



[BILLING CODE: 4810-33-P]

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 5 and 7

[Docket No. OCC-2020-0020]

RIN: 1557-AE94

Director, Shareholder, and Member Meetings

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Interim final rule and request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its regulations on activities and operations of national banks and corporate activities of Federal savings associations to provide that these institutions may permit telephonic and electronic participation at all board of directors, shareholder, and as applicable, member, meetings. This Interim Final Rule (IFR) will update the OCC’s regulations to conform with modern technologies and enable national banks and Federal savings associations to hold these meetings without violating social distancing restrictions imposed in response to the coronavirus disease 2019 (COVID-19) emergency.

DATES: The effective date of this interim final rule is [INSERT DATE OF PUBLICATION IN **FEDERAL REGISTER**]. Comments on the interim final rule must be received no later than [INSERT 45 DAYS AFTER DATE OF PUBLICATION IN **FEDERAL REGISTER**].

ADDRESSES:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible. Please use the title “Director, Shareholder, and

Member Meetings” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal – Regulations.gov Classic or Regulations.gov Beta:*
Regulations.gov Classic: Go to <https://www.regulations.gov/>. Enter “Docket ID OCC-2020-0020” in the Search Box and click “Search.” Click on “Comment Now” to submit public comments. For help with submitting effective comments please click on “View Commenter’s Checklist.” Click on the “Help” tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

- *Regulations.gov Beta:* Go to <https://beta.regulations.gov/> or click “Visit New *Regulations.gov Site*” from the *Regulations.gov* Classic homepage. Enter “Docket ID OCC-2020-0020” in the Search Box and click “Search.” Public comments can be submitted via the “Comment” box below the displayed document information or by clicking on the document title and then clicking the “Comment” box on the top-left side of the screen. For help with submitting effective comments please click on “Commenter’s Checklist.” For assistance with the *Regulations.gov* Beta site, please call (877) 378-5457 (toll free) or (703) 454-9859 Monday-Friday, 9am-5pm ET or e-mail regulations@erulemakinghelpdesk.com.

- *E-mail:* regs.comments@occ.treas.gov.
- *Mail:* Chief Counsel’s Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street, SW., suite 3E-218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street, SW., suite 3E-218, Washington, DC 20219.

- *Fax:* (571) 465-4326.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC-2020-0020” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically – Regulations.gov Classic or Regulations.gov*

Beta:

Regulations.gov Classic: Go to <https://www.regulations.gov/>. Enter “Docket ID OCC-2020-0020” in the Search box and click “Search.” Click on “Open Docket Folder” on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on “View all documents and comments in this docket” and then using the filtering tools on the left side of the screen. Click on the “Help” tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Regulations.gov Beta: Go to <https://beta.regulations.gov/> or click “Visit New *Regulations.gov Site*” from the *Regulations.gov* Classic homepage. Enter “Docket ID

OCC-2020-0020” in the Search Box and click “Search.” Click on the “Comments” tab. Comments can be viewed and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen. Supporting materials can be viewed by clicking on the “Documents” tab and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen.” For assistance with the *Regulations.gov* Beta site, please call (877) 378-5457 (toll free) or (703) 454-9859 Monday-Friday, 9am-5pm ET or e-mail regulations@erulemakinghelpdesk.com.

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

FOR FURTHER INFORMATION CONTACT:

Frances C. Augello, Special Counsel, or Heidi M. Thomas, Special Counsel, Chief Counsel’s Office, (202) 649-5490, or Donald W. Dwyer, Thrift Licensing Lead Expert, (202) 649-6260, for persons who are deaf or hearing impaired, TTY, (202) 649-5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

The OCC recognizes the recent disruptions and significant challenges faced by national banks and Federal savings associations as a result of the coronavirus disease 2019 (COVID-19) emergency. Health and safety advisories declared in response to the COVID-19 emergency, including those relating to social distancing, are impeding the ability of national banks and Federal savings associations to hold in-person meetings, such as board of director, shareholder, and member meetings. However, neither the

National Bank Act or the Home Owners' Loan Act, as applicable, nor OCC regulations require that director, shareholder, or member meetings take place in person.¹

Furthermore, remote communication tools such as telephone or internet-based conferencing are available to institutions so that they may comply with internal and regulatory meeting requirements within the parameters of the social distancing guidelines. The OCC is issuing this IFR to clarify that national banks and Federal savings associations may use remote communication tools to conduct these meetings. Specifically, this IFR allows national banks and Federal savings associations to permit remote participation by shareholders, directors, and as applicable, members at shareholder, board of directors, and member meetings. Under this authority, institutions could hold in-person meetings with some participants attending remotely or hold these meetings exclusively by means of remote communication.

The amendments made by this IFR will enable national banks and Federal savings associations to conduct necessary meetings remotely during the COVID-19 emergency as well as during any other future emergency when in-person meetings may not be feasible. Because these amendments will be permanent and will not expire after the COVID-19 emergency has ended, they also will provide national banks and Federal savings associations, on an ongoing basis, with more flexibility in planning and holding director, shareholder, and, as applicable, member meetings; could permit greater director,

¹ Although the National Bank Act does not specifically address the manner in which a national bank's board of directors must conduct its meetings, it does authorize national banks "[t]o prescribe by its board of directors, bylaws not inconsistent with law, regulating the manner . . . its general business [is to be] conducted." 12 U.S.C. 24 (Sixth). In a 1999 interpretive letter, the OCC stated that "[t]his authority to prescribe bylaws to conduct a national bank's general business is sufficiently broad to permit a national bank to adopt procedures governing the practice of conducting board meetings, including the ability to conduct regular board meetings by telephone or video conferencing." OCC Interpretive Letter No. 860 (Apr. 5, 1999).

shareholder, and member participation at these meetings for those participants not able to attend in person; and may reduce the burden and costs of in-person meetings for national banks and Federal savings associations, as well as meeting participants. The OCC expects that national banks and Federal savings associations allowing remote participation will provide fair treatment and transparency for shareholders or members participating telephonically or electronically.

II. Description of the Interim Final Rule

Federal Savings Associations (§§ 5.21, 5.22)²

Member and Shareholder Meetings. Twelve CFR 5.21 governs the procedures and requirements for charters and bylaws of Federal mutual savings associations. Paragraph (j)(2)(i) of § 5.21 requires the association's bylaws to indicate that the association will provide for and conduct an annual meeting of its members for the election of directors and any other business of the association. Paragraph (j)(2)(i) also provides that the annual meeting must be held at any convenient place the board of directors may designate, and at a date and time within 150 days after the end of the association's fiscal year.³ Paragraph (j)(2)(ii) of § 5.21 requires the bylaws to include procedures for calling and conducting special meetings of Federal mutual savings association members.

² On March 5, the OCC issued a proposal to amend 12 CFR part 5 to update and clarify its policies and procedures for corporate activities and transactions involving national banks and Federal savings associations, eliminate unnecessary requirements consistent with safety and soundness, and make other technical and conforming changes. 85 FR 18728 (Apr. 2, 2020). This proposed rule includes amendments to §§ 5.21 and 5.22. The OCC will reconcile these proposed changes with the amendments made by this IFR when issuing the part 5 final rule.

³ On May 12, 2020, the OCC issued guidance to institutions considering changes to the date, time or location of their annual meetings as a result of the COVID-19 emergency. *See* OCC Bulletin 2020-51.

Section 5.22 governs the procedures and requirements for Federal stock savings association charters and bylaws and generally parallels § 5.21. Paragraph (k)(1) of § 5.22 provides that all annual and special meetings of shareholders must be held at any convenient place the board of directors may designate.

To clarify that both a Federal mutual savings association and a Federal stock savings association may use remote communication tools to conduct these meetings, the OCC is amending §§ 5.21(j)(2)(i) and (j)(2)(ii) and 5.22(k)(1) to permit an association's bylaws to provide for telephonic or electronic participation of members and shareholders, as applicable, at both annual and special meetings. This amendment also provides that members or shareholders participating telephonically or electronically in an annual or special meeting will be deemed present in person for purposes of the quorum requirement in §§ 5.21(j)(2)(v) or 5.22(k)(5), as applicable.⁴ As noted below, OCC regulations and model bylaw provisions governing annual and special meetings of the board of directors of Federal mutual savings associations and special meetings of the board of directors of Federal stock savings associations currently permit “telephonic and electronic participation.” The OCC is using the phrase “telephonic and electronic participation” in its amendments to the shareholder meeting provisions and maintaining the use of this phrase in its board of director provisions to provide consistent terminology for Federal savings associations and to avoid the cost and burden of any bylaw changes that could result from modifying this terminology in this IFR. The OCC requests comment on whether this terminology is appropriate in light of current technology or whether the

⁴ Section 5.21(j)(2)(v) provides that any number of members present and voting, represented in person or by proxy, at a regular or special meeting of the members constitutes a quorum. Section 5.22(k)(5) provides that a majority of the outstanding shares of the association entitled to vote, represented in person or by proxy, constitutes a quorum at a meeting of shareholders.

OCC should use a different phrase in describing remote participation at shareholder and board of directors meetings.

This IFR also requires Federal savings associations to have procedures in place for telephonic and electronic participation at member or shareholder meetings and provides associations with a choice of procedures to follow. The procedures available to Federal mutual savings associations and those available to Federal stock savings associations differ only with respect to the State law procedures they may choose. As explained below, this difference is based on the State corporate governance procedures available to each type of entity under current OCC regulations.

With respect to Federal mutual savings associations, the IFR amends § 5.21(j)(2)(i) (annual meetings of members) and § 5.21(j)(2)(ii) (special meetings of members) to require the association to follow the procedures for telephonic or electronic participation of: (1) the State corporate governance procedures it is permitted to elect pursuant to § 5.21(j)(3)(iii), if those State corporate governance procedures include telephonic or electronic participation procedures; (2) the Delaware General Corporation Law⁵ (with “member” substituting for “stockholder”); or (3) the Model Business Corporation Act⁶ (with “member” substituting for “shareholder”), provided that such

⁵ Delaware law provides that stockholders and proxyholders not physically present at a stockholders meeting may, by means of remote communication, participate in the meeting and be deemed present in person and vote at the meeting provided that: (1) the corporation implements reasonable measures to verify that each person deemed present and permitted to vote remotely is a stockholder or proxyholder, (2) the corporation implements reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (3) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action is maintained by the corporation. 8 Del. C. § 211.

⁶ The Model Business Corporation Act provides that shareholders participating in a shareholders’ meeting by means of remote communication shall be deemed present and may vote at such meeting if the corporation has implemented reasonable measures to: (1) verify that each person

procedures are not inconsistent with applicable Federal statutes and regulations and safety and soundness. With certain exceptions, § 5.21(j)(3)(iii) provides that a Federal mutual savings association may elect to follow the corporate governance procedures of the laws of the State where the home office of the institution is located. Therefore, pursuant to this IFR, a Federal mutual savings association has the choice of following either the procedures for remote participation of the laws of its home State if these procedures exist, the procedures for remote participation under Delaware General Corporation Law, or the procedures for remote participation under the Model Business Corporation Act. To inform members of its choice of procedures, the IFR requires the association to indicate the use of these procedures in its bylaws.

With respect to Federal stock savings associations, § 5.22(k)(1) as amended by this IFR requires the association to elect to follow, pursuant to § 5.22(j)(2)(iii), corporate governance procedures for shareholder meetings that include procedures for telephonic or electronic participation. With certain exceptions, § 5.22(j)(2)(iii) provides that a Federal stock association may elect to follow the corporate governance procedures of: (1) the laws of the State where the home office of the association is located; (2) the laws of the State where the association's holding company, if any, is incorporated or chartered; (3) the Delaware General Corporation Law; or (4) the Model Business Corporation Act, provided that such procedures are not inconsistent with applicable Federal statutes and regulations and safety and soundness. This amendment, therefore, permits a Federal

participating remotely as a shareholder is a shareholder; and (2) provide such shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate, and to read or hear the proceedings of the meeting, substantially concurrently with such proceedings. Section 7.09, The Model Business Corporation Act (as amended 2019).

stock savings association to choose from any of the sources listed in § 5.22(j)(2)(iii) for its telephonic and electronic participation procedures. As with the amendments for Federal mutual savings associations, this IFR requires a Federal stock savings association to indicate in its bylaws which procedures it will use to inform its shareholders of these procedures.

As a result of these amendments, this IFR will ensure that if a Federal savings association's bylaws provide for telephonic or electronic participation at member or shareholder meetings, the Federal savings association must have procedures in place for this remote participation even if it has not elected to follow any particular corporate governance law pursuant to §§ 5.21(j)(3)(iii) or 5.22(j)(2)(iii), or if the corporate governance law it has elected to follow does not contain procedures for remote participation at meetings.

As indicated above, the IFR requires a Federal savings association to amend its bylaws if it wishes to utilize remote means of communication for its meetings. Current §§ 5.21(j)(3) and 5.22(j)(2) provide that, in general, a Federal savings association must submit an amendment to its bylaws to the OCC 30 days prior to adoption by its board of directors and that the amendment is effective 30 days after filing with the OCC. However, pursuant to §§ 5.21(j)(3)(i)(B) and 5.22(j)(2)(i)(B), if an association adopts a bylaw amendment that includes the language of the OCC's model or optional bylaws without change and files the bylaw with the OCC within 30 days after adoption, the bylaw is effective upon adoption. To permit Federal savings associations to utilize the remote communication provisions included in this IFR as quickly as possible during the COVID-19 emergency, the OCC is issuing concurrent with this IFR optional model

bylaw provisions for telephonic and electronic participation at shareholder and member meetings.⁷

The OCC also is considering updating the member and shareholder meeting notice requirements contained in §§ 5.21 and 5.22. Section 5.21(j)(2)(iii) requires a Federal mutual savings association to publish a notice of the annual or special meeting in a newspaper of general circulation in the city or county in which the principal place of business of the association is located or to mail the notice postage prepaid to each of its members of record. This provision also requires the Federal mutual savings association to post notice of the meeting in a conspicuous place in each of its offices during the 14 days immediately preceding the date on which the meeting convenes. The OCC requests comment on whether it should amend this provision to permit a Federal mutual savings association to deliver the meeting notice to a member electronically if the member receives electronic communications. In addition, the OCC requests comment on whether it should amend this provision to permit the Federal mutual savings association to post the notice of the meeting on its website instead of in its offices. Section 5.22(k)(2) requires a Federal savings association to deliver a written notice of a shareholder meeting either personally or by mail to each shareholder of record entitled to vote at the meeting. If mailed, the notice is deemed delivered when deposited in the mail, addressed to the shareholder at the address appearing on the stock transfer books or records of the association as of the record date, with postage thereon prepaid. As with § 5.21(j)(2)(iii), the OCC requests comment on whether it should amend § 5.22(k)(2) to permit the

⁷ Model bylaw provisions for mutual savings associations are available at <https://www.occ.gov/static/licensing/model-mutual-fsa-bylaws.pdf>. Model bylaw provisions for stock savings associations are available at <https://www.occ.gov/static/licensing/model-stock-fsa-bylaws.pdf>.

Federal stock savings association to deliver the meeting notice to the shareholder electronically if the shareholder receives electronic communications and that this electronic notice be deemed delivered when sent to the shareholder's electronic address appearing on the books or records of the association as of the record date. The OCC believes that these amendments to the notice provisions would update the OCC's rules to reflect modern communication methods and complement the amendments made by this IFR. The OCC also believes that these amendments would benefit members and shareholders by providing them with notice by means consistent with other communications they receive from the association and allow a Federal savings association to announce a member or shareholder meeting through less costly or burdensome methods.

Board of Directors Meetings. Current § 5.21(j)(2)(ix) provides that the board of directors of a Federal mutual savings association may permit telephonic or electronic participation at its meetings. Current § 5.22(1)(8) permits the bylaws of a Federal stock savings association to provide for electronic participation at special meetings of the board of directors. The OCC's model bylaws for Federal mutual and stock savings associations also permit telephonic or similar communication at meetings of the board of directors.⁸ However, current § 5.22(1)(3), which provides requirements for regular meetings of the board of directors of a Federal stock savings association, is silent with respect to electronic participation. To make these provisions consistent with each other, as well as with the model bylaws, the OCC is amending § 5.22(1)(3) to provide that the bylaws of a Federal stock savings association may provide for telephonic or electronic participation

⁸ See "Articles of Association, Charter, and Bylaw Amendments," Comptroller's Licensing Manual, (June 2017).

of board members at regular meetings. The OCC also is making technical changes to § 5.22(1)(8) by revising it to include telephonic in addition to electronic participation so that it is consistent with the other provisions of this IFR and to specify that this telephonic and electronic participation provision applies to special meetings of the board.

National Banks (§ 7.2003)

As with the amendments to §§ 5.21 and 5.22, the OCC is permitting national banks to provide for telephonic or electronic participation at shareholder and board of directors meetings. To accomplish this, the OCC is combining current 12 CFR 7.2001, which provides procedures for notifying shareholders of shareholder meetings, into current § 7.2003, which provides the rule for annual shareholder meetings that fall on a holiday; adding new telephonic and electronic participation language to 12 CFR 7.2003 as new paragraphs (c) and (d); and retitling § 7.2003 as “Shareholder meetings; Board of directors meetings.” The OCC is not making any substantive changes to current § 7.2001, which becomes § 7.2003(a), or current § 7.2003, which becomes § 7.2003(b). Combining §§ 7.2001 and 7.2003 puts all amendments related to shareholder meetings are held in one section.

New paragraph (c) to § 7.2003 permits a national bank to provide for telephonic or electronic participation at shareholder meetings. Further, new paragraph (c) requires a national bank to have procedures for telephonic or electronic participation in shareholder meetings. As with Federal savings associations, a national bank may choose these procedures from several sources: (1) the corporate governance procedures it has elected to follow pursuant to § 7.2000(b),⁹ if those elected procedures include telephonic or

⁹ Section 7.2000(b) provides that to the extent not inconsistent with applicable Federal banking statutes or regulations or bank safety and soundness, a national bank may elect to follow the corporate

electronic participation procedures; (2) the Delaware General Corporation Law; or (3) the Model Business Corporation Act. However, these procedures must not be inconsistent with applicable Federal statutes and regulations and safety and soundness. To inform shareholders of its choice of procedures, the IFR requires the national bank to indicate the use of these procedures in its bylaws. In general, Federal law does not require a national bank to file its bylaws and any amendments with, or to seek approval of its bylaws from, the OCC.¹⁰

As with the amendments to §§ 5.21(j)(2)(i) and (j)(2)(ii) and 5.22(k)(1) for Federal savings associations, this provision will ensure that a national bank has procedures in place for remote participation at shareholder meetings even if the corporate governance law it has elected to follow does not contain procedures for remote participation at shareholder meetings or if it has not elected to follow any particular corporate governance law pursuant to § 7.2000(b).

New paragraph (d) of § 7.2003 provides that a national bank may provide for telephonic or electronic participation at a meeting of its board of directors. This provision codifies OCC Interpretive Letter No. 860¹¹ and makes the national bank rule consistent with rules for Federal savings associations.

III. Request for Comment

governance procedures of the law of the State in which the main office of the bank is located, the law of the State in which the holding company of the bank is incorporated, Delaware General Corporation Law, or the Model Business Corporation Act. Further, § 7.2000 requires that a national bank designate in its bylaws the body of law selected for its corporate governance procedures.

¹⁰ See Articles of Association, Charter, and Bylaw Amendments booklet of the Comptroller's Licensing Manual at page 4 (June 2017). 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. *Id.*

¹¹ See footnote 1.

The OCC seeks comment on all aspects of the IFR in addition to those specific requests noted in the **SUPPLEMENTARY INFORMATION**. In addition, please comment on the following:

- Should the OCC limit the ability of national banks and Federal savings associations to hold shareholder or member meetings exclusively by means of remote communication to emergency situations or when extenuating circumstances exist? If so, in what extenuating circumstances should national banks and Federal savings associations have authority to hold meetings exclusively by means of remote communication?
- Would holding shareholder or member meetings exclusively by means of remote communication limit participation by some shareholders or members, and if so, how?
- Should the OCC require national banks and Federal savings associations to provide in-person options for each shareholder or member meeting or require national banks or Federal savings associations to adopt procedures that permit shareholder participation at virtual meetings? If so, why?
- Should the OCC adopt regulatory procedures governing telephonic and electronic participation at shareholder meetings instead of requiring national banks and Federal savings associations to follow State corporate law, Delaware General Corporation Law, or Model Business Corporation Act procedures? If so, what specific procedures should the OCC adopt?
- Should the OCC provide risk management standards to mitigate any security risks arising from telephonic or electronic meetings? If so, what specific standards should the OCC adopt?

IV. Administrative Law Matters

A. Administrative Procedure Act

The OCC is issuing the IFR without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).¹² Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”¹³

The OCC believes that the public interest is best served by implementing the IFR immediately upon publication in the **Federal Register**. National banks and Federal savings associations are acutely impacted by the COVID-19 emergency. Health and safety advisories in response to the COVID-19 emergency, including those relating to social distancing, are impeding the ability of national banks and Federal savings associations to hold in-person meetings, such as board of director, shareholder, and member meetings. The IFR amends the OCC’s rules to permit telephonic and electronic participation at these meetings, thereby allowing national banks and Federal savings associations to conduct all necessary board of director, shareholder, and member meetings during the COVID-19 emergency. For these reasons, the OCC finds that there

¹² 5 U.S.C. 553.

¹³ 5 U.S.C. 553(b)(3)(A).

is good cause consistent with the public interest to issue the rule without advance notice and comment.¹⁴

The APA also requires a 30-day delayed effective date, except for: (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.¹⁵ As described above, the OCC believes it has good cause to issue this rule without a delayed effective date. Therefore, the IFR is exempt from the APA's delayed effective date requirement.¹⁶

While the OCC believes that there is good cause to issue the rule without advance notice and comment and with an immediate effective date, the OCC is interested in the views of the public and requests comment on all aspects of the IFR.

B. Congressional Review Act

For purposes of the Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a “major rule.”¹⁷ If a rule is deemed a “major rule” by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.¹⁸

The Congressional Review Act defines a “major rule” as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has

¹⁴ 5 U.S.C. 553(b)(B); 553(d)(3).

¹⁵ 5 U.S.C. 553(d).

¹⁶ 5 U.S.C. 553(d)(1).

¹⁷ 5 U.S.C. 801 *et seq.*

¹⁸ 5 U.S.C. 801(a)(3).

resulted in or is likely to result in: (1) an annual effect on the economy of \$100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.¹⁹

The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.²⁰ For the same reasons set forth above, the OCC is adopting the IFR without the delayed effective date generally prescribed under the Congressional Review Act. In light of the COVID-19 emergency, the OCC believes that delaying the effective date of the rule would be contrary to the public interest.

As required by the Congressional Review Act, the OCC will submit the IFR and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

Certain provisions of the proposed rulemaking contain “collection of information” requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521). In accordance with the requirements of the PRA, the OCC may not

¹⁹ 5 U.S.C. 804(2).

²⁰ 5 U.S.C. 808.

conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC reviewed the IFR and determined that it revises certain information collection requirements previously cleared by OMB under OMB Control No. 1557-0014. The OCC has submitted the revised information collection to OMB for review under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320).

Current Actions

The information collection requirements are as follows:

- National banks and FSAs must have procedures in place for holding remote meetings.
- FSAs will need to amend their bylaws if they wish to utilize remote means of communication for its meetings.
- Depending on which state or law the FSA elects to follow for procedures for remote means of communication, the FSA may have to amend its bylaws and file with the OCC.
- National banks must indicate the use of telephonic or electronic participation at shareholder meetings in their bylaws.
- The OCC is considering allowing alternative/electronic means of notifying members/shareholders of meetings.

The OCC estimates that there will be no change in burden as a result of these changes.

Title of Information Collection: Licensing Manual.

Frequency: Event generated.

Affected Public: Businesses or other for-profit.

Estimated number of respondents: 1,174

Total estimated annual burden for the collection: 12,534 hours.

Comments are invited on:

a. Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the ADDRESSES section of this document. A copy of the comments may also be submitted to the OMB desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235,

Washington, DC 20503; facsimile to (202) 395-6974; or e-mail to oira_submission@omb.eop.gov, Attention, Federal Banking Agency Desk Officer.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),²¹ in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.²² For the reasons described above, the OCC finds good cause exists under section 302 of RCDRIA to publish this IFR with an immediate effective date.

As such, the IFR will be effective immediately. Nevertheless, the OCC seeks comment on RCDRIA.

E. Regulatory Flexibility Act

²¹ 12 U.S.C. 4802(a).

²² 12 U.S.C. 4802.

The Regulatory Flexibility Act (RFA)²³ requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.²⁴ The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the OCC has determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the OCC is not issuing a notice of proposed rulemaking. Accordingly, the OCC has concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

Nevertheless, the OCC seeks comment on whether, and the extent to which, the IFR would affect a significant number of small entities.

F. *Unfunded Mandates*

As a general matter, the Unfunded Mandates Act of 1995 (UMRA)²⁵ requires the preparation of a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published.²⁶ Therefore, because the OCC has found good

²³ 5 U.S.C. 601 *et seq.*

²⁴ Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of \$600 million or less and trust companies with total assets of \$41.5 million or less. *See* 13 CFR 121.201.

²⁵ 2 U.S.C. 1531 *et seq.*

²⁶ *See* 2 U.S.C. 1532(a).

cause to dispense with notice and comment for this IFR, the OCC has not prepared an economic analysis of the rule under the UMRA.

List of Subjects

12 CFR Part 5

Administrative practice and procedure, Federal savings associations, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 7

Computer technology, Credit, Derivatives, Federal savings associations, Insurance, Investments, Metals, National banks, Reporting and recordkeeping requirements, Securities, Security bonds

For the reasons set out in the preamble, the OCC amends 12 CFR part 5 and part 7 as follows:

PART 5 – RULES, POLICIES, AND PROCIDURES FOR CORPORATE ACTIVITIES

1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24a, 93a, 215a-2, 215a-3, 481, 1462a, 1463, 1464, 2901 *et seq.*, 3907, and 5412(b)(2)(B).

2. Amend 5.21 by:

- a. Adding two sentences at the end of paragraph (j)(2)(i)(A);
- b. Adding a new paragraph (j)(2)(i)(C); and
- c. Adding two sentences after the second sentence of paragraph (j)(2)(ii).

The additions read as follows:

§ 5.21 Federal mutual savings association charter and bylaws.

* * * * *

(j) * * *

(2) * * *

(i) * * *

(A) * * * The association's bylaws may provide for telephonic or electronic participation of members at an annual meeting. Members participating in an annual meeting telephonically or electronically will be deemed present in person for purposes of the quorum requirement in paragraph (j)(2)(v) of this section.

* * * * *

(C) If the association's bylaws provide for telephonic or electronic participation in member meetings, the association must follow the procedures for telephonic or electronic participation of the State corporate governance procedures it is permitted to elect pursuant to paragraph (j)(3)(iii) of this section, if those State corporate governance procedures include telephonic or electronic participation procedures; the Delaware General Corporation Law, Del. Code Ann. Tit. 8 (1991, as amended 1994, and as amended thereafter) (with "member" substituting for "stockholder"); or the Model Business Corporation Act (with "member" substituting for "shareholder"), provided, however, that such procedures are not inconsistent with applicable Federal statutes and regulations and safety and soundness. The association must indicate the use of these procedures in its bylaws.

(ii) * * * The association's bylaws may provide for telephonic or electronic participation of members at a special meeting pursuant to the procedures specified in paragraph (j)(2)(i)(C) of this section. Members participating in a special meeting

telephonically or electronically will be deemed present in person for purposes of the quorum requirement in paragraph (j)(2)(v) of this section. * * *

* * * * *

3. Amend § 5.22 by:

- a. Revising paragraph (k)(1);
- b. Adding a sentence at the end of paragraph (l)(3); and
- c. Revising the last sentence of paragraph (l)(8).

The revisions and additions read as follows:

§ 5.22 Federal Stock savings association charter and bylaws.

* * * * *

(k) Shareholders of Federal stock savings associations—(1) Shareholder meetings. (i) In general. A meeting of the shareholders of the association for the election of directors and for the transaction of any other business of the association shall be held annually within 150 days after the end of the association's fiscal year. Unless otherwise provided in the association's charter, special meetings of the shareholders may be called by the board of directors or on the request of the holders of 10 percent or more of the shares entitled to vote at the meeting, or by such other persons as may be specified in the bylaws of the association.

(ii) Location of shareholder meetings. (A) In general. All annual and special meetings of shareholders of the association shall be held at any convenient place the board of directors may designate. The association's bylaws may provide for the telephonic or electronic participation of shareholders in these meetings. Shareholders participating in an annual or special meeting telephonically or electronically will be

deemed present in person for purposes of the quorum requirement in paragraph (k)(5) of this section.

(B) *Procedures for telephonic or electronic participation.* If the association's bylaws provide for telephonic or electronic participation in shareholder meetings, the association must elect to follow corporate governance procedures for these meetings pursuant to paragraph (j)(2)(iii) of this section that include procedures for telephonic or electronic participation in shareholder meetings. The association must indicate the use of these elected procedures in its bylaws.

(1) * * *

(3) * * * The bylaws may provide for telephonic or electronic participation at these meetings.

* * * * *

(8) * * * The bylaws may provide for telephonic or electronic participation at a special meeting.

* * * * *

PART 7—ACTIVITIES AND OPERATIONS

4. The authority citation for part 7 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 25b, 29, 71, 71a, 92, 92a, 93, 93a, 95(b)(1), 371, 371d, 481, 484, 1463, 1464, 1465, 1818, 1828(m), 3102(b), and 5412(b)(2)(B).

§ 7.1001 [Reserved]

6. Remove and reserve § 7.1001.

7. Revise § 7.2003 to read as follows:

§ 7.2003 Shareholder meetings; Board of directors meetings.

(a) *Notice of shareholders' meetings.* A national bank must mail shareholders notice of the time, place, and purpose of all shareholders' meetings at least 10 days prior to the meeting by first class mail, unless the OCC determines that an emergency circumstance exists. Where a national bank is a wholly-owned subsidiary, the sole shareholder is permitted to waive notice of the shareholder's meeting. The articles of association, bylaws, or law applicable to a national bank may require a longer period of notice.

(b) *Annual meeting for election of directors.* When the day fixed for the regular annual meeting of the shareholders falls on a legal holiday in the State in which the bank is located, the shareholders' meeting must be held, and the directors elected, on the next following banking day.

(c) *Virtual participation at shareholder meetings--(1) In general.* A national bank may provide for telephonic or electronic participation at shareholder meetings.

(2) *Procedures.* A national bank must follow the procedures for telephonic or electronic participation in a shareholder meeting of the corporate governance procedures it has elected to follow pursuant to § 7.2000(b), if those elected procedures include telephonic or electronic participation procedures; the Delaware General Corporation Law, Del. Code Ann. Tit. 8 (1991, as amended 1994, and as amended thereafter); or the Model Business Corporation Act, provided, however, that such procedures are not inconsistent with applicable Federal statutes and regulations and safety and soundness. The national bank must indicate the use of these procedures in its bylaws.

(d) *Virtual participation at board of directors meetings.* A national bank may provide for telephonic or electronic participation at a meeting of its board of directors.

Brian P. Brooks,
First Deputy Comptroller, Comptroller of the
Currency.

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