
2. The location of the bank’s main office should include a city/town/village, county, and state/territory/district. A street name should not be given, to avoid the need to amend the articles for a relocation of the main office within the same city/town/village (12 USC 22, 30, and 81, and 12 CFR 5.40).
3. Directors should number no less than five and no more than 25, unless the OCC has exempted the bank from the 25-member limit. Information about director qualifying shares and vacancies should be included. For a bankers’ bank, information about replacing participating banks should be included (12 USC 27(b), 71a, 72, and 74, and 12 CFR 7.2005, 7.2007, 7.2008, and 7.2009).
4. The procedures for holding the annual shareholders’ meeting and the election of directors should be addressed. The articles may provide for cumulative voting for directors (12 USC 61, 71, and 75, and 12 CFR 7.2002, 7.2003, 7.2004, 7.2005, 7.2006, 7.2007, and 7.2021).
5. The articles should identify all types and classes of the bank’s capital stock (12 USC 51a, 51b, 51b-1, 51c, 52, 56, 57, and 59, and 12 CFR 5.46 and 7.2021).
 - The par value of the bank’s common stock must be \$100 or less (12 USC 52).
 - The shareholders must be provided or denied preemptive rights to acquire newly issued shares of bank stock. Any amendment to the articles that modifies preemptive rights must be approved by at least two-thirds of the holders of the bank’s outstanding shares (12 CFR 7.2021).
 - The articles may include provisions for the issuance of subordinated debt (12 CFR 5.47).
6. The articles should include the requirement that the person serving as, or in the function of, president, regardless of title, must be a member of the board of directors. The articles also should discuss the board’s powers, including its ability to appoint and dismiss management (12 USC 24(5) and 76, and 12 CFR 7.2010 and 7.2012).
7. The articles should address the establishment of branches (12 USC 30, 36, and 81).

8. The articles should address the ability to call special meetings of the shareholders (various statutes and regulations apply, including 12 USC 21a, 30(b), 51a, 57, 59, 75, 181, 214a, 215, 215a, 215a-2, and 215a-3, and 12 CFR 5.33).
9. If included in the articles, indemnification payments to institution-affiliated parties should be consistent with 12 USC 1828(k), and 12 CFR 7.2014 and 359. If the payment of insurance premiums to cover the payment of expenses, legal fees, and liability of institution-affiliated parties is included, the article should explicitly exclude coverage of liability for a formal order assessing civil money penalties against a director or employee. As applicable, a bank shall designate in its bylaws the body of law selected for making indemnification payments under this provision.

National Bank Bylaws

Some of the more common issues addressed in bylaws are listed here, and some often appear in a national bank's articles of association.

1. Directors should number no less than five and no more than 25, unless the OCC has granted a waiver to the 25-director limit. Information about qualifying shares and vacancies should be included. For a bankers' bank, information about replacing participating banks should be included (12 USC 27(b), 71a, 72, and 74, and 12 CFR 7.2005, 7.2007, 7.2008, and 7.2009).
2. The annual shareholders' meeting and the election of directors (12 USC 61, 71, and 75, and 12 CFR 7.2002, 7.2003, 7.2004, 7.2005, 7.2006, 7.2007, and 7.2024).
3. The requirement that the person serving as, or in the function of, president, regardless of title, must be a member of the board of directors. Bylaws also should discuss the board's powers, including its ability to appoint management (12 USC 24(5) and 76, and 12 CFR 7.2010, 7.2012, and 7.2015).
4. The ability to call special meetings of the shareholders (12 USC 21a, 30(b), 51a, 57, 59, 75, 181, 214a, 215, 215a, 215a-2, and 215a-3, and 12 CFR 5.33).
5. Restrictions on the transfer of stock and information about stock certificates (12 USC 24(6) and 52, and 12 CFR 7.2016).
6. Indemnification payments to institution-affiliated parties should be consistent with 12 USC 1828(k) and 12 CFR 7.2014 and 359. If the payment of insurance premiums to cover the payment of expenses, legal fees, and liability of institution-affiliated parties is included, the article should explicitly exclude coverage of liability for a formal order assessing civil money penalties against a director or employee. As applicable, a bank shall designate in its bylaws the body of law selected for making indemnification payments under this provision.

7. The bylaws should specify the corporate governance procedures that the bank will follow. To the extent that the corporate governance procedures are not inconsistent with applicable federal banking statutes or regulations, or bank safety and soundness, a bank can elect to follow the corporate governance procedures of the law of the state where the bank's main office or any branch is located, the law of the state in which the holding company is incorporated (if applicable), the Delaware General Corporation Law, or the Model Business Corporation Act. (12 CFR 7.2000).

FSA Charter

Charters for FSAs generally must include the following provisions (refer to 12 CFR 5.21 for mutual charters and 12 CFR 5.22 for stock charters).

1. The full corporate title of the FSA.
2. The city and state of the home office.
3. The duration of the FSA should be perpetual.
4. The general purpose and powers of the FSA.
5. For mutual charters, the charter must address member qualifications and the number of votes each member may cast.
6. For stock charters, the total number of authorized shares of all classes of capital stock and the par value of the shares. In addition, the charter should specify under what circumstances the stock can be issued; the amount and form of consideration to be paid for the shares; limitations on the issuance of stock to officers, directors, or controlling persons; and the voting rights of the stock.
7. The board of directors shall not be fewer than five nor more than 15, except as otherwise approved by the OCC.
8. The process for amending the charter.

FSA Bylaws

Bylaws for FSAs should include the following provisions pursuant to 12 CFR 5.21 or 5.22.

1. The specifics of annual and special meetings of members, including the location, timing, voting procedures, form of meeting notice, and record date determination.
2. For mutual charters, a provision regarding communication between members.
3. The exact number of directors and the term of service.

4. The frequency and location of board meetings, the election of officers, and steps to be taken in the event of a vacancy, a resignation, or the removal of a director.
5. Specific powers of the board and the establishment of board committees.
6. The process for amending the bylaws, including board or member (or shareholder) approval and any required regulatory approval.

Bylaws for FSAs may include the following optional provisions.

1. For mutual and stock FSAs, an optional provision regarding age limitations for board members and officers (12 CFR 5.22).
2. For mutual and stock FSAs, an optional provision on indemnification. Any such bylaw provision, however, must comply with the requirements of 12 CFR 7.2014 and 359, and the Federal Deposit Insurance Act.
3. For stock FSAs, the board of directors may also permit telephonic or electronic participation of shareholders at annual and special meetings.
4. For mutual FSAs, the board of directors may also permit telephonic or electronic participation of members at annual meetings.
5. For stock FSAs, each director shall at all times be the beneficial owner of not less than 100 shares of capital stock of the association unless the association is a wholly owned subsidiary of a holding company.

Glossary

Bankers' bank: A bank owned exclusively, except for director qualifying shares, by other depository institutions or depository institution holding companies. Bankers' bank activities are limited to providing the following:

- Services to or for other depository institutions, their holding companies, or the officers, directors, and employees of such institutions.
- Correspondent banking services at the request of other depository institutions or their holding companies.

Corporate governance: A set of relationships among a company's management, its board, its shareholders, and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and by which the means of attaining those objectives and monitoring performance are determined.

Covered savings associations: Section 5A of the Home Owners' Loan Act (12 USC 1464a), as implemented by 12 CFR 101, authorizes FSAs with total assets of \$20 billion or less, as reported to the OCC as of December 31, 2017, to operate as "covered savings associations" (CSAs). A CSA has the same rights and privileges as a national bank and is subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations. A CSA retains its FSA charter, however, and is treated as an FSA for purposes of governance and other purposes described in the final rule.⁴¹

Director qualifying shares: A director of a national bank must hold a minimum \$1,000 par value or fair market value of stock in the director's own right in the national bank or an equivalent interest in the parent company that controls the bank.

Federal savings association: An FSA or federal savings bank chartered pursuant to section 5 of the Home Owners' Loan Act (12 USC 1464). An FSA may take one of two forms: (1) it may be a stock FSA, in which stock is issued to shareholders for an offering price to raise capital; or (2) it may be a mutual FSA, in which no stock is issued, and depositors (and in some cases borrowers) have voting rights and certain other rights in the FSA.

Institution-affiliated party: (1) Any director, officer, employee, or controlling stockholder (other than a bank holding company or savings and loan holding company) of, or agent for, an insured depository institution; (2) any other person who has filed or is required to file a change in control notice with the appropriate federal banking agency under 12 USC 1817(j); (3) any shareholder (other than a bank holding company or savings and loan holding company), consultant, joint venture partner, and other person as determined by the appropriate federal banking agency (by regulation or case by case) who participates in the conduct of the affairs of an insured depository institution; and (4) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in (a) any violation of any law or regulation; (b) any breach of fiduciary duty; or (c) any unsafe

⁴¹ Refer to OCC Bulletin 2019-25, "Covered Savings Associations."

or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured depository institution (12 USC 1813(u)).

Model Business Corporation Act: A model set of laws prepared by the Committee on Corporate Laws of the Section of Business Law of the American Bar Association that is followed by several states.

Mutual FSA: An FSA that does not have stockholders. The members of the association (that is, depositors and, in some cases, borrowers) have voting rights with respect to the association.

National bank: An insured or uninsured national banking association chartered by the OCC pursuant to the National Bank Act (12 USC 21, et seq.).

Preemptive rights: A privilege extended to shareholders of an institution that gives them the right to purchase additional shares in the institution before the general public has the opportunity.

Stock FSA: An FSA that issues shares of one or more classes of stock that represent equity interests in the FSA. The stock may be held by one or more shareholders or stockholders.

References

National Banks

Articles of Association

Law	12 USC 21 and 21a
Cumulative Voting	
Law	12 USC 61
Regulation	12 CFR 7.2006
Location	
Law	12 USC 22 and 30
Regulation	12 CFR 5.40
Name	
Law	12 USC 22 and 30
Preemptive Rights	
Regulation	12 CFR 7.2021
Quorum of Directors	
Regulation	12 CFR 7.2009
Shareholder Meetings	
Law	12 USC 61
Stock	
Law	12 USC 51a, 51b, 51b-1, 52, and 57
Vacancies in Board	
Regulation	12 CFR 7.2007

Bylaws

Law	12 USC 24(6)
Cashier	
Regulation	12 CFR 7.2015
Chief Executive Officer	
Regulation	12 CFR 7.2015

Corporate Governance	
Regulation	12 CFR 7.2000
Indemnification	
Regulation	12 CFR 7.2014
Lost Stock Certificate	
Regulation	12 CFR 7.2018
President	
Regulation	12 CFR 7.2015
Quorum of Directors	
Regulation	12 CFR 7.2009
Shareholder Meetings	
Law	12 USC 71 and 75
Regulation	12 CFR 7.2003
Staggered Terms of Directors	
Regulation	12 CFR 7.2024
Stock Certificate Signatures	
Law	12 USC 52
Regulation	12 CFR 7.2016

Federal Savings Associations

Charter and Bylaws

Processing Guidelines and Procedures	
Regulation	12 CFR 5, subpart A

Charter

Regulation	
Mutual FSA Charter	12 CFR 5.21(e) and (f)
Stock FSA Charter	12 CFR 5.22(e) and (f)

Change of Home Office Location

Regulation	
Mutual FSA	12 CFR 5.21(g)(3) and 5.40
Stock FSA	12 CFR 5.22(g)(2) and 5.40

Change of Title

Regulation

Mutual FSA

12 CFR 5.21(g)(2) and 5.42

Stock FSA

12 CFR 5.22(g)(1) and 5.42

Bylaws

Regulation

Mutual FSA

12 CFR 5.21(j)

Stock FSA

12 CFR 5.22(j)–(n)

Indemnification

Regulation

12 CFR 7.2014 and 359

Table of Updates Since Publication

Date of Last Publication: June 2017	
Reason	Affected pages
Align booklet with recent changes to 12 CFR Part 5	All