

**Section-by-Section Overview of
the OCC Licensing Integration Final Rule
Effective Date of Final Rule: July 1, 2015**

District Offices (12 CFR 4.5)

The final rule restructures 12 CFR 4.5 to reflect more accurately the current supervisory structure for national banks and FSAs. Specifically, the final rule revises § 4.5 to include a description and address of the OCC's Midsize Bank Supervision (MBS) program and refers to the district offices as supervising community banks not otherwise supervised by the Washington, D.C., office or MBS.

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

Under the regulations in place prior to the effective date of the final rule (hereafter, prior rules), 12 CFR 5, subpart A, and 12 CFR 116 set forth the OCC's generally applicable rules and procedures for processing filings related to the corporate activities and transactions of national banks and federal savings associations (FSA), respectively. Both rules included filing requirements and explained where and how to file. The final rule removes part 116 and makes part 5, subpart A, applicable to both national banks and FSAs. As a result, FSAs will follow some procedural and processing provisions that are different from the prior rules. For example, the standard for expedited application treatment for FSAs changes in that adequately capitalized savings associations no longer qualify for expedited treatment; only well capitalized institutions are eligible.

For national banks, the final rule applies the requirement, applicable to FSAs in the prior rules, that an institution must have a consumer compliance rating of 1 or 2 under the Uniform Interagency Consumer Compliance Rating System to qualify for expedited treatment.¹ The final rule also makes minor substantive changes regarding public notice filing requirements that would apply to national banks.

Organizing a National Bank or FSA; FSA Charters and Bylaws (12 CFR 5.20, new 5.21, and new 5.22)

Section 5.20 of title 12 of the Code of Federal Regulations (CFR) sets forth the requirements and procedures involved in organizing a de novo national bank. Under the prior rules, FSA organizing rules were set forth in three CFR parts: part 143, "Federal Mutual Savings Associations—Incorporation, Organization, and Conversion"; part 144, "Federal Mutual Savings Associations—Charter and Bylaws"; and part 152, "Federal Stock Associations—Incorporation, Organization, and Conversion." In addition, § 163.1 contained certain rules about FSA charters and bylaws.

¹ Under the prior rules, a bank's compliance rating under the Uniform Interagency Consumer Compliance Rating System was not a factor in the requirements for eligibility. Section 5.13(a)(2), in both the prior rules and the final rule, however, permits the OCC to remove a filing from expedited review if the filing raises certain issues, including consumer compliance concerns. In addition, § 5.2(b) gives the OCC the authority to make exceptions for particular filings, where appropriate.

Many of the procedures in the prior rules that organizers were required to follow to charter a national bank or an FSA were substantively similar. Because, however, the statutes relating to organizing documents (organization certificate, articles of association, and bylaws for national banks; charters and bylaws for FSAs) differ, the prior rules contained different requirements and procedures for national bank and FSA organizing documents. Because of these differences in requirements and procedures, the final rule: (1) revises § 5.20 to apply to both national banks and FSAs; (2) adds 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) adds 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. The final rule also makes various substantive amendments to these rules for both national banks and FSAs.

Conversions (12 CFR 5.24, new 5.23, and new 5.25)

Under the prior rules, 12 CFR 5.24 set forth the rules and procedures that a state bank, state savings association, or FSA 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 were at 12 CFR 143.8 through 143.14, the rules for a stock form depository institution to convert to a federal stock savings association were at 12 CFR 152.18, and the rules for an FSA to convert to a national bank or state bank were at 12 CFR 152.19 and 163.22(b)(1)(ii) and (b)(2). While there were some differences in procedures, the rules for national banks and FSAs were substantively similar.

The final rule: (1) revises § 5.24 to include only rules for converting into a national bank, (2) places all rules for converting into an FSA (either stock or mutual) in new § 5.23, and (3) places rules for converting from a national bank or FSA charter to a state charter in new § 5.25. The final rule also makes substantive and technical changes to these rules that affect both national banks and FSAs. These changes include provisions implementing section 612 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (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. The final rule also does not include the "conversion out" notice requirement included in § 5.25(e) of the prior rules that requires a national bank or an FSA to file a notice with the OCC when the national bank or FSA files an application with the OCC to convert to a national bank or an FSA. Instead, the final rule amends §§ 5.23 and 5.24 to require a national bank or an FSA, respectively, to include the information from this notice in its application to convert to the new charter.

Fiduciary Powers (12 CFR 5.26 and 12 CFR 150, subpart A)

Under the prior rules, 12 CFR 5.26 and part 150, subpart A (§§ 150.70 through 150.125), contained the fiduciary powers application requirements and processes for national banks and FSAs, respectively. The final rule consolidates these rules by: (1) revising § 5.26 to cover FSAs and incorporating certain provisions from part 150 into § 5.26; (2) amending § 150.70 to remove

language regarding filing requirements and direct FSAs to § 5.26 for the application and notice procedures they should follow; and (3) deleting §§ 150.80 through 150.125, which contain additional FSA filing requirements. The final rule also makes various substantive amendments to these rules for both national banks and FSAs. Among other things, the time period that triggers the need for an FSA to re-notify the OCC before beginning to exercise previously approved fiduciary powers that have not been exercised is shortened from five years to 18 months. In addition, eligible FSAs will receive expedited review of applications for fiduciary powers.

Branching (12 CFR 5.30, new 5.31, and branching-related sections in part 7)

Section 5.30 of title 12 of the CFR addresses the establishment, acquisition, and relocation of branch offices of national banks. Under the prior rules, 12 CFR 145.92, 145.93, 145.95, and 145.96 addressed these subjects, as well as agency offices, for FSAs. These prior rules differ with respect to: (1) the locations at which a branch may be established, (2) the application requirements, and (3) the definition of a branch.

Under 12 CFR 5.30, a national bank must receive OCC approval to establish a branch pursuant to 12 USC 36. Generally, there is no statutory branch application requirement for FSAs. The prior rules for savings associations, at § 145.93, required a branch application but excepted 1- and 2-rated FSAs from this application requirement if no comment was filed after the FSA issued its public notice of intent to establish the branch.

The final rule retains the differences between national banks and FSAs. Specifically, instead of adding FSAs to 12 CFR 5.30, the final rule adds a new § 5.31 to part 5. Section 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. The final rule, however, differs from the prior rules in that only well capitalized FSAs are exempt from the application requirement. Furthermore, the final rule requires FSAs not required to file an application to file an after-the-fact notice to the OCC within 10 days of opening the branch.

Expedited Procedures for Certain Reorganizations of a National Bank (12 CFR 5.32)

Section 5.32 of title 12 of the CFR 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. A similar rule does not exist for FSAs because there is no similar underlying statutory authority for savings associations. In the prior rules, § 5.32 did not exempt these 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). The final rule amends § 5.32 to make clear that these procedural requirements do not apply unless the OCC concludes that an application presents a significant and novel policy, supervisory, or other legal issue.

Business Combinations (12 CFR 5.33)

The OCC's regulations governing business combinations of national banks are contained in 12 CFR 5.33. Under the prior rules, rules for business combinations involving FSAs were contained in 12 CFR 163.22. Additionally, extensive regulations addressing the authority of FSAs to engage in mergers and consolidations, the procedures a savings association must follow, and the effect of a merger or consolidation were contained in 12 CFR 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 addressed a common subject, there were a number of differences. Specifically, the FSA regulations addressed the authority and procedures for business combinations in more detail than the national bank regulation.

The final rule harmonizes and consolidates these provisions where consistent with underlying statutes by amending 12 CFR 5.33 to apply to FSAs. The final rule also includes in § 5.33 some provisions from the FSA rules and makes several other substantive changes in § 5.33. In particular, the final rule continues to require an application for a merger of a credit union into an FSA, but it does not retain the OCC application requirement in § 163.22(c) for a merger of a federal stock savings association into a credit union. Instead, the OCC would receive a notice for the “merging out” of the savings association charter consistent with mergers into banks and savings associations.

In addition, the final rule permits an FSA to engage in a whole entity purchase and assumption transaction with a nonbank affiliate or other company. (Under the prior rules, an FSA had authority to engage in such transactions only with an entity with which it could engage in a consolidation or merger, i.e., a bank, savings association, or credit union.) The final rule continues this authority for national banks. We note that whole entity purchase and assumption transactions that would cause the assets of the national bank or FSA to increase by 25 percent or more may be subject to an application requirement under revised § 5.53(c)(1)(iii) as a substantial asset change.

Operating Subsidiaries (12 CFR 5.34 and new 5.38)

OCC regulations permit both national banks and FSAs to establish operating subsidiaries that engage in activities authorized for national banks and FSAs, respectively. Section 5.34 of title 12 of the CFR contains the OCC's rules for operating subsidiaries of national banks. Under the prior rules, 12 CFR 159 contained the OCC's rules for operating subsidiaries of FSAs, as well as FSA service corporation rules.

The final rule separates the rules for FSA operating subsidiaries and service corporations into two new rules in part 5 (§§ 5.38 and 5.59). New § 5.38 addresses FSA operating subsidiaries and contains provisions found in both the bank rule, § 5.34, and part 159. The final rule also makes a number of changes to § 5.34 to clarify existing provisions and to apply to national banks some provisions from part 159.

Bank Service Company Act Investments (12 CFR 5.35)

Section 5.35 of title 12 of the CFR addresses national bank investments in bank service companies pursuant to the Bank Service Company Act.⁴ Although Congress amended this act in 2006 to permit FSAs to invest in bank service companies,⁵ the former Office of Thrift Supervision (OTS) did not adopt implementing regulations. The final rule amends § 5.35 to: (1) make it applicable to FSAs, (2) state certain OCC authority, (3) conform definitions to Dodd-Frank Act changes, and (4) make technical changes. The changes for FSAs are not likely to be very significant because FSAs already are subject to the statute and the filing procedures in § 5.35 follow the statute. With respect to national banks, the final rule requires a prior notice for approval through an expedited process under which the notice would be deemed approved after 30 days, a change from the after-the-fact notice process for eligible banks contained in the prior rules.

Investment in National Bank or FSA Premises (12 CFR 5.37, 7.1000, and 7.3001)

Pursuant to 12 USC 371d, 12 CFR 5.37(d) requires a national bank to submit an application to the OCC to make an investment in bank premises if the aggregate 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. This application requirement and quantitative limit do not apply, however, 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 with 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 6, and will continue to be well capitalized after it makes the investment or loan.

Under the prior rules, 12 CFR 160.37, the sole quantitative limit on an FSA's investment in premises was based on the savings association's *total capital*. OCC guidance provides that an FSA ordinarily must obtain prior OCC approval if such investments would exceed the amount of its total capital.⁶

The final rule makes several changes to these regulations for FSAs, including applying the national bank regulations to FSAs. In particular, the final rule applies the quantitative investment limitations applicable to national banks to FSAs, with the exception of federal mutual savings associations. As a result, a federal stock savings association will be able to invest up to 100 percent of its capital stock or, if 1- or 2-rated, up to 150 percent of capital and surplus in premises without prior OCC approval. Because the vast majority of FSAs have CAMELS ratings of 1 or 2, the OCC believes that the relevant limit for a federal stock savings association generally will be "capital and surplus," which is not materially different from "total capital." In addition, the quantitative limitation for these savings associations will be 150 percent of capital

⁴ 12 USC 1861–1867.

⁵ Public Law 109-351, 120 Stat. 1965 (2006), section 602.

⁶ OTS *Examination Handbook*, Section 252, "Fixed Assets," April 1999, p. 2.

and surplus, which is a greater amount than 100 percent of “total capital.” Thus, we expect that under the final rule, the amount that a 1- or 2-rated federal stock savings association can invest in premises without OCC approval will increase.

For federal stock savings associations that do not have a CAMELS rating of 1 or 2 and are not well capitalized, the relevant limit will be “capital stock,” which is a significantly lower threshold than “total capital” in § 160.37. While the OCC is aware that this new lower threshold likely will increase the burden on FSAs with CAMELS ratings of 3, 4, or 5 (by requiring them to file an application for investments in premises that exceed 100 percent of capital stock), we believe that additional scrutiny of investments in premises by these FSAs is warranted for safety and soundness purposes.

Because by definition a federal mutual savings association has not issued stock, a limit based on capital stock cannot apply to such associations. Accordingly, the final rule uses retained earnings as a proxy for capital stock for purposes of the quantitative limitations on investments in premises for such institutions. A limitation based on retained earnings is not a significant change for a federal mutual savings association, because “total capital” of a mutual FSA generally consists of retained earnings. Moreover, under the final rule, federal mutual savings associations that are CAMELS 1- and 2-rated have a higher limit of 150 percent of capital and surplus, as with federal stock savings associations.

The final rule does not make any substantive changes for national banks.

Main Office and Home Office Relocations (12 CFR 5.40)

Under the prior rules, 12 CFR 5.40 addressed changes in location of a national bank’s main office while 12 CFR 145.91, 145.93, and 145.95 addressed changes in location of an FSA’s home office. While these rules addressed a common subject, there were a number of differences. The final rule amends 12 CFR 5.40 to apply to FSAs. As a result, FSAs now are subject to certain additional notices and applications. Although these procedures are different from those that applied to FSAs in the prior rules, we expect those institutions that qualified for treatment as highly rated savings associations under the prior rules also to qualify for expedited treatment under the revised regulation, resulting in only minimal additional requirements. The final rule makes no substantive changes for national banks.

Changes in Corporate Title (12 CFR 5.42)

Under the prior rules, 12 CFR 5.42 set forth the applicable standards and procedures for when a national bank seeks to change its corporate title and 12 CFR 143.1 set forth the applicable standards and procedures for a change in corporate title for FSAs.

The final rule amends § 5.42 to include FSAs. The primary substantive effect of this change is to eliminate the advance notice requirement applicable to FSA corporate title changes. Instead, FSAs now are required to provide a notice to the appropriate district office subsequent to any change in its corporate title. The final rule makes no substantive changes for national banks.

Increases in Permanent Capital of a Federal Stock Savings Association (12 CFR new 5.45)/Changes in Permanent Capital of a National Bank (12 CFR 5.46)

Section 5.46 of title 12 of the CFR sets out the OCC's rule addressing changes in permanent capital by national banks.⁷ This rule implements statutory provisions that establish the processes and requirements for a national bank to increase or decrease its permanent capital, including 12 USC 51a, 51b, 51b-1, 52, 56, 57, and 59. This rule includes a streamlined approval process for most increases in permanent capital by national banks. The rule, however, requires a full application and prior approval for 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. The final rule makes clarifying and technical changes to § 5.46.

The above listed statutes do not apply to FSAs, and there are no comparable provisions in the Home Owners' Loan Act requiring a savings association to receive prior approval for any increase in permanent capital. Accordingly, the final rule does not add FSAs to § 5.46. The final rule, however, does add a new § 5.45 to require a federal stock savings association to apply to the OCC and obtain prior approval for an increase in permanent capital in the same circumstances in which a national bank would be required to file a full application under § 5.46.⁸ The final rule limits this requirement to federal stock savings associations because 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 preamble to the final rule indicates that the OCC will review any proposed capital increases at federal mutual savings associations on a case-by-case basis.

Voluntary Liquidation (12 CFR 5.48)

Section 5.48 of title 12 of the CFR sets forth the standards and procedures for the voluntary liquidation of a national bank. Under the prior rules, 12 CFR 146.4 governed the voluntary liquidation of FSAs. The final rule makes § 5.48 applicable to both FSAs and national banks and amends § 5.48 to incorporate certain provisions from § 146.4, codify existing OCC and institution practices, and make changes to the liquidation process for FSAs.

Change in Control (12 CFR 5.50)

Section 5.50 of title 12 of the CFR implements the Change in Bank Control Act⁹ for national banks. Under the prior rules, 12 CFR 174 implemented this statute for FSAs. While many of the substantive requirements in the two regulations were the same, part 174 included certain substantive requirements not included in § 5.50. The final rule amends 12 CFR 5.50 to make it applicable to both national banks and FSAs and to include some of the definitions and

⁷ Declaration and payment of national bank dividends are addressed in 12 USC 56 and 60 and in 12 CFR 5.60 through 5.67.

⁸ New § 5.55 sets forth the procedures and standards for capital distributions made by an FSA.

⁹ 12 USC 1817(j).

substantive provisions formerly found in part 174. The amendments affect both national banks and FSAs.

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

Section 1831i of title 12 of the United States Code requires certain national banks and FSAs to notify the OCC of a change in a director or senior executive officer. Under the prior rules, 12 CFR 5.51 and part 163, subpart H (§§ 163.550 through 163.590), implemented this requirement for national banks and FSAs, respectively. The final rule amends § 5.51 to make it applicable to both national banks and FSAs, to include certain requirements included in part 174, and to make various clarifying changes.

Change in Address (12 CFR 5.52)

Section 5.52 of title 12 of the CFR requires a national bank to submit a written notice to the OCC if its main office or post-office box address changes. Under the prior rules, § 145.91(b) of title 12 required an FSA to notify the appropriate OCC licensing office if it changes the permanent address of its home office, with certain exceptions. The final rule amends § 5.52 by making it applicable to both national banks and FSAs. Among other changes, the amendments remove the requirement to file a notice in certain cases for national banks and FSAs.

Substantial Asset Change (12 CFR 5.53)

Section 5.53 of title 12 of the CFR sets out the OCC's rules addressing changes in asset composition for national banks. Under the prior rules, § 163.22(c) and (h)(2) of title 12 set out the OCC's rules addressing changes in asset composition, as well as several other types of changes in business, for FSAs. Among other things, the final rule combines these rules in an expanded § 5.53 by including additional requirements for approval of asset transfers by national banks based on § 163.22(c). The final rule also removes some approval requirements for certain asset transfers by FSAs, clarifies existing provisions of § 5.53, and revises the rule's format to make it easier to follow.

Capital Distributions by FSAs (12 CFR new 5.55)

Under the prior rules, 12 CFR 163, subpart E, set forth the procedures and standards for all capital distributions made by an FSA. As indicated above, 12 CFR 5.46 and subpart E of part 5 describe the procedures and standards for transactions resulting in changes in a national bank's permanent capital and declaration and payment of national bank dividends.

Although these sections cover similar transactions, they are structured differently and apply in different ways to national banks and FSAs. The national bank rules are based on statutory requirements that are not applicable to FSAs. Therefore, the final rule does not integrate these rules. To include all OCC licensing-related rules in part 5, however, the final rule moves the capital distributions provisions contained in subpart E of part 163 to part 5 as new 5.55.¹⁰ The

¹⁰ New § 5.45 sets forth the procedures and standards for an increase in permanent capital of a federal stock savings association.

final rule also includes in new § 5.55 filing procedures based on provisions in part 5 regarding eligible savings associations and expedited review that results in filing requirements similar to those in subpart E of part 163. Finally, the final rule clarifies the provisions regarding filing of a notice with the OCC and Board of Governors of the Federal Reserve System to describe the requirements more precisely.

Subordinated Debt (12 CFR new 5.56)

Section 5.47 provides the rules governing subordinated debt issued by national banks. Section 163.81 of the prior rules contained the subordinated debt rules for FSAs. Because of the differences and complexity of these rules, the final rule does not integrate them. In order to include all OCC licensing-related rules in part 5, however, the final rule moves § 163.81 to part 5 as new § 5.56 and includes in the new section filing procedures based on provisions in part 5 regarding eligible savings associations and expedited review that results in filing requirements similar to those in § 163.81. The final rule makes no changes to § 5.47.

Pass-Through Investments by an FSA (12 CFR new 5.58)

National banks and FSAs may make, directly or through an operating subsidiary, noncontrolling investments (the national bank term) or pass-through investments (the FSA term) in entities pursuant to their respective authority under 12 USC 24(Seventh) (national banks), 12 USC 1464(c) (FSAs), and other statutes. Section 5.36 of title 12 of the CFR describes the procedures for making these noncontrolling investments for national banks. Under the prior rules, § 160.32(a) of title 12 addressed the authority of FSAs to make pass-through investments, while § 160.32(b) and (c) described the procedures for making these investments.

Because of differences in the statutory authorities, respective implementing regulations, and interpretations, the final rule does not integrate these bank and FSA rules. In order to include all OCC licensing-related rules in part 5, however, the final rule adds a new § 5.58. Section 5.58 is based on § 5.36 and subjects FSA pass-through investments to filing requirements very similar to those applicable to national banks. The final rule also amends § 160.32(b) to become a cross-reference referring FSAs to § 5.36 and removes § 160.32(c). The final rule makes no substantive changes to § 5.36.

Service Corporations (12 CFR new 5.59)

FSAs are statutorily authorized to invest in service corporations and are generally required by statute to apply to the OCC before establishing a service corporation. Under the prior rules, the regulations governing service corporations were at 12 CFR 159. The final rule creates a new 12 CFR 5.59, based on part 159, to address FSA service corporations and removes part 159. Section 5.59 differs from part 159 in that it conforms more closely to the statute by requiring notice to the OCC to establish any service corporation, rather than only to establish service corporations the FSA controls.