

COMPTROLLER'S LICENSING MANUAL

Substantial Asset Changes, Including Changes in Charter Purpose



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Introduction

This booklet of the *Comptroller's Licensing Manual* discusses key policies and requirements under 12 CFR 5.53 for filings by a national bank or federal savings association (FSA) pertaining to a substantial asset change, including a change in charter purpose. In this booklet, national banks and FSAs are collectively referred to as banks, unless it is necessary to distinguish between the two.

In general, a bank must submit an application and obtain OCC approval before engaging in a substantial asset change or change in charter purpose.¹ This booklet discusses what constitutes a substantial asset change, including a change in charter purpose, and when a filing with the OCC is required.

¹ Refer to 12 CFR 5.53(b).

Key Policies

Regulatory Applicability

A bank must file an application and obtain OCC approval before engaging in a substantial asset change, including changes in charter purpose. Except as described in the “Exceptions” section, a substantial asset change includes any of the following:

- Sale or other disposition of all, or substantially all, of a bank’s assets in a transaction or a series of transactions.
- After having sold or disposed of all, or substantially all, of its assets, subsequent purchases or other acquisitions or other expansions of the bank’s operations.
- Any other purchases, acquisitions, or other expansions of operations that are part of a plan to increase a bank’s size by more than 25 percent in a one-year period.
- Any change in a bank charter’s purpose as described in 12 CFR 5.20(1)(2).
- Any other material increase or decrease in a bank’s size or a material alteration in the composition of the types of assets or liabilities of a bank (including the entry or exit of business lines), on a case-by-case basis, as determined by the OCC.

A bank must consult with the OCC when considering a transaction, or series of transactions, that may constitute, or result in, a material alteration in the composition of the bank’s assets or liabilities. Such a consultation assists in determining whether an application to the OCC is required.²

In addition, 12 CFR 5.20(1)(2) requires a bank to file an application and obtain prior OCC approval under 12 CFR 5.53 if

- the bank is a special purpose bank that wants to change to another special purpose, add another special purpose, or no longer be limited to a special purpose (expansion of operations); or
- the bank’s activities are not limited and the bank wants to limit its activities and become a special purpose bank (contraction of operations).

Exceptions

Under 12 CFR 5.53, the term substantial asset change does not include a change in the composition of all, or substantially all, of a bank’s assets in the following circumstances:

² Refer to 12 CFR 5.53(d). A bank considering a transaction or series of transactions that may constitute a material change under 12 CFR 5.53(c)(1)(iv) must consult with the appropriate OCC supervisory office for a determination whether the OCC will require an application under this section. In determining whether to require an application, the OCC considers all of the relevant facts and circumstances, including the size and nature of the transaction and the condition of the institutions involved.

- The bank undertakes the change in response to direction from the OCC (for example, an enforcement action pursuant to 12 USC 1818).
- The change is part of a voluntary liquidation under 12 CFR 5.48, provided that the bank has obtained the OCC's non-objection to the liquidation plan and has stipulated in its liquidation notice to the OCC that it will complete the liquidation, dissolve the bank, and return its charter within one year of the date it filed the notice, unless the OCC extends the time period.
- The change occurs as a result of a bank's ordinary and ongoing business of originating and securitizing loans.
- The change is subject to OCC approval under another application to the OCC.³

With respect to changes in charter purpose, 12 CFR 5.20(1)(2) requires a bank to file an application under 12 CFR 5.53 for an expansion or a contraction of operations and does not include any exceptions. Accordingly, a bank that is subject to the 12 CFR 5.53 filing requirement by virtue of 12 CFR 5.20(1)(2) is not exempted from the 12 CFR 5.53 filing requirement if the bank is also required to file a separate application with the OCC (such as an application under 12 CFR 5.21 or 5.22 to amend its charter). Refer to the discussion in the "Changes in Charter Purpose" section of this booklet for additional information regarding charter issues.

Questions on the applicability of the exception under 12 CFR 5.53(c)(2)(iv) should be directed to the appropriate OCC licensing office.

Related Requirements

Changes in Charter Purpose

The activities of a special purpose national bank are limited by its articles of association and generally by a condition of approval in the OCC's decision letter on the application to establish the bank as a special purpose bank. The activities of a special purpose FSA may be limited by its charter and also may be limited by a condition of approval imposed in a decision letter on a prior application by the FSA.

Changes in charter purpose often also involve amendments to the bank's articles of association or charter. The bank must add restrictions if it contracts operations or remove restrictions if it expands operations. Refer to 12 CFR 5.20, 5.21, and 5.22.

³ For example, a full-service bank that proposes to expand by acquiring insured deposits from another bank is required to file a Bank Merger Act application with the OCC, but is not required to file under 12 CFR 5.53 for the same acquisition. A national bank that proposes to transfer its insured deposits to another insured institution and then merge into an uninsured affiliate pursuant to 12 USC 215a-3, however, must file an application under 12 CFR 5.53 for the transfer of the deposits, and also file an application under 12 USC 215a-3 with respect to the merger with the affiliate.

Filing Requirements With Other Regulators

A bank filing an application under this regulation may be subject to filing requirements with other regulators. For example, an uninsured national trust bank changing its charter purpose to a full-service national bank must file an application with the OCC pursuant to 12 CFR 5.53 and also file an application with the Federal Deposit Insurance Corporation to obtain insurance of deposit accounts.

Dormant Banks

The OCC has a long-standing practice of not allowing transactions that would remove substantially all of the assets and liabilities of a bank without closing it, thereby creating a dormant bank. Banks should consult with the appropriate OCC licensing office if a substantial change in assets would result in a dormant bank.

Decision Criteria

When reviewing an application filed pursuant to 12 CFR 5.53, the OCC considers the following factors:

- Capital level of any resulting bank.
- Conformity of the transaction to applicable laws, regulations, and supervisory policies.
- Purpose of the transaction.
- Impact of the transaction on the bank's safety and soundness.
- Projected effect of the transaction on the bank's depositors, other creditors, customers, and shareholders or members.

The OCC's review of any substantial asset change that involves the purchase, other acquisition, or other expansion of a bank's operations or that involves a change in charter purpose, as described in 12 CFR 5.20(l), also includes factors that would apply to the organization of a new bank as outlined in 12 CFR 5.20. Although many of the factors regarding safety and soundness and conformity to applicable laws, regulations, and OCC policies are factors in both 12 CFR 5.53 and 12 CFR 5.20, the OCC considers additional factors outlined in 12 CFR 5.20 to the extent appropriate for the circumstances of the proposed transaction.

Filing Requirements

An application for a substantial asset change, including a change in charter purpose, by a bank as required by 12 CFR 5.53 must be filed with the bank's appropriate OCC licensing office.

Public Notice, Public Comments, and Hearings

The public notice, public comments, and hearings provisions under 12 CFR 5.8, 5.10, and 5.11, respectively, do not apply to the applications filed pursuant to 12 CFR 5.53. If the OCC determines that the application presents a significant or novel policy, supervisory, or legal issue, however, the OCC may determine that some or all of the provisions of 12 CFR 5.8, 5.10, and 5.11 apply.

Application Contents

A "[Change in Assets Applications](#)" form for a substantial asset change, including further information and instructions, is available on the OCC's website. The application should include

- a description of the change in charter purpose or the transaction(s), including descriptions of the assets to be sold, transferred, retained, purchased, or received.
- the business reason for the transaction(s).
- a discussion that details the impact of the transaction(s) on the bank's depositors, creditors, customers, and shareholders or members.
- a discussion of any other required regulatory approvals and the steps and timeline for obtaining the approvals and copies of other regulatory filings.
- information regarding any shareholder or member approvals that will be required and the timeline for obtaining the approvals.
- financial information, including pro forma balance sheets before and after the transaction(s), showing projected adjustments resulting from the transaction.
- a pro forma calculation of regulatory capital ratios before and after the transaction(s).
- a discussion of any proposed change in management or board composition.
- if applicable, a post-transaction business plan.
- information pertaining to the factors in 12 CFR 5.20 as appropriate for the proposed transaction(s).⁴
- a discussion of Community Reinvestment Act (CRA) implications, such as an amended CRA plan, if there will be any changes in the market area to be served.

⁴ Refer to 12 CFR 5.53(d)(3)(ii).

Application Process

Exploratory Meeting

1. Potential applicants may request an exploratory meeting (or conference call) with the OCC to clarify any questions or concerns. The OCC encourages potential applicants to contact the appropriate OCC licensing office for assistance regarding regulatory requirements. A potential applicant should securely submit a copy of any written documents, if available, that describe the proposal to the appropriate OCC licensing office for review before the meeting.
2. A bank contemplating a transaction or series of transactions that may result in a substantial change of assets must consult with the OCC to determine if an application is required. In addition, the OCC encourages banks to consult with the OCC before filing an application.
3. OCC licensing staff will arrange an exploratory meeting as appropriate.
4. Before an exploratory meeting, OCC licensing staff will advise potential applicants to review the [“Charters,”](#) [“Business Combinations,”](#) or [“Termination of Federal Charter”](#) booklets of the *Comptroller’s Licensing Manual*, as appropriate, and the [“General Policies and Procedures”](#) booklet of the *Comptroller’s Licensing Manual*.

Prefiling Meeting

1. Potential applicants may request a prefiling meeting with the OCC. A prefiling meeting is optional but is beneficial if the transaction presents possible issues or if the applicant has questions on the structure of the transaction or the filing process. The OCC also may request a prefiling meeting.
2. Before any prefiling meeting, potential applicants should provide OCC staff with an overview of the proposal that includes
 - a brief description of the proposal, including a listing of planned activities and related transactions.
 - biographical information on each member of the senior management team who is coming onboard in connection with the bank’s proposed engagement in a new activity, including experience managing that activity.
 - pro forma balance sheet and income statements and capital schedules.
 - a schedule for completion of the transaction in cases when a series of transactions is contemplated.
3. OCC licensing staff will arrange a prefiling meeting after allowing adequate time for review of the prefiling materials. The meeting is normally held in the OCC district

office where the application will be filed but may be held at another location or by telephone at the request of the applicant.⁵

Filing the Application

1. File the application with the appropriate OCC licensing office.
2. As necessary, file applications with the OCC or other regulatory agencies for approvals to execute any necessary steps in the plan to change the assets or scope of activities or purpose of the bank.
3. Depending on the transaction, shareholder or member approval may be required for certain steps. As necessary, provide proper notification of any required shareholder meetings, provide appropriate proxy or shareholder disclosures, and obtain the requisite approvals.

Consummation

1. If applicable, provide the OCC copies of any required board of director approvals, shareholder or member approvals, and other regulatory approvals 10 calendar days before consummation of the transaction.

⁵ Refer to 12 CFR 5.4(f).

Glossary

Articles of association: The organizational document for a national bank.

Charter: The organizational document for a federal savings association.

Dormant bank: A bank that is no longer engaged in banking activities other than on a de minimis basis. This definition includes, for example, a bank that has significantly reduced its activities and services or that has contracted out significant portions of its operations to third-party service providers, other than in the ordinary course of the bank's ongoing business.

Liquidation: The process by which a solvent national bank or FSA that has decided to close, without being sold to another owner or merged into another entity, winds down its operations and ceases to exist.

Special purpose bank: A bank that offers only a small number of products, targets a limited customer base, or operates narrow business plans that limit activities. Examples of special purpose banks include bankers' banks, credit card banks, trust-only banks or trust companies, community development banks, or banks that focus on cash management activities. Special purpose banks are described in the "[Charters](#)" booklet of the *Comptroller's Licensing Manual*.

References

In this section, “NB” denotes that the referenced law or regulation applies to national banks, and “FSA” denotes that the reference applies to federal savings associations.

Articles of Association and Charter

Law 12 USC 21, 21a (NB)
12 USC 1464 (FSA)
Regulation 12 CFR 5.21, 5.22 (FSA)

Bank Merger Act

Law 12 USC 1828(c) (NB and FSA)
Regulation 12 CFR 5.33 (NB and FSA)

Bylaws

Law 12 USC 24(Sixth) (NB)
Regulation 12 CFR 5.21, 5.22 (FSA); 7.2000(NB)

Enforcement Action

Law 12 USC 1818 (NB and FSA)

Organization of a National Bank or Federal Savings Association

Law 12 USC 21, 21a, 22, 23, and 24 (NB); 1464 (FSA)
Regulation 12 CFR 5.20 (NB and FSA)

Substantial Asset Change

Regulation 12 CFR 5.53 (NB and FSA)

Voluntary Liquidation

Law 12 USC 181, 182 (NB); 12 USC 1464 (FSA)
Regulation 12 CFR 5.48 (NB and FSA)