

§ 163.201 Corporate opportunity.

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

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

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

(2) The opportunity is of present or potential practical advantage to the savings association, either directly or through its subsidiary.

(c) The OCC will not deem you to have taken advantage of a corporate opportunity belonging to the Federal savings association if a disinterested and independent majority of the savings association's board of directors, after receiving a full and fair presentation of the matter, rejected the opportunity as a matter of sound business judgment.

Subpart H—Notice of Change of Director or Senior Executive Officer

§ 163.550 What does this subpart do?

This subpart implements 12 U.S.C. 1831i, which requires certain Federal savings associations to notify the OCC before appointing or employing directors and senior executive officers.

§ 163.555 What definitions apply to this subpart?

The following definitions apply to this subpart:

Director means an individual who serves on the board of directors of a Federal savings association. This term does not include an advisory director who:

- (1) Is not elected by the shareholders;
- (2) Is not authorized to vote on any matters before the board of directors or any committee of the board of directors;
- (3) Provides only general policy advice to the board of directors or any

committee of the board of directors; and

(4) Has not been identified by the OCC or the OTS in writing as an individual who performs the functions of a director, or who exercises significant influence over, or participates in, major policymaking decisions of the board of directors.

Senior executive officer means an individual who holds the title or performs the function of one or more of the following positions (without regard to title, salary, or compensation): President, chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer. *Senior executive officer* also includes any other person identified by the OCC or the OTS in writing as an individual who exercises significant influence over, or participates in, major policymaking decisions, whether or not hired as an employee.

Troubled condition means:

(1) A Federal savings association that has a composite rating of 4 or 5, as composite rating is defined in §16.5(c) of this chapter;

(2) A Federal savings association that is subject to a capital directive, a cease-and-desist order, a consent order, a formal written agreement, or a prompt corrective action directive relating to the safety and soundness or financial viability of the savings association, unless otherwise informed in writing by the OCC; or

(3) A Federal savings association that is informed in writing by the OCC that it is in troubled condition based on information available to the OCC.

§ 163.560 Who must give prior notice?

(a) *Federal savings association.* Except as provided under §163.590, you must notify your OCC supervisory office at least 30 days before adding or replacing any member of your board of directors, employing any person as a senior executive officer, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive position if you are a Federal savings association and at least one of the following circumstances apply:

(1) You do not comply with all minimum capital requirements under part 167 of this chapter;

(2) Are in troubled condition; or

(3) The OCC has notified you, in connection with its review of a capital restoration plan required under section 38 of the Federal Deposit Insurance Act or part 165 of this chapter or otherwise, that a notice is required under this subpart.

(b) *Notice by individual.* If you are an individual seeking election to the board of directors of a Federal savings association described in paragraph (a) of this section, and have not been nominated by management, you must either provide the prior notice required under paragraph (a) of this section or follow the process under § 163.590(b).

§ 163.565 What procedures govern the filing of my notice?

The procedures found in part 116, subpart A of this chapter govern the filing of your notice under § 163.560.

§ 163.570 What information must I include in my notice?

(a) *Content requirements.* Your notice must include:

(1) The information required under 12 U.S.C. 1817(j)(6)(A), and the information prescribed in the Interagency Notice of Change in Director or Senior Executive Officer and the Interagency Biographical and Financial Report which are available from the OCC;

(2) Legible fingerprints of the proposed director or senior executive officer. You are not required to file fingerprints if, within three years prior to the date of submission of the notice, the proposed director or senior executive officer provided legible fingerprints as part of a notice filed with the OCC or the Office of Thrift Supervision under 12 U.S.C. 1831i; and

(3) Such other information required by the OCC.

(b) *Modification of content requirements.* The OCC may require or accept other information in place of the content requirements in paragraph (a) of this section.

§ 163.575 What procedures govern OCC review of my notice for completeness?

The OCC will first review your notice to determine whether it is complete.

(a) If your notice is complete, the OCC will notify you in writing of the date that the OCC received the complete notice.

(b) If your notice is not complete, the OCC will notify you in writing what additional information you need to submit, why we need the information, and when you must submit it. You must, within the specified time period, provide additional information or request that the OCC suspend processing of the notice. If you fail to act within the specified time period, the OCC may treat the notice as abandoned or may review the application based on the information provided.

§ 163.580 What standards and procedures will govern OCC review of the substance of my notice?

The OCC will disapprove a notice if, pursuant to the standard set forth in 12 U.S.C. 1831i(e), the OCC finds that the competence, experience, character, or integrity of the proposed director or senior executive officer indicates that it would not be in the best interests of the depositors of the Federal savings association or of the public to permit the individual to be employed by, or associated with, the savings association. If the OCC disapproves a notice, it will issue a written notice that explains why the OCC disapproved the notice. The OCC will send the notice to the savings association and the individual.

§ 163.585 When may a proposed director or senior executive officer begin service?

(a) A proposed director or senior executive officer may begin service 30 days after the date the OCC receives all required information, unless:

(1) The OCC notifies you that it has disapproved the notice; or

(2) The OCC extends the 30-day period for an additional period not to exceed 60 days. If the OCC extends the 30-day period, it will notify you in writing that the period has been extended, and will state the reason for the extension.

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The proposed director or senior executive officer may begin service upon expiration of the extended period, unless the OCC notifies you that it has disapproved the notice during the extended period.

(b) Notwithstanding paragraph (a) of this section, a proposed director or senior executive officer may begin service after the OCC notifies you, in writing, of its intention not to disapprove the notice.

§ 163.590 When will the OCC waive the prior notice requirement?

(a) *Waiver request.* (1) An individual may serve as a director or senior executive officer before filing a notice under this subpart if the OCC issues a written finding that:

(i) Delay would threaten the safety or soundness of the savings association;

(ii) Delay would not be in the public interest; or

(iii) Other extraordinary circumstances exist that justify waiver of prior notice.

(2) If the OCC grants a waiver, you must file a notice under this subpart within the time period specified by the OCC.

(b) *Automatic waiver.* An individual may serve as a director before filing a notice under this subpart, if the individual was not nominated by management and the individual submits a notice under this subpart within seven days after election as a director.

(c) *Subsequent OCC action.* The OCC may disapprove a notice within 30 days after the OCC issues a waiver under paragraph (a) of this section or within 30 days after the election of an individual who has filed a notice and is serving pursuant to an automatic waiver under paragraph (b) of this section.

PART 164—APPRAISALS

Subpart A—Appraisals

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164.21 Application of appraisal requirements for higher-priced mortgage loans to Federal savings associations and their operating subsidiaries.

AUTHORITY: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828(m), 3331 *et seq.*, 5412(b)(2)(B).

EFFECTIVE DATE NOTE: At 78 FR 10437, Jan. 13, 2013, the authority citation was revised, effective Jan. 18, 2014. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828(m), 3331 *et seq.*, 5412(b)(2)(B), 15 U.S.C. 1639h.

SOURCE: 76 FR 49062, Aug. 9, 2011, unless otherwise noted.

Subpart A—Appraisals

§ 164.1 Purpose and scope.

(a) [Reserved]

(b) *Purpose and scope.* (1) Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”) (Pub. L. 101–73, 103 Stat. 183, 511 (1989)), 12 U.S.C. 3331 *et seq.* provides protection for Federal financial and public policy interests in real estate related transactions by requiring real estate appraisals used in connection with Federally related transactions to be performed in writing, in accordance with uniform standards, by appraisers whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. This part implements the requirements of title XI and applies to all Federally related transactions entered into by institutions regulated by the OCC (“regulated institutions”).

(2) This part: (i) Identifies which real estate-related financial transactions require the services of an appraiser;

(ii) Prescribes which categories of Federally related transactions shall be appraised by a state certified appraiser and which by a state licensed appraiser; and