Office of Thrift Supervision, Treasury

§ 563.180 Suspicious Activity Reports and other reports and statements.

(a) Periodic reports. Each savings association and service corporation thereof shall make such periodic or other reports of its affairs in such manner and on such forms as the Office may prescribe. The Office may provide that reports filed by savings associations or service corporations to meet the requirements of other regulations also satisfy requirements imposed under this section.

(b) False or misleading statements or omissions. No savings association or director, officer, agent, employee, affiliated person, or other person participating in the conduct of the affairs of such association nor any person filing or seeking approval of any application shall knowingly:

1. Make any written or oral statement to the Office or to an agent, representative or employee of the Office that is false or misleading with respect to any material fact or omits to state a material fact concerning any matter within the jurisdiction of the Office; or

2. Make any such statement or omission to a person or organization auditing a savings association or otherwise preparing or reviewing its financial statements concerning the accounts, assets, management condition, ownership, safety, or soundness, or other affairs of the association.

(c) Notifications of loss and reports of increase in deductible amount of bond. A savings association maintaining bond coverage as required by §563.190 of this part shall promptly notify its bond company and file a proof of loss under the procedures provided by its bond, concerning any covered losses greater than twice the deductible amount.

(d) Suspicious Activity Reports—

1. Purpose and scope. This paragraph (d) ensures that savings associations and service corporations file a Suspicious Activity Report when they detect a known or suspected violation of Federal law or a suspicious transaction related to money laundering activity or a violation of the Bank Secrecy Act.

2. Definitions. For the purposes of this paragraph (d):

   (i) FinCEN means the Financial Crimes Enforcement Network of the Department of the Treasury.

   (ii) Institution-affiliated party means any institution-affiliated party as that term is defined in sections 3(u) and 8(b)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u) and 1818(b)(9)).

   (iii) SAR means a Suspicious Activity Report on the form prescribed by the OTS.

3. SARs required. A savings association or service corporation shall file a SAR with the appropriate Federal law enforcement agencies and the Department of the Treasury in accordance with the form’s instructions, by sending a completed SAR to FinCEN in the following circumstances:

   (i) Insider abuse involving any amount. Whenever the savings association or service corporation detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the savings association or service corporation or involving a transaction or transactions conducted through the savings association or service corporation, where the savings association or service corporation believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that it was used to facilitate a criminal transaction, and it has a substantial basis for identifying one of its directors, officers, employees, agents or other institution-affiliated parties as having committed or aided in the commission of a criminal act, regardless of the amount involved in the violation.

   (ii) Violations aggregating $5,000 or more where a suspect can be identified. Whenever the savings association or service corporation detects any known
or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the savings association or service corporation or involving a transaction or transactions conducted through the savings association or service corporation and involving or aggregating $5,000 or more in funds or other assets, where the savings association or service corporation believes that it was either an actual or potential victim of a criminal violation or series of criminal violations, or that it was used to facilitate a criminal transaction, and it has a substantial basis for identifying a possible suspect or group of suspects. If it is determined prior to filing this report that the identified suspect or group of suspects has used an alias, then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as drivers’ license or social security numbers, addresses and telephone numbers, must be reported.

(iii) Violations aggregating $25,000 or more regardless of potential suspects. Whenever the savings association or service corporation detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the savings association or service corporation or involving a transaction or transactions conducted through the savings association or service corporation and involving or aggregating $25,000 or more in funds or other assets, where the savings association or service corporation believes that it was either an actual or potential victim of a criminal violation or series of criminal violations, or that it was used to facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.

(iv) Transactions aggregating $5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act. Any transaction (which for purposes of this paragraph (d)(3)(iv) means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected) conducted or attempted by, at or through the savings association or service corporation and involving or aggregating $5,000 or more in funds or other assets, if the savings association or service corporation knows, suspects, or has reason to suspect that:

(A) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any law or regulation or to avoid any transaction reporting requirement under Federal law;

(B) The transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or

(C) The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(4) Service corporations. When a service corporation is required to file a SAR under paragraph (d)(3) of this section, either the service corporation or a savings association that wholly or partially owns the service corporation may file the SAR.

(5) Time for reporting. A savings association or service corporation is required to file a SAR no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of detection of the incident requiring the filing, a savings association or service corporation may delay filing a SAR for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction. In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, the savings association or service corporation is required to file a SAR no later than 30 calendar days after the date of initial detection of the reportable violation.
association or service corporation shall immediately notify, by telephone, an appropriate law enforcement authority and the OTS in addition to filing a timely SAR.

(6) Reports to state and local authorities. A savings association or service corporation is encouraged to file a copy of the SAR with state and local law enforcement agencies where appropriate.

(7) Exception. A savings association or service corporation need not file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(8) Retention of records. A savings association or service corporation shall maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of the filing of the SAR. Supporting documentation shall be identified and maintained by the savings association or service corporation as such, and shall be deemed to have been filed with the SAR. A savings association or service corporation shall make all supporting documentation available to appropriate law enforcement agencies upon request.

(9) Notification to board of directors—(i) Generally. Whenever a savings association (or a service corporation in which the savings association has an ownership interest) files a SAR pursuant to this paragraph (d), the management of the savings association or service corporation shall promptly notify its board of directors, or a committee of directors or executive officers designated by the board of directors to receive notice.

(ii) Suspect is a director or executive officer. If the savings association or service corporation files a SAR pursuant to this paragraph (d) and the suspect is a director or executive officer, the savings association or service corporation shall promptly notify its board of directors, or a committee of directors or executive officers designated by the board of directors to receive notice.

(e) Adjustable-rate mortgage indices—(1) Reporting obligation. Upon the request of a Federal Home Loan Bank, all savings associations within the jurisdiction of that Federal Home Loan Bank shall report the data items set forth in paragraph (e)(2) of this section for the Federal Home Loan Bank to use in calculating and publishing an adjustable-rate mortgage index.

(2) Data to be reported. For purposes of paragraph (e)(1) of this section, the term “data items” means the data items previously collected from the monthly Thrift Financial Report and such data items as may be altered, amended, or substituted by the requesting Federal Home Loan Bank.

(3) Applicable indices. For the purpose of this reporting requirement, the term “adjustable-rate mortgage index” means any of the adjustable-rate mortgage indices calculated and published by a Federal Home Loan Bank or the
§ 563.190  Bonds for directors, officers, employees, and agents; form of and amount of bonds.

(a) Each savings association shall maintain fidelity bond coverage. The bond shall cover each director, officer, employee, and agent who has control over or access to cash, securities, or other property of the savings association.

(b) The amount of coverage to be required for each savings association shall be determined by the association’s management, based on its assessment of the level that would be safe and sound in view of the association’s potential exposure to risk; provided, such determination shall be subject to approval by the association’s board of directors.

(c) Each savings association may maintain bond coverage in addition to that provided by the insurance underwriter industry’s standard forms, through the use of endorsements, riders, or other forms of supplemental coverage, if, in the judgment of the association’s board of directors, additional coverage is warranted.

(d) The board of directors of each savings association shall formally approve the association’s bond coverage. In deciding whether to approve the bond coverage, the board shall review the adequacy of the standard coverage and the need for supplemental coverage. Documentation of the board’s approval shall be included as a part of the minutes of the meeting at which the board approves coverage.

§ 563.200  Conflicts of interest.

If you are a director, officer, or employee of a savings association, or have the power to direct its management or policies, or otherwise owe a fiduciary duty to a savings association:

(a) You must not advance your own personal or business interests, or those of others with whom you have a personal or business relationship, at the expense of the savings association; and

(b) You must, if you have an interest in a matter or transaction before the board of directors:

(1) Disclose to the board all material nonprivileged information relevant to the board’s decision on the matter or transaction, including:

(i) The existence, nature and extent of your interests; and

(ii) The facts known to you as to the matter or transaction under consideration;

(2) Refrain from participating in the board’s discussion of the matter or transaction; and

(3) Recuse yourself from voting on the matter or transaction (if you are a director).

§ 563.201  Corporate opportunity.

(a) If you are a director or officer of a savings association, or have the power to direct its management or policies, or otherwise owe a fiduciary duty to a savings association, you must not take advantage of corporate opportunities belonging to the savings association.

(b) A corporate opportunity belongs to a savings association if:

(1) The opportunity is within the corporate powers of the savings association or a subsidiary of the savings association; and