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and shall make such adjustments as it considers necessary and appropriate to the policy for interest-rate-risk management, including adjustments to the authorized acceptable level of interest-rate risk.

§ 390.354 Procedures for monitoring Bank Secrecy Act (BSA) compliance.

(a) *Purpose.* The purpose of this regulation is to require State savings associations (as defined by § 390.308 to establish and maintain procedures reasonably designed to assure and monitor compliance with the requirements of subchapter II of chapter 53 of title 31, United States Code, and the implementing regulations promulgated thereunder by the U.S. Department of Treasury, 31 CFR part 103.

(b) *Establishment of a BSA compliance program*—(1) *Program requirement.* Each State savings association shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. The compliance program must be written, approved by the State savings association's board of directors, and reflected in the minutes of the State savings association.

(2) *Customer identification program.* Each State savings association is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation promulgated at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

(c) *Contents of compliance program.* The compliance program shall, at a minimum:

(1) Provide for a system of internal controls to assure ongoing compliance;

(2) Provide for independent testing for compliance to be conducted by a savings association's in-house personnel or by an outside party;

(3) Designate individual(s) responsible for coordinating and monitoring day-to-day compliance; and

(4) Provide training for appropriate personnel.

§ 390.355 Suspicious Activity Reports and other reports and statements.

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

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

(1) Make any written or oral statement to the FDIC or to an agent, representative or employee of the FDIC 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 FDIC; or

(2) Make any such statement or omission to a person or organization auditing a State 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 State savings association.

(c) *Notifications of loss and reports of increase in deductible amount of bond.* A State savings association maintaining bond coverage as required by § 390.356 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 State 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 a 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 FDIC.

(3) *SARs required.* A State savings association 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 State savings association detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the State savings association or involving a transaction or transactions conducted through the State savings association where the State savings association 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 State savings association detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the State savings association involving a transaction or transactions conducted through the State savings association and involving or aggregating $5,000 or more in funds or other assets, where the State savings association 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 State savings association detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the State savings association involving a transaction or transactions conducted through the State savings association and involving or aggregating $25,000 or more in funds or other assets, where the State savings association 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 State savings association involving or aggregating $5,000 or more in funds or other assets, if the State savings association 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) [Reserved]

(5) *Time for reporting.* A State savings association 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 State savings association 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 State savings association shall immediately notify, by telephone, an appropriate law enforcement authority and the FDIC in addition to filing a timely SAR.

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

(7) *Exception.* A State savings association 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 State savings association 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 State savings association as such, and shall be deemed to have been filed with the SAR. A State savings association shall make all supporting documentation available to appropriate law enforcement agencies upon request.

(9) *Notification to board of directors*—(i) *Generally.* Whenever a State savings association files a SAR pursuant to this paragraph (d), the management of the State savings association 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 State savings association files a SAR pursuant to this paragraph (d) and the suspect is a director or executive officer, the State savings association may not notify the suspect, pursuant to 31 U.S.C. 5318(g)(2), but shall notify all directors who are not suspects.

(10) *Compliance.* Failure to file a SAR in accordance with this section and the instructions may subject the State savings association, its directors, officers, employees, agents, or other institution-affiliated parties to supervisory action.

(11) *Obtaining SARs.* A State savings association may obtain SARs and the instructions from the appropriate FDIC region as defined in § 303.2 of this chapter.

(12) *Confidentiality of SARs.* SARs are confidential. Any institution or person subpoenaed or otherwise requested to disclose a SAR or the information contained in a SAR shall decline to produce the SAR or to provide any information that would disclose that a SAR has been prepared or filed, citing this paragraph (d), applicable law (*e.g.*, 31 U.S.C. 5318(g)), or both, and shall notify the FDIC.

(13) *Safe harbor.* The safe harbor provision of 31 U.S.C. 5318(g), which exempts any financial institution that makes a disclosure of any possible violation of law or regulation from liability under any law or regulation of the United States, or any constitution, law or regulation of any state or political subdivision, covers all reports of suspected or known criminal violations and suspicious activities to law enforcement and financial institution supervisory authorities, including supporting documentation, regardless of whether such reports are filed pursuant

to this paragraph (d), or are filed on a voluntary basis.

(e) *Adjustable-rate mortgage indices*—(1) *Reporting obligation.* Upon the request of a Federal Home Loan Bank, all State 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 or Consolidated Reports of Condition or Income (''Call Report''), as applicable, 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 Federal Home Loan Bank Board on or before August 9, 1989.

§ 390.356 Bonds for directors, officers, employees, and agents; form of and amount of bonds.

(a) Each State 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 State savings association.

(b) The amount of coverage to be required for each State 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 State 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 State savings association's board of directors, additional coverage is warranted.

(d) The board of directors of each State savings association shall formally approve the State savings 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. Additionally, the board of directors shall review the State savings association's bond coverage at least annually to assess the continuing adequacy of coverage.

§ 390.357 Bonds for agents.

In lieu of the bond provided in § 390.356 in the case of agents appointed by a State savings association, a fidelity bond may be provided in an amount at least twice the average monthly collections of such agents, provided such agents shall be required to make settlement with the State savings association at least monthly, and provided such bond is approved by the board of directors of the State savings association. No bond need be obtained for any agent that is a financial institution insured by the FDIC.

§ 390.358 Conflicts of interest.

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