

COMPTROLLER'S LICENSING MANUAL

Articles of Association, Charter, and Bylaw Amendments



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Introduction

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 Office of the Comptroller of the Currency (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 that the bank will follow. For mutual FSAs and stock FSAs, members and shareholders, respectively, may also approve or amend bylaws.

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)

Key Policies

A national bank may amend its articles of association consistent with 12 USC 21a, as outlined in the “Notification/Application Process” section of this booklet.¹ The national bank may add additional articles or amendments to the articles of association provided they are not contrary to law. Amendments to a national 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 national bank’s bylaw amendments need not be filed with the OCC. The national bank should ensure that bylaw amendments are legal and are consistent with the national 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 5.22.² In addition to providing the standards governing charters and bylaws, 12 CFR 5.21 and 5.22 specify the applicable filing requirements by either application or notice, and include the permissible language for the charter and bylaws of mutual and stock FSAs, respectively. The requirements for an FSA to file either a notice or an application with the OCC for a charter or bylaw amendment are discussed in the next section of this booklet. The OCC may object to a charter or bylaw amendment if it is contrary to a law, regulation, or OCC policy, or if it may adversely affect the safe and sound operation of the FSA.

¹ 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).

² An FSA initially adopts the charter and bylaws at the time of organization. Refer to 12 CFR 5.20(e)(1)(iii)(A).

Notification/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 national bank, unless a higher percentage is required.³ A proposed amendment requiring shareholder approval may be obtained at a duly called shareholders' meeting. The national 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.⁴

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 national bank's shareholders.⁵ In the case of a shareholder vote to approve such amendment, the national bank must give shareholders at least five days' notice of the shareholder meeting by registered or certified mail.⁶ Two-thirds of the national bank's shareholders, however, must approve amendments to the capital stock article to either increase or decrease the authorized number of common shares of the national bank.⁷

Whenever changes are made in a national bank's articles of association, the national bank must send to the OCC the amendment with a corporate resolution certifying shareholder action. The national bank should send the certified copy to the appropriate OCC licensing office for preservation in the OCC's records.⁸

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 of association is recommended, not required. The model articles do not address every situation but have been drafted to incorporate compliance with applicable laws and regulations.

³ Refer to 12 USC 21a.

⁴ Refer to 12 USC 21a. Pursuant to 12 CFR 7.2001, 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.

⁵ Refer to 12 USC 51a.

⁶ Refer to 12 USC 51a.

⁷ Refer to 12 USC 57 and 59.

⁸ 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,⁹ and a national bank is not required to seek OCC approval of the bylaws. Should it come to the OCC's attention, however, that a national bank's bylaws are inconsistent with a law or regulation or the national bank's articles of association, or the bylaws promote unsafe or unsound operation of the national bank, the OCC will consider appropriate supervisory action to address any concerns.

The OCC's website includes model [bylaws](#) that a national 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.¹⁰ An FSA must file either an application or a notice with the OCC to amend its charter or bylaws, depending on the nature of the amendment. The filing should be made with the appropriate OCC licensing office.

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 rather than notices, the OCC notifies the FSA within 30 days of receipt of the application if the OCC 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 institution fails to 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.

⁹ 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.

¹⁰ Refer to 12 CFR 5.21 for requirements for mutual FSAs and 12 CFR 5.22 for requirements for stock FSAs.

- A copy of the proposed charter or bylaw amendment with a second copy marked to show how the proposed provision varies from the current charter or bylaws provisions.
- A statement or certification that the proposed amendment has been approved by a majority of the board of directors.
- A discussion of the basis or reason for the amendment, including a conclusion if the provision is consistent with the model charter or model bylaws, or if not, how the provision is not consistent.
- 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.

For charter amendments of either a mutual or a stock FSA, the OCC will request that the FSA provide the OCC with sufficient information to verify that the FSA has complied with applicable requirements for providing notice of the members' or shareholders' meeting, that proxy materials provided to the members or shareholders complied with applicable requirements, and that the 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 has amended 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, together with such supporting documents as needed to demonstrate that the amendments were properly adopted.¹¹

Charter Amendments

Charter amendments of a mutual FSA must be approved by a majority of the board of directors¹² and approved by the association's members at a legal meeting.¹³ The FSA must post a notice of the meeting in each of the FSA's offices during the 14 days immediately before the meeting.¹⁴ 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 in which the meeting will be held.

¹¹ Refer to 12 CFR 5.21(h) for mutual FSAs and 12 CFR 5.22(i) for stock FSAs.

¹² Refer to 12 CFR 5.21(f)(1).

¹³ Refer to 12 CFR 5.21(e), "Charter Form," section 9, "Amendment of Charter."

¹⁴ Refer to 12 CFR 5.21(j)(2).

- 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.

Charter amendments of a stock FSA must be approved by a majority of the board of directors¹⁵ 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.¹⁶ 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.¹⁷

Preapproved Charter or Charter Amendments

If an FSA adopts the standard form of charter¹⁸ or any of the standard charter amendments,¹⁹ 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 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.²⁰

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

- 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 application to the OCC is required if a charter amendment for either a stock or a mutual FSA would render more difficult or discourage

- a merger.

¹⁵ Refer to 12 CFR 5.22(f)(1).

¹⁶ Refer to 12 CFR 5.22(e), "Charter Form," section 8, "Amendment of Charter."

¹⁷ Refer to 12 CFR 5.22(k)(2).

¹⁸ Refer to 12 CFR 5.21(e) for mutual FSAs and 12 CFR 5.22(e) for stock FSAs.

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

²⁰ Refer to 12 CFR 5.20.

- 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.²¹

An application to the OCC also is required 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. The OCC can, however, 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 of the state where the FSA's home office is located or, if state law is unclear or silent, under the Delaware General Corporation Law.

If the OCC approves the charter amendment, the proposed amendment 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 prior approval of the OCC, and the amendment is permissible under all applicable laws, rules, and regulations,²² a stock FSA shall submit the proposed amendment to the appropriate OCC licensing office at least 30 days before the date the proposed amendment is to be mailed for consideration by the stock FSA's shareholders. In the same circumstance, a mutual FSA shall submit the proposed amendment to the OCC at least 30 days before the proposed effective date of the charter amendment.

Within 30 days of receiving the notice of a proposed charter amendment, the OCC reviews the amendment for compliance with applicable laws and regulations, any adverse impact on the operation of the bank, and conformance with applicable supervisory or policy matters. If the OCC does not object to the proposed amendment, the OCC notifies the FSA in writing of the OCC's decision. If the OCC rejects the proposed amendment, the OCC notifies the bank in writing of the reason for the rejection. The amendment is automatically approved 30 days from the date of the FSA's filing unless the OCC notifies the FSA before the expiration of the 30-day period that the OCC has rejected the amendment or has concluded that an application on the proposed amendment is required instead of the prior notice.²³

²¹ Refer to 12 CFR 5.21(f)(2)(i) for mutual FSAs and 12 CFR 5.22(f)(2)(i) for stock FSAs.

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

²³ Refer to 12 CFR 5.21(g) or 5.22(g).

Bylaw Amendments

Bylaw amendments of either a mutual or a 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 of 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 (m). 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.

Bylaw Amendment Application

An application to the OCC is required if a bylaw amendment for either a stock or a 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.²⁴

An application to the OCC also is required if the proposed amendment involves a significant issue of law or policy. In addition, an application is required 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 (m) (for stock FSAs); applicable laws, rules, or regulations; or the FSA's charter.

An FSA should file an application for prior written approval by the OCC with the appropriate OCC licensing office.

Bylaw Amendment Notice

If a proposed bylaw amendment does not involve a provision that would require an application to be submitted, and is permissible under all applicable laws, rules, and regulations, an FSA shall submit a notice of the proposed amendment to the appropriate OCC

²⁴ Refer to 12 CFR 5.21(j)(3)(i)(A) for mutual FSAs and 12 CFR 5.22(j)(2)(i)(A)(1) for stock FSAs.

licensing office at least 30 days before the effective date of the amendment.²⁵ A bylaw amendment is deemed to be effective 30 days after filing of the amendment with the OCC, provided the FSA follows the requirements of its charter in adopting the amendment. The automatic approval does not apply if, before the expiration of the 30-day period, the OCC notifies the FSA in writing that the amendment is rejected or that the OCC has concluded that an application is required.

If the amendment is approved, the FSA should provide the OCC with the effective date of the amendment, and verification that the amendment was properly approved by the board of directors, the members, or the shareholders, as applicable.

Bylaw Amendment of Model Provisions Notification

If an FSA proposes to adopt or amend a bylaw provision to conform to the model bylaws, such an amendment 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 in adopting such an amendment.²⁶

An FSA adopting or amending its bylaws with these standard provisions should submit the following information to the OCC within the 30-day period:

- 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

Optional Bylaw Amendment—Integrity of Directors

The bylaws for a mutual or a stock FSA may include an optional bylaw provision on integrity. The OCC has approved the following bylaw provision, which must be filed with the OCC 30 days before the effective date.

A person is not qualified to serve as a director if he or she: (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 ten 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 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.

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

²⁶ Refer to 12 CFR 5.21(j)(3)(i)(B) for mutual FSAs and 12 CFR 5.22(j)(2)(i)(B) for stock FSAs.

Specific Requirements

National Banks

Corporate Governance Procedures

The bylaws of a national bank shall specify the corporate governance procedures that the national bank will follow.²⁷ To the extent that the national bank's corporate governance procedures are not inconsistent with applicable federal banking statutes or regulations, or bank safety and soundness, a national bank can elect to follow the corporate governance procedures of the law of the state in which the national bank's main office is located, the law of the state in which the bank's holding company is incorporated (if applicable), the Delaware General Corporation Law, or the Model Business Corporation Act.

Federal Savings Associations

Corporate Governance Procedures

A mutual FSA can elect to follow the corporate governance procedures of the laws of the state where the FSA's home office 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, and must file a copy of the bylaws (which are effective upon adoption) with the OCC within 30 days after adoption. The filing must indicate, where not obvious, why the bylaw provision or provisions meet the requirements for adoption.²⁸ Any bylaw amendment filed in accordance with these procedures is automatically effective 30 days from the date of the filing, provided that the mutual FSA follows the requirements of its charter and bylaws in adopting the amendment. This automatic effective date does not apply if, before the expiration of the 30-day period, the OCC notifies the institution that the amendment is rejected or that the amendment requires an application to be filed pursuant to 12 CFR 5.21(f)(2)(i).

A stock FSA may elect to follow the corporate governance procedures of the laws of the state where the FSA's home office 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 be consistent 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. All

²⁷ Refer to 12 CFR 7.2000.

²⁸ Refer to 12 CFR 5.21(j)(3)(iii).

other filing requirements and procedures for adoption are the same as those for mutual FSAs.²⁹

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. Anti-takeover amendments are subject to an application requirement for approval by the OCC.

If a mutual FSA converts to a stock FSA, however, 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.³⁰ Further, any provision that would render a change in control of the FSA more difficult and would require for any corporate action (other than the removal of directors) the affirmative vote of a larger percentage of shareholders than is required by 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.

Bylaw Provision on Indemnification

For mutual and stock FSAs, the bylaws may include an optional bylaw provision on indemnification. Any such bylaw provision must be filed with the OCC 30 days before the effective date and must comply with the requirements of 12 CFR 145.121, 12 CFR 359, and the Federal Deposit Insurance Act (12 USC 1828(k)).

²⁹ Refer to 12 CFR 5.22(j)(2)(iii).

³⁰ Refer to 12 CFR 5.22(h).

Annual Meeting and Fiscal Year End Closing Date: Bylaw Considerations

A change in the fiscal year end for either a mutual or a 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.

Existing Federal Savings Associations

FSAs in existence before September 15, 1983, might have charters that were valid at that time but that 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. The bylaws, however, must contain provisions that comply with all requirements under 12 CFR 5.21(j) for mutual FSAs and 12 CFR 5.22(j) through (m) 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 approval of the OCC.

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 national bank must include the word “national” (12 USC 22 and 30, and 12 CFR 5.42).
2. The location of the national 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 national bank from the 25-member limit. Information about director qualifying shares and vacancies should be included. For a bankers’ bank, information about replacing participating national 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 7.2001, 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 national 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 national 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 national 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 president be a member of the board and 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 national 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, some of which 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 7.2001, 7.2002, 7.2003, 7.2004, 7.2005, 7.2006, 7.2007, and 7.2024).
3. The requirement that the president be a member of the board and 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, 7.2017, and 7.2018).
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 national 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 national 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 national bank can elect to follow the corporate governance procedures of the law of the state in which the national bank's main office 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 stock FSAs, an optional provision regarding age limitations for board members (12 CFR 5.22).
2. For mutual and stock FSAs, an optional provision on indemnification. Any such bylaw provision, however, must comply with and be limited to the requirements of 12 CFR 145.121 and 359, and the Federal Deposit Insurance Act.

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: The system of rules, practices, and processes by which a company is directed and controlled.

Director qualifying shares: A director of a national bank must hold a minimum \$1,000 par value or fair market value of stock in his or her own right in the national bank or an equivalent interest in the parent company that controls the national 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) The FSA may be a stock FSA, in which stock is issued to shareholders for an offering price to raise capital, or (2) the FSA 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 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 a number of 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 5.42
Lost Stock Certificate	
Regulation	12 CFR 7.2018
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 Regulation	12 USC 71 and 75 12 CFR 7.2001 and 7.2003
Staggered Terms of Directors Regulation	12 CFR 7.2024
Stock Certificate Signatures Law Regulation	12 USC 52 12 CFR 7.2017

Federal Savings Associations

Charter and Bylaws

Processing Guidelines and Procedures Regulation	12 CFR 5, subpart A
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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

Stock FSA

12 CFR 5.21(g)(2) and 5.42

12 CFR 5.22(g)(1) and 5.42

Bylaws

Regulation

Mutual FSA

Stock FSA

12 CFR 5.21(j)

12 CFR 5.22(j)–(m)

Indemnification

Regulation

12 CFR 145.121 and 359