

Office of Thrift Supervision, Treasury

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§ 561.55 With recourse.

(a) The term *with recourse* means, in connection with the sale of a loan or a participation interest in a loan, an agreement or arrangement under which the purchaser is to be entitled to receive from the seller a sum of money or thing of value, whether tangible or intangible (including any substitution), upon default in payment of any loan involved or any part thereof or to withhold or to have withheld from the seller a sum of money or anything of value by way of security against default. The recourse liability resulting from a sale with recourse shall be the total book value of any loan sold with recourse less:

(1) The amount of any insurance or guarantee against loss in the event of default provided by a third party,

(2) The amount of any loss to be borne by the purchaser in the event of default, and

(3) The amount of any loss resulting from a recourse obligation entered on the books and records of the savings association.

(b) The term *with recourse* does not include loans or interests therein where the agreement of sale provides for the savings association directly or indirectly

(1) To hold or retain a subordinate interest in a specified percentage of the loans or interests; or

(2) To guarantee against loss up to a specified percentage of the loans or interests, which specified percentage shall not exceed ten percent of the outstanding balance of the loans or interests at the time of sale: *Provided*, That the savings association designates adequate reserves for the subordinate interest or guarantee.

(c) This definition does not apply for purposes of determining the capital adequacy requirements under part 567 of this chapter.

[54 FR 49545, Nov. 30, 1989, as amended at 57 FR 33437, July 29, 1992]

PART 562—REGULATORY REPORTING STANDARDS

Sec.

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AUTHORITY: 12 U.S.C. 1463.

SOURCE: 57 FR 40090, Sept. 2, 1992, unless otherwise noted.

§ 562.1 Regulatory reporting requirements.

(a) *Authority and scope*. This part is issued by the Office of Thrift Supervision (OTS) pursuant to section 4(b) and 4(c) of the Home Owners' Loan Act (HOLA). It applies to all savings associations regulated by the OTS.

(b) *Records and reports—general*—(1) *Records*. Each savings association and its affiliates shall maintain accurate and complete records of all business transactions. Such records shall support and be readily reconcilable to any regulatory reports submitted to the OTS and financial reports prepared in accordance with GAAP. The records shall be maintained in the United States and be readily accessible for examination and other supervisory purposes within 5 business days upon request by the OTS, at a location acceptable to the OTS.

(2) *Reports*. For purposes of examination by and regulatory reports to the OTS and compliance with this chapter, all savings associations shall use such forms and follow such regulatory reporting requirements as the OTS may require by regulation or otherwise.

§ 562.2 Regulatory reports.

(a) *Definition and scope*. This section applies to all regulatory reports, as defined herein. A regulatory report is any report that the OTS prepares, or is submitted to, or is used by the OTS, to determine compliance with its rules and regulations, and to evaluate the safe and sound condition and operation of savings associations. The Report of Examination and the Thrift Financial Report (TFR) are examples of regulatory reports. Regulatory reports are regulatory documents, not accounting documents.

(b) *Regulatory reporting requirements*—(1) *General*. The instructions to regulatory reports are referred to as "regulatory reporting requirements." Regulatory reporting requirements include, but are not limited to, the accounting

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instructions provided in the TFR, guidance contained in OTS regulations, bulletins, and examination handbooks, and safe and sound practices. Regulatory reporting requirements are not limited to the minimum requirements under generally accepted accounting principles (GAAP) because of the special supervisory, regulatory, and economic policy needs served by such reports. Regulatory reporting by savings associations that purports to comply with GAAP shall incorporate the GAAP that best reflects the underlying economic substance of the transaction at issue. Regulatory reporting requirements shall, at a minimum:

(i) Incorporate GAAP whenever GAAP is the referenced accounting instruction for regulatory reports to the Federal banking agencies;

(ii) Incorporate safe and sound practices contained in OTS regulations, bulletins, examination handbooks and instructions to regulatory reports. Such safety and soundness requirements shall be no less stringent than those applied by the Comptroller of the Currency for national banks; and

(iii) Incorporate additional safety and soundness requirements more stringent than GAAP, as the Director may prescribe.

(2) *Exceptions.* Regulatory reporting requirements that are not consistent with GAAP, if any, are not required to be reflected in audited financial statements, including financial statements contained in securities filings submitted to the OTS pursuant to the Securities and Exchange Act of 1934 or parts 563b, 563d, or 563g of this chapter.

(3) *Compliance.* When the OTS determines that a savings association's regulatory reports did not conform to regulatory reporting requirements in previous reporting periods, the association shall correct its regulatory reports in accordance with the directions of the OTS.

§ 562.4 Audit of savings associations and savings association holding companies.

(a) *General.* The OTS may require, at any time, an independent audit of the financial statements of, or the application of procedures agreed upon by the OTS to a savings association, savings

and loan holding company, or affiliate (as defined by 12 CFR 563.41) by qualified independent public accountants when needed for any safety and soundness reason identified by the Director.

(b) *Audits required for safety and soundness purposes.* The OTS requires an independent audit for safety and soundness purposes:

(1) If a savings association has received a composite rating of 3, 4 or 5, as defined at § 516.5(c) of this chapter; or

(2) If, as of the beginning of its fiscal year, a savings and loan holding company controls savings association subsidiary(ies) with aggregate consolidated assets of \$500 million or more.

(c) *Procedures.* (1) When the OTS requires an independent audit because such an audit is needed for safety and soundness purposes, the Director shall determine whether the audit was conducted and filed in a manner satisfactory to the OTS.

(2) The Director may waive the independent audit requirement described at paragraph (b)(1) of this section, if the Director determines that an audit would not provide further information on safety and soundness issues relevant to the examination rating.

(3) When the OTS requires the application of procedures agreed upon by the OTS for safety and soundness purposes, the Director shall identify the procedures to be performed. The Director shall also determine whether the agreed upon procedures were conducted and filed in a manner satisfactory to the OTS.

(d) *Qualifications for independent public accountants.* The audit shall be conducted by an independent public accountant who:

(1) Is registered or licensed to practice as a public accountant, and is in good standing, under the laws of the state or other political subdivision of the United States in which the savings association's or holding company's principal office is located;

(2) Agrees in the engagement letter to provide the OTS with access to and copies of any work papers, policies, and procedures relating to the services performed;