

## §5.20

## 12 CFR Ch. I (1–1–18 Edition)

(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 in-

stead 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.

### Subpart B—Initial Activities

#### §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. An existing national bank or Federal savings association desiring to change the purpose of its charter 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. This section also describes the requirements for an existing national bank or Federal savings association to change the purpose of its charter and refers such institutions to § 5.53 for the procedures to follow.

(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 ag-

gregate, 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 suf-

ficient 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, non-profit, 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 prefilings 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 pre-filing meeting. The pre-filing 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

## §5.21

## 12 CFR Ch. I (1–1–18 Edition)

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*—(1) *In general*. 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.

(2) *Changes in charter purpose*. An existing national bank or Federal savings association whose activities are limited to a special purpose that desires to change to another special purpose, to add another special purpose, or to no longer be limited to a special purpose charter shall submit an application and obtain prior OCC approval under §5.53. An existing national bank or Federal savings association whose activities are not limited that desires to limit its activities and become a special purpose institution shall submit an application and obtain prior OCC approval under §5.53.

[80 FR 28418, May 18, 2015, as amended at 82 FR 8103, Jan. 23, 2017]

### §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