



DIVISION OF FINANCIAL INSTITUTIONS GUIDE TO ORGANIZING A NEW STATE BANK IN FLORIDA

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About This Guide

This guide is provided by the Office of Financial Regulation as a tool to assist individuals who are interested in chartering new state banks. It is intended to provide the reader with general information and issues for consideration only, and is not legal advice nor a substitute for legal or other professional advice. For ease of reference in this guide, the Office of Financial Regulation is referred to as "OFR", the Office of the Comptroller of the Currency is referred to as the "OCC",

the Federal Deposit Insurance Corporation is referred to as the "FDIC", the Federal Reserve Bank of Atlanta is referred to as the "Federal Reserve", and the Secretary of State's Division of Corporations is referred to as "Corporations".

Preliminary Considerations

Before getting to the charter application and process, the organizing group must make several strategic decisions:

Executive Officers and Directors

One of the organizing group's most important decisions is the selection of a chief executive officer. The organizers must thoroughly investigate the background and qualifications of their proposed chief executive officer prior to submitting their application. A qualified chief executive officer is viewed as essential in the overall assessment of the likelihood of a new bank's success. The proposed chief executive officer's prior banking experience is especially relevant. The organizing group's failure to propose a suitable chief executive officer reflects poorly on the group's judgment and raises doubts about the future success of the proposed bank.

Rule 69U-105.206(2)(c), Florida Administrative Code provides that executive officers shall have demonstrated abilities and experience commensurate with the position for which they are proposed. Executive officers must have reputations evidencing honesty and integrity and an employment history demonstrating competent past financial institution experience. The rule does not require that the names of the president, chief executive officer, and/or senior trust officer be submitted with the application. However, these individuals must be named and have submitted executed Interagency Biographical and Financial Reports (Form OFR-U-10) in substantially complete form not later than ninety (90) days prior to an applicant's intended opening date. The proposed state bank may not open for business without prior approval of these executive officers, as applicable, by OFR.

These guidelines are consistent with the organizers' objective of choosing a well-rounded person for the leadership of a new state bank. If the proposed bank's plan is to offer specialized types of services, its executive officers should have experience relevant to the development and administration of those services.

Extensive background investigations will be undertaken not only on the proposed chief executive officer, but also on other executive officers, all organizers, principal stockholders and directors. Principal stockholders are those proposed stockholders expected to own ten percent (10%) or more of the new bank's outstanding shares. Background checks are intended to provide information on the competence, experience, integrity and financial ability of each person named in the proposed bank's application. Anyone whose previous banking experience is tied to failed or problem financial institutions will be closely scrutinized to determine his/her ability to carry out applicable duties.

Rule 69U-105.206(2)(c), Florida Administrative Code also provides that the proposed directors shall generally have reputations evidencing honesty and integrity and similar reputations within the local community where the proposed state financial institution is to be located. Directors shall have employment and business histories demonstrating their responsibility in financial affairs. The fact that a proposed director has been adjudicated bankrupt or has filed for relief under the Federal Bankruptcy Act shall be considered a material factor in the evaluation of his/her responsibility in financial affairs. At least two (2) of the proposed directors, who are not also proposed officers, shall have had direct experience as an executive officer, regulator, or director

of a financial institution within 3 years of the date of the application. If in the opinion of OFR the aggregate level of financial institution experience represented by the proposed board of directors is not substantial, OFR shall require the addition of other outside directors to the board who have had previous financial institution experience. At least five (5) directors of a proposed independent bank or association shall demonstrate strong and well-established residency and/or business ties to the local community for at least the last five years prior to the date of the application, and shall represent diverse occupation and business interests.

Generally, the organizing group should seek directors who are knowledgeable about the market and the services to be provided, and who have ties in the community. The proposed directors should have diverse experience and backgrounds, and at least a majority of the proposed directors should have banking or business experience. For a period of two years after commencement of business, any new executive officers or new directors of a new state bank must obtain prior OFR approval before assuming office.

To successfully establish a new bank, the organizers must make a substantial personal and financial commitment.

Organizer Compensation and Expenses

The general character of management and the adequacy of capital structure are important in the charter application process. Organizer compensation methods should not reflect negatively on those aspects of an application, and should not hinder the bank's future ability to raise required capital. Instead, organizer compensation should be structured so that any gains are proportionate to each organizer's financial risk and the success of the bank. Organizers cannot be allowed to purchase or acquire a separate class of holding company stock with greater voting rights, or at an original issue price lower than that paid by other investors.

Section 658.24, Florida Statutes, states that, after the corporate existence of a bank has commenced and stock has been issued, but no less than 30 days prior to the intended opening date, a shareholders' meeting shall be held with approval of organization expenses as one of the agenda items. Within ten days after this meeting, a detailed accounting of the organization expenses approved by the shareholders shall be provided to OFR.

Rule 69U-105.205, Florida Administrative Code states that organization expenses shall be borne by the applicant. After approval of the shareholders, those expenses may be reimbursed as provided in Section 658.24, Florida Statutes. The rule further states that an accounting of the organization expenses must be provided to each subscriber as well as OFR no later than the date upon which the call for payment of stock subscriptions is made.

The expenses incurred by the organizing group in making an application and organizing the bank usually may be charged to the bank's capital or may be capitalized, provided they are documented and approved by the board of directors. Expenses typically include filing and organizational fees, cost of professional and consulting services, travel expenses, printing, postage, telephone, supplies, salaries and rent, and the lease or purchase of fixed assets. Organizers are expected to contribute time and expertise to the bank's organization and should neither rely unduly on professional and consulting assistance nor make excessive charges to its accounts for those services.

Payment of organizational expenses for disapproved applications are the responsibility of the organizing group. Those expenses for banks that do not open must be paid by the directors and organizers.

Market Area

Extensive analysis of the proposed bank's market area is a necessary part of the application process. Rule 69U-105.206(2)(a) states that local conditions [should] indicate a reasonable promise of a successful operation. Applicants should determine if there does and will exist a significant volume of business for which the proposed state bank can realistically compete. Competition is encouraged and does benefit consumers but must be intertwined with the objective of maintaining a stable and safe financial institution environment for the potential customers.

In a given market area, there may be competing applications for a new bank charter. There may also be strenuous objections to the issuance of a new charter in a given market. Requests for administrative hearings on a denovo bank application may be filed in accordance with Rule 69U-105.104, Florida Administrative Code.

Organizers should consider other entities offering financial services in the market area, including factors such as the distance from the proposed bank location and the types of services offered. This information will be useful in developing a pro forma balance sheet and income statement for the date of opening through the end of the first three years of operation. A proposed bank in a market with a strong local economy and weak competition has a much greater prospect of success than where the economy is weak or the competition is strong.

Bank Location and Premises

The location of the proposed bank's main banking premises is another important consideration. Although a market area may be identified, the charter application cannot be filed until the proposed location is established. Demographic information obtained by the organizers should be helpful in identifying and prioritizing desirable locations.

The organizing group must decide whether to lease or purchase the main banking premises. Organizers must be mindful of the statutory limitation on their investment in fixed assets [See Section 658.67(7), Florida Statutes], and the effect that an excessive investment in fixed assets would have on the bank's profitability. Also, organizers must bear in mind that proceeds from the sale of stock must be held in escrow and cannot be used before the bank opens to pay acquisition or construction expenses of the main banking premises. Details of the planned main banking premises, including copies of blueprints, floor plans and leases, as well as any plans for temporary premises, must be provided to the regulators. Construction of the banking premises should comply with security standards set forth by federal regulation.

If the main banking premises is being built, purchased or leased from an organizer, a proposed director, officer or principal stockholder, then the agreements or contracts for the transaction must be submitted for regulatory approval. Generally, at least one independent appraisal of the property and terms of the transaction, plus any other evidence necessary to show that the proposed transaction is fair, reasonable, and comparable to similar arrangements that could have been made with unrelated parties, must also be submitted [See Rule 69U-105.206(4), Florida Administrative Code]. The agreement should also be disclosed to stockholders.

Finally, any agreements or contracts for the purchase or lease of the main banking premises should provide a contingency for application approval and delays in the application and organization process.

Capital

How much capital is enough for a new bank? Although there is a statutory minimum for state banks of \$8 million, OFR will generally require capital in excess of the statutory minimum level of capitalization. Capital shall be allocated among capital stock and paid-in surplus in the ratios set forth in Subsection 658.21(3), Florida Statutes.

Factors that are considered in determining the adequacy of capital include: organizing expenses; earning prospects; economic and competitive conditions in the community to be served; the experience and competence of management; the risks inherent in the expected asset and liability mix; the amount of fixed asset investment; and the ability to raise additional capital when needed. The size of the community where the bank will be located also is a significant factor in capital adequacy. A location in a larger community generally will require greater capital.

No later than six months after commencement of corporate existence, and at least thirty days prior to the issuance of stock, the directors shall file with OFR a final list of subscribers to all the capital stock as required in Rule 69U-105.206(3)(c)1, Florida Administrative Code.

Section 658.21(2), Florida Statutes states that, in the aggregate, the proposed board of directors must subscribe to at least twenty-five percent (25%) of the initial shares of stock for OFR to determine that the proposed state bank will have a reasonable promise of successful operation.

Choice of Charter

Organizers must choose one of two commercial bank charters -- either a Florida state-chartered bank, or a national bank chartered under federal law. Each charter allows for performing the general business of banking in Florida. However, because of different enabling statutes and regulations, state banks and national banks have some substantive differences. For example, an Florida state bank may be, but is not required to be, a member of the Federal Reserve System. National banks are required to be members of the Federal Reserve System and must meet the then current legal reserve requirements in Regulation D for member banks, and must subscribe for and purchase shares of the Federal Reserve Bank of its district. The choice of charter may also depend on previous experience and familiarity with the regulator. Members of the organizing group may have previously been regulated by, and established a relationship with, OFR or the OCC.

Formation of a Bank Holding Company

A bank holding company is any company which has control over a bank. Generally, a company controls a bank if: it directly or indirectly, or acting through one or more other persons, owns, controls, or has power to vote twenty-five percent (25%) or more of any class of voting securities of the bank; it controls in any manner the election of a majority of the directors of the bank; or the Federal Reserve determines that the company directly or indirectly exercises a controlling influence over the management or policies of the bank.

The organizing group should determine whether it wishes to establish a one bank holding company while applying for a new bank charter. It will be necessary for the organizers to file an application on Form Y-3 with the Federal Reserve to establish a one bank holding company.

Name of Proposed State Bank

To avoid confusion by the public, the proposed bank's name should not be the same as or deceptively similar to any other bank in the state. Many bank names include a geographic reference and the word "Bank", resulting in some similarity among bank names in any given community. While a geographic reference may not be beneficial if a new bank later establishes

additional locations outside the referenced geographic area, some names using a geographic reference seem to suggest a bank is older or established.

Organizers should check with Corporations [call (850) 245-6900] to determine the availability of the proposed name. It should be noted that Corporations no longer reserves proposed names.

S Corporation Tax Election The Small Business Job Protection Act of 1996 removed the long-standing prohibition against financial institutions being taxed as S corporations. Financial institutions can now elect S corporation status effective for tax years beginning after December 31, 1996. For tax purposes, an S corporation passes through the stockholder's pro-rata share of taxable income or loss to the stockholder's personal tax return. Each organizing group should determine the bank's eligibility for an S corporation election and the effect of the election on the bank and its stockholders.

Restriction on Interstate Mergers

Florida law prohibits a denovo bank from being acquired by an out of state bank, until the denovo bank has existed and continuously operated for at least three years. Because Florida has not opted into interstate denovo branching, out of state financial institutions cannot establish denovo branches in Florida. This law does not effect the ability of a denovo bank to merge with or into another Florida bank.

Timing of Process

Generally, the process of organizing a new bank consists of seven phases: 1) pre-application filing discussions; 2) application filing; 3) application processing; 4) issuance of a final order approving organization of the proposed state bank; 5) completion of the organization of the bank and stock subscriptions; 6) pre-charter examination and pre-opening procedures; and 7) issuance of charter.

Under Administrative Procedures Act time frames, OFR must render a decision on a denovo bank application by no later than 180 days after an application has been deemed to be substantially complete. Therefore, if an application is complete as received, the countdown begins on the date of receipt.

It is OFR 's experience that the greatest delays in rendering a decision on an application are generally due to incomplete background and financial information filed by the organizers on behalf of the proposed officers and directors. It is therefore strongly recommended that all biographical and financial information filed with OFR be complete when the application is originally filed, in order to ensure a timely review of the application.

After an application to organize a state bank is approved, the time frame for opening the bank rests with the organizing group and their ability to satisfy any conditions of an approval order. Final Orders typically allow one year for a proposed bank to open. Upon the request of an organizing group, and at the discretion of OFR, an extension of this deadline may be approved for good cause shown.

Organizing A State Bank

To charter a denovo state bank, Form OFR-U-1 (the "Application") must be submitted to OFR along with the applicable filing fee. Before an Application is filed, it is recommended that the

organizers request a pre-filing meeting with OFR. At least five individuals are required to act as directors. Each proposed officer, director, and principal stockholder of a denovo state bank must complete and submit Form OFR-U-10 for a background check.

The Florida Financial Institutions Code does permit a bank holding company to be the sole shareholder of a state bank.

State Application

After the pre-filing meeting, the completed Application must be filed with OFR. The filing fee currently is \$15,000. To complete the Application, the following information and documents must be compiled:

- Name and address of the proposed bank holding company, if applicable, or the names and addresses of the organizers.
- Names of the proposed directors, chief executive officer, senior loan officer, and cashier.
- Name and address of the proposed bank.
- Number of shares, par value, and the price for which each share of stock is to be sold.
- Determine aggregate amounts of common stock and surplus and reserves for operating expenses.
- Number of shares of bank stock that each organizer intends to purchase.
- Identify the amount and provide verification of the source of funds to be used by each organizer to purchase the stock. If assets are to be liquidated to finance the acquisition, provide a detailed explanation. If necessary, separate schedules should be provided. If any funds will be borrowed by the organizers or otherwise obtained for the purpose of acquiring stock of the proposed bank, attach a detailed description of the collateral to be pledged and the terms of the transaction, including interest rates, amortization requirements, co-maker, guarantors, endorsers and any other arrangements, agreements and understandings between and among the parties. Copies of any loan commitments should also be provided. If borrowed funds are to be obtained, indicate the sources of funds for debt service. Additionally, explain the extent to which salaries, dividends, fees, etc., from the bank will be needed for debt servicing requirements.
- Names and addresses of every proposed investor or trustee of a voting trust, other than the organizers, who are expected to own ten percent (10%) or more of the proposed bank's stock.
- Form OFR-U-10, and supplements, for each organizer, proposed director and principal stockholder, the proposed chief executive officer, senior loan officer, cashier and all other executive officers.
- Pro forma financial statements of the proposed bank. The balance sheet should include specific categories identifying all assets, liabilities and capital for the date of opening and the end of each of the first three years of operation. The capital presentation must be prepared in a risk-based format, with Tier 1 and Tier 2 capital identified. A risk-based capital ratio and leverage ratio must be calculated at the end of each projected year. The income statement should also include specific categories of income and expenses for the end of each of the first three years of operation.
- Addendum to the pro forma financial statements explaining the assumptions and strategies that will be used to achieve the projected market share for each type of product and service.
- Provide the assumptions that are used to calculate the earnings projections. Provide a description of the proposed main banking premises, including a summary of the

cost. Describe any plans for temporary quarters. Provide copies of blueprints and leases, if available or applicable.

- Identify all parties involved in the acquisition or lease of the proposed site of the banking premises.
- Identify any business or personal affiliations between the seller or lessor of the property and any of the organizers, proposed directors, officers or anticipated stockholders who will own 10% or more of the proposed bank stock. Include copies of any sales agreements, lease agreements and appraisals.
- Provide copies of any feasibility studies conducted for the location of the banking premises. Provide evidence that the proposed banking premises will be in compliance with the local zoning laws.
- Provide the results of any environmental tests conducted on the site of the proposed banking premises.
- Provide a list of projected organization costs and explain each category of expense. The list of organizational costs will generally include filing and regulatory fees, professional and consulting services, payroll and payroll taxes, rent, capital raising costs, printing, postage, telephone, and office supplies.
- Provide a list of the proposed salaries and benefits for all bank officers.
- Indicate whether any officers will be given employment contracts. If so, provide copies or drafts of the proposed contracts.
- Provide copies of all proposed bank policies, including asset/liability management, bank secrecy, business plan, budget, investment and loan.
- Provide a business plan detailing the purpose, objectives, and business philosophy of the proposed state bank.

After the application is filed, OFR begins independent investigations of the proposed bank, assessing its capital adequacy, its future earnings prospects, and the general character and experience of its management.

Should all statutory requirements to establish a state bank be met or can be met through compliance with certain conditions, OFR will issue a Final Order approving the state bank application. The Final Order will be issued within 180 days from the date of acceptance of a substantially complete application. The Final Order does not enable the proposed state bank to commence business.

Federal Application

For state chartered banks, the Florida Financial Institutions Code requires that deposit insurance be maintained with the FDIC. Proposed state banks must file an application for deposit insurance with the FDIC.

Post-Application Organization and Charter

After this organizational process, OFR will conduct an examination to confirm that no intervening circumstance has occurred to change OFR's findings made in Final Order and that all conditions of such Order have been satisfied. Assuming no adverse changes, the FDIC will be notified that a charter will be issued. The FDIC will have independently notified the proposed state bank and OFR whether deposit insurance will be provided. The FDIC will issue its certificate of deposit insurance immediately prior to the scheduled opening date for the bank.

Raising Capital

The concern of bank regulators for the soundness of the banking industry is evident in the requirements imposed on raising capital. The organizing group must plan to raise capital sufficient to support the projected growth of the proposed bank.

Securities Law Issues – Banks

The initial offering of subscriptions for the shares of a new state bank is exempt from the registration requirements of the Florida Securities and Investor Protection Act when an application for a state bank has been deemed complete by OFR, and OFR has reviewed the offering circular. Bank securities are also exempt from the federal Securities Act of 1933 and the Securities Exchange Act of 1934, unless the 1934 Act applies because the proposed bank will have five hundred or more stockholders. Generally, an offering circular should identify permissible investors and tell them how to subscribe; identify risk factors involved in a denovo bank; provide certain projected financial information; describe the offering and how proceeds of the offering will be used; describe the business of the bank and state the material effects that compliance with state and federal banking laws will have on the bank's operations; identify the organizers, directors and executive officers; and disclose any transactions with insiders.

Securities Laws Issues - Bank Holding Companies

Bank holding companies are corporations organized under state law, and the issuance of bank holding company stock is not covered by the exemption under state and federal securities laws for banks.

List of Actions to Perform

The following is a list of actions that should be performed by an organizing group as part of the start-up process. It is not in "chronological" order, nor should it be considered all-inclusive.

- Obtain final approval from State/FDIC/Federal Reserve.
- Send notice of proposed opening date to State/FDIC/Federal Reserve.
- Establish service charges, fees, and rates.
- Review products and services.
- Establish: corporate policy, personnel policy, general accounting (charts of accounts, expense, control, signing authorities, etc.), credit/commercial/ consumer loan policies, investment policy, trust policy/procedures, corporate compliance.
- Identify and obtain staff members.
- Train staff on polices and procedures.
- Obtain directories: internal telephone directory, internal corporate telephone directory, bank directory, city directory, bank operations contact list, zip code directory.
- Provide bank operations overview.
- Insure that head teller: records bait money numbers, orders adequate opening cash/currency.

- Establish cash/currency limits for: banking office, each teller.
- Arrange for signing and operating authorities.
- List distribution of all keys and establish key control records.
- Order business cards for personnel as appropriate.
- Order/install equipment: PCs/printer, teller terminals, microfiche viewer, copy machine, adding machine, shredder, currency counter, cash drawer trays, safe deposit vault clock, micro-film machine, encoder, typewriters.
- Order letterhead stationery and envelopes with bank logo.
- Establish control records for negotiable instruments: travelers checks, cashiers checks, counter checks.
- Prepare marketing program: marketing strategies, necessary publicity, advertisements.
- Opening ceremonies.
- Advertising and services stand (lobby display rack with initial supply of brochures).
- Develop budgetary projections.
- Prepare and implement business development plan and public notification.
- Obtain appropriate permits, licenses and posters: U.S. Department of Labor, OSHA, Federal Wage and Hour Law, Equal Employment Opportunity, Age Discrimination Law, Workers Compensation Law, Occupational License.
- Order safe deposit supplies: forms, safe deposit key, set-up in system.
- Meet vendors to make arrangements as necessary.
- Select and order supplies.
- Order starter kit supplies, forms, etc.
- Secure paying and issuing agent number for Series EE Bonds.
- Secure designation as depository for TTL and order necessary supplies.
- Order bags and agreements if office will have courier and/or night depository service.
- Procure sample checkbooks, order/reorder stamps and supplies and other vendor materials.
- Establish appropriate system security levels for personnel.
- Assign teller numbers and order stamps.
- Train tellers, platform personnel, etc. on: products and services, teller procedures, operations procedures/instructions, price schedules, equipment usage, systems capabilities.
- Arrange report distribution.
- Coordinate insurance requirements: blanket bond coverage, liability coverage, building and contents coverage, plate glass, if necessary.
- Display state charter in conspicuous location.
- Coordinate internal signage: obtain FDIC door and teller window signs, FDIC plaques and certificate in place.
- Arrange for mail service and postage matters.
- Mail supplies, forms and equipment.
- Obtain certified number(s) from post office.
- Courier service.
- U.S. Mail pick-up and delivery.
- Registered, certified mail processing.
- Internal mail processing.
- Arrange for armored car service and establish cash ordering/shipping procedures.
- Order all requisite security equipment: obtain security system, alarm and burglary protection, perimeter alarm, hold-up alarm, cameras, security guard, after-hours security.

- Notify police of proposed opening date.
- Implement and train staff on security program and specific procedures such as hold-up, robbery, office opening/closing, fraud, etc.
- Supervise and complete construction.
- Equip bank with the following: carpet, chairs, clocks (wall), desks, desk supplies, calendars, pencil cups, waste baskets, drapery/venetian blinds, planters and vases, safe/vault and related equipment, telephones, kitchen supplies, kitchen furniture, china, silverware, appliances, tables.
- Arrange for telephones and service.
- Arrange for electricity and water service.
- Develop and supervise signage installation: outdoor site and/or building signs, lobby signs, banking hour signs.
- Arrange for building and landscape maintenance services.

Financial Institution Regulation

Through OFR, state-chartered financial institutions are licensed, examined and regulated to ensure that private funds invested in Florida's state-chartered financial institutions are protected from potential loss due to failure or insolvency. OFR has regulatory authority over state-chartered commercial banks, credit unions, savings associations, non-deposit trust companies, international banking agencies, representative and administrative offices. Nationally or federally chartered financial institutions are chartered and regulated by various agencies of the federal government and the OFR does not have regulatory authority over those entities. OFR processes all applications for new banks, savings associations, foreign banks, trust companies, and credit unions. Applications for acquisitions, mergers, cross-industry conversions, changes of control, requests for trust powers, purchase and assumptions, branches, and office relocations are also processed through OFR.

OFR is also responsible for non-regulatory activities, including technical staff training, all budgetary, purchasing and revenue issues, drafting legislation and rules, monitoring federal legislative initiatives, maintaining analytical and statistical information, preparing special research projects, and office automation.