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contained in securities filings submitted to the OCC pursuant to the Securities and Exchange Act of 1934 or parts 192, 194, or 197 of this chapter.

(3) *Compliance.* When the OCC 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 OCC.

§ 162.4 Audit of savings associations.

(a) *General.* The OCC may require, at any time, an independent audit of the financial statements of, or the application of procedures agreed upon by the OCC to a savings association or affiliate (as defined by 12 CFR 563.41, or upon issuance of superseding regulations by the Board of Governors of the Federal Reserve System, such superseding regulations) by qualified independent public accountants when needed for any safety and soundness reason identified by the OCC.

(b) *Audits required for safety and soundness purposes.* The OCC requires an independent audit for safety and soundness purposes if a savings association has received a composite rating of 3, 4 or 5, as defined at §116.5(c) of this chapter.

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

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

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

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(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 OCC with access to and copies of any work papers, policies, and procedures relating to the services performed;

(3)(i) Is in compliance with the American Institute of Certified Public Accountants' (AICPA) Code of Professional Conduct; and

(ii) Meets the independence requirements and interpretations of the Securities and Exchange Commission and its staff; and

(4) Has received, or is enrolled in, a peer review program that meets guidelines acceptable to the OCC.

(e) *Voluntary audits.* When a savings association or affiliate (as defined by 12 CFR 563.41, or upon issuance of superseding regulations by the Board of Governors of the Federal Reserve System, such superseding regulations) obtains an independent audit voluntarily, it must be performed by an independent public accountant who satisfies the requirements of paragraphs (d)(1), (d)(2), and (d)(3)(i) of this section.

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Subpart A—Accounts

§ 163.1 Chartering documents.

(a) *Submission for approval.* Any *de novo* Federal savings association prior to commencing operations shall file its charter and bylaws with the OCC for approval, together with a certification that such charter and bylaws are permissible under all applicable laws, rules and regulations.

(b) *Availability of chartering documents.* Each Federal savings association shall cause a true copy of its charter and bylaws and all amendments thereto to be available to accountholders at all times in each office of the savings association, and shall upon request deliver to any accountholders a copy of such charter and bylaws or amendments thereto.

§ 163.4 [Reserved]

§ 163.5 Securities: Statement of non-insurance.

Every security issued by a Federal savings association must include in its provisions a clear statement that the security is not insured by the Federal Deposit Insurance Corporation.

Subpart B—Operation and Structure

§ 163.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

(a) No Federal savings association may, without application to and approval by the OCC:

(1) Combine with any insured depository institution, if the acquiring or resulting institution is to be a Federal savings association; or

(2) Assume liability to pay any deposit made in, any insured depository institution.

(b)(1) No Federal savings association may, without notifying the OCC, as provided in paragraph (h)(1) of this section:

(i) Combine with another insured depository institution where a Federal savings association is not the resulting institution; or

(ii) In the case of a savings association that meets the conditions for expedited treatment under §116.5 of this chapter, convert, directly or indirectly, to a national or state bank.

(2) A Federal savings association that does not meet the conditions for expedited treatment under §116.5 of this chapter may not, directly or indirectly, convert to a national or state bank without prior application to and approval of the OCC, as provided in paragraph (h)(2)(ii) of this section.

(c) No Federal savings association may make any transfer (excluding transfers subject to paragraphs (a) or (b) of this section) without notice or application to the OCC, as provided in paragraph (h)(2) of this section. For purposes of this paragraph, the term “transfer” means purchases or sales of assets or liabilities in bulk not made in the ordinary course of business including, but not limited to, transfers of assets or savings account liabilities, purchases of assets, and assumptions of deposit accounts or other liabilities, and combinations with a depository institution other than an insured depository institution.

(d)(1) In determining whether to confer approval for a transaction under paragraphs (a), (b)(2), or (c) of this section, the OCC shall take into account the following:

(i) The capital level of any resulting Federal savings association;

(ii) The financial and managerial resources of the constituent institutions;

(iii) The future prospects of the constituent institutions;

(iv) The convenience and needs of the communities to be served;

(v) The conformity of the transaction to applicable law, regulation, and supervisory policies;

(vi) Factors relating to the fairness of and disclosure concerning the transaction, including, but not limited to:

(A) *Equitable treatment.* The transaction should be equitable to all concerned—savings account holders, borrowers, creditors and stockholders (if any) of each Federal savings association—giving proper recognition of and protection to their respective legal rights and interests. The transaction will be closely reviewed for fairness where the transaction does not appear to be the result of arms’ length bargaining or, in the case of a stock savings association, where controlling stockholders are receiving different consideration from other stockholders. No finder’s or similar fee should be paid to any officer, director, or controlling person of a Federal savings association which is a party to the transaction.

(B) *Full disclosure.* The filing should make full disclosure of all written or oral agreements or understandings by which any person or company will receive, directly or indirectly, any money, property, service, release of pledges made, or other thing of value, whether tangible or intangible, in connection with the transaction.

(C) *Compensation to officers.* Compensation, including deferred compensation, to officers, directors and controlling persons of the disappearing Federal savings association by the resulting institution or an affiliate thereof should not be in excess of a reasonable amount, and should be commensurate with their duties and responsibilities. The filing should fully justify the compensation to be paid to such persons. The transaction will be particularly scrutinized where any of such persons is to receive a material increase in compensation above that paid by the disappearing savings association prior to the commencement of negotiations regarding the proposed transaction. An increase in compensation in excess of the greater of 15% or \$10,000 gives rise to presumptions of unreasonableness and sale of control. In the case of such an increase, evidence sufficient to rebut such presumptions should be submitted.

(D) *Advisory boards.* Advisory board members should be elected for a term

not exceeding one year. No advisory board fees should be paid to salaried officers or employees of the resulting Federal savings association. The filing should describe and justify the duties and responsibilities and any compensation paid to any advisory board of the resulting Federal savings association that consists of officers, directors or controlling persons of the disappearing institution, particularly if the disappearing institution experienced significant supervisory problems prior to the transaction. No advisory board fees should exceed the director fees paid by the resulting savings association. Advisory board fees that are in excess of 115 percent of the director fees paid by the disappearing Federal savings association prior to commencement of negotiations regarding the transaction give rise to presumptions of unreasonableness and sale of control unless sufficient evidence to rebut such presumptions is submitted. Rebuttal evidence is not required if:

(1) The advisory board fees do not exceed the fee that advisory board members of the resulting institution receive for each monthly meeting attended or \$150, whichever is greater; or

(2) The advisory board fees do not exceed \$100 per meeting attended for disappearing Federal savings associations with assets greater than \$10,000,000 or \$50 per meeting attended for disappearing Federal savings associations with assets of \$10,000,000 or less, based on a schedule of 12 meetings per year.

(E) The accounting and tax treatment of the transaction; and

(F) Fees paid and professional services rendered in connection with the transaction.

(2) In conferring approval of a transaction under paragraph (a) of this section, the OCC also will consider the competitive impact of the transaction, including whether:

(i) The transaction would result in a monopoly, or would be in furtherance of any monopoly or conspiracy to monopolize or to attempt to monopolize the savings association business in any part of the United States; or

(ii) The effect of the transaction on any section of the country may be substantially to lessen competition, or tend to create a monopoly, or in any

other manner would be in restraint of trade, unless the OCC finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the communities to be served.

(3) Applications and notices filed under this section shall be upon forms prescribed by the OCC.

(4) Applications filed under paragraph (a) of this section must be processed in accordance with the time frames set forth in §§116.210 through 116.290 of this chapter, provided that the period for review may be extended only if the OCC determines that the applicant has failed to furnish all requested information or that the information submitted is substantially inaccurate, in which case the review period may be extended for up to 30 days.

(e)(1) The following procedures apply to applications described in paragraph (a) of this section, unless the OCC finds that it must act immediately to prevent the probable default of one of the depository institutions involved:

(i) The applicant must publish a public notice of the application in accordance with the procedures in subpart B of part 116 of this chapter. In addition to the initial publication, the applicant must also publish on a weekly basis during the public comment period.

(ii) Commenters may submit comments on an application in accordance with the procedures in subpart C of part 116 of this chapter. The public comment period is 30 calendar days after the date of publication of the initial public notice. However, if the OCC has advised the Attorney General that an emergency exists requiring expeditious action, the public comment period is 10 calendar days after the date of publication of the initial public notice.

(iii) The OCC may arrange a meeting in accordance with the procedures in subpart D of part 116 of this chapter.

(iv) The OCC will request the Attorney General to provide reports on the competitive impacts involved in the transaction.

(v) The OCC will immediately notify the Attorney General of the approval of the transaction. The applicant may

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not consummate the transaction before the date established under 12 U.S.C. 1828(c)(6).

(2) For applications described in § 163.22, certain savings associations described below must provide affected accountholders with a notice of a proposed account transfer and an option of retaining the account in the transferring Federal savings association. The notice must allow affected accountholders at least 30 days to consider whether to retain their accounts in the transferring Federal savings association. The following savings associations must provide the notices:

(i) A Federal savings association transferring account liabilities to an institution the accounts of which are not insured by the Deposit Insurance Fund or the National Credit Union Share Insurance Fund; and

(ii) Any mutual Federal savings association transferring account liabilities to a stock form depository institution.

(f) *Automatic approvals by the OCC.* Applications filed pursuant to paragraph (a) of this section shall be deemed to be approved automatically by the OCC 30 calendar days after the OCC sends written notice to the applicant that the application is complete, unless:

(1) The acquiring Federal savings association does not meet the criteria for expedited treatment under § 116.5 of this chapter;

(2) The OCC recommends the imposition of non-standard conditions prior to approving the application;

(3) The OCC suspends the applicable processing time frames under § 116.190 of this chapter;

(4) The OCC raises objections to the transaction;

(5) The resulting Federal savings association would be one of the 3 largest depository institutions competing in the relevant geographic area where before the transaction there were 5 or fewer depository institutions, the resulting savings association would have 25 percent or more of the total deposits held by depository institutions in the relevant geographic area, and the share of total deposits would have increased by 5 percent or more;

(6) The resulting Federal savings association would be one of the 2 largest

depository institutions competing in the relevant geographic area where before the transaction there were 6 to 11 depository institutions, the resulting savings association would have 30 percent or more of the total deposits held by depository institutions in the relevant geographic area, and the share of total deposits would have increased by 10 percent or more;

(7) The resulting Federal savings association would be one of the 2 largest depository institutions competing in the relevant geographic area where before the transaction there were 12 or more depository institutions, the resulting savings association would have 35 percent or more of the total deposits held by the depository institutions in the relevant geographic area, and the share of total deposits would have increased by 15 percent or more;

(8) The Herfindahl-Hirschman Index (HHI) in the relevant geographic area was more than 1800 before the transaction, and the increase in the HHI caused by the transaction would be 50 or more;

(9) In a transaction involving potential competition, the OCC determines that the acquiring Federal savings association is one of three or fewer potential entrants into the relevant geographic area;

(10) The acquiring Federal savings association has assets of \$1 billion or more and proposes to acquire assets of \$1 billion or more;

(11) The Federal savings association that will be the resulting savings association in the transaction has a composite Community Reinvestment Act rating of less than satisfactory and the deficiencies have not been resolved to the satisfaction of the OCC;

(12) The transaction involves any supervisory or assistance agreement with the OCC, Office of Thrift Supervision, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation;

(13) The transaction is part of a conversion under part 192 of this chapter;

(14) The transaction raises a significant issue of law or policy; or

(15) The transaction is opposed by any constituent institution or contested by a competing acquiror.

(g) *Definitions.* (1) The terms used in this section shall have the same meaning as set forth in §152.13(b) of this chapter.

(2) *Insured depository institution.* *Insured depository institution* has the same meaning as defined in section 3(c)(2) of the Federal Deposit Insurance Act.

(3) With regard to paragraph (f) of this section, the term *relevant geographic area* is used as a substitute for *relevant geographic market*, which means the area within which the competitive effects of a merger or other combination may be evaluated. The relevant geographic area shall be delineated as a county or similar political subdivision, an area smaller than a county, or an aggregation of counties within which the merging or combining insured depository institutions compete. In addition, the OCC may consider commuting patterns, newspaper and other advertising activities, or other factors as the OCC deems relevant.

(h) *Special requirements and procedures for transactions under paragraphs (b) and (c) of this section—*(1) *Certain transactions with no surviving Federal savings association.* (i) The OCC must be notified of any transaction under paragraph (b)(1) of this section. Such notification must be submitted to the OCC at least 30 days prior to the effective date of the transaction, but not later than the date on which an application relating to the proposed transaction is filed with the primary regulator of the resulting institution; the OCC may, upon request or on its own initiative, shorten the 30-day prior notification requirement. Notifications under this paragraph must demonstrate compliance with applicable stockholder or accountholder approval requirements. Where the Federal savings association submitting the notification maintains a liquidation account established pursuant to part 192 of this chapter, the notification must state that the resulting institution will assume such liquidation account.

(ii) The notification may be in the form of either a letter describing the material features of the transaction or a copy of a filing made with another Federal or state regulatory agency seeking approval from that agency for the transaction under the Bank Merger

Act or other applicable statute. If the action contemplated by the notification is not completed within one year after the OCC's receipt of the notification, a new notification must be submitted to the OCC.

(2) *Other transfer transactions—*(i) *Expedited treatment.* A notice in conformity with §116.25(a) of this chapter may be submitted to the OCC under §116.40 of this chapter for any transaction under paragraph (c) of this section, provided all constituent Federal savings associations meet the conditions for expedited treatment under §116.5 of this chapter. Notices submitted under this paragraph must be deemed approved automatically by the OCC 30 days after receipt, unless the OCC advises the applicant in writing prior to the expiration of such period that the proposed transaction may not be consummated without the OCC's approval of an application under paragraphs (h)(2)(ii) or (h)(2)(iii) of this section.

(ii) *Standard treatment.* An application in conformity with §116.25(b) of this chapter and paragraph (d) of this section must be submitted to the OCC under §116.40 by each Federal savings association participating in a transaction under paragraph (b)(2) or (c) of this section, where any constituent savings association does not meet the conditions for expedited treatment under §116.5 of this chapter. Applications under this paragraph must be processed in accordance with the procedures in part 116, subparts A and E of this chapter.

§ 163.27 Advertising.

No Federal savings association shall use advertising (which includes print or broadcast media, displays or signs, stationery, and all other promotional materials), or make any representation which is inaccurate in any particular or which in any way misrepresents its services, contracts, investments, or financial condition.

§ 163.33 Directors, officers, and employees.

(a) *Directors—*(1) *Requirements.* The composition of the board of directors of a Federal savings association must be

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in accordance with the following requirements:

(i) A majority of the directors must not be salaried officers or employees of the savings association or of any subsidiary thereof.

(ii) Not more than two of the directors may be members of the same immediate family.

(iii) Not more than one director may be an attorney with a particular law firm.

(2) *Prospective application.* In the case of an association whose board of directors does not conform with any requirement set forth in paragraph (a)(1) of this section as of October 5, 1983, this paragraph (a) shall not prohibit the uninterrupted service, including re-election and re-appointment, of any person serving on the board of directors at that date.

(b) [Reserved]

§ 163.36 Tyng restriction exception.

For applicable rules, see regulations of the Board of Governors of the Federal Reserve System.

§ 163.39 Employment contracts.

(a) *General.* A Federal savings association may enter into an employment contract with its officers and other employees only in accordance with the requirements of this section. All employment contracts shall be in writing and shall be approved specifically by an association's board of directors. An association shall not enter into an employment contract with any of its officers or other employees if such contract would constitute an unsafe or unsound practice. The making of such an employment contract would be an unsafe or unsound practice if such contract could lead to material financial loss or damage to the association or could interfere materially with the exercise by the members of its board of directors of their duty or discretion provided by law, charter, bylaw or regulation as to the employment or termination of employment of an officer or employee of the association. This may occur, depending upon the circumstances of the case, where an employment contract provides for an excessive term.

(b) *Required provisions.* Each employment contract shall provide that:

(1) The Federal savings association's board of directors may terminate the officer or employee's employment at any time, but any termination by the association's board of directors other than termination for cause, shall not prejudice the officer or employee's right to compensation or other benefits under the contract. The officer or employee shall have no right to receive compensation or other benefits for any period after termination for cause. Termination for cause shall include termination because of the officer or employee's personal dishonesty, incompetence, willful misconduct, breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, willful violation of any law, rule, or regulation (other than traffic violations or similar offenses) or final cease-and-desist order, or material breach of any provision of the contract.

(2) If the officer or employee is suspended and/or temporarily prohibited from participating in the conduct of the association's affairs by a notice served under section 8(e)(3) or (g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(3) and (g)(1)), the association's obligations under the contract shall be suspended as of the date of service unless stayed by appropriate proceedings. If the charges in the notice are dismissed, the association may in its discretion (i) pay the officer or employee all or part of the compensation withheld while its contract obligations were suspended, and (ii) reinstate (in whole or in part) any of its obligations which were suspended.

(3) If the officer or employee is removed and/or permanently prohibited from participating in the conduct of the association's affairs by an order issued under section 8(e)(4) or (g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(4) or (g)(1)), all obligations of the association under the contract shall terminate as of the effective date of the order, but vested rights of the contracting parties shall not be affected.

(4) If the savings association is in default (as defined in section 3(x)(1) of the Federal Deposit Insurance Act), all obligations under the contract shall

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terminate as of the date of default, but this paragraph (b)(4) shall not affect any vested rights of the contracting parties: *Provided*, that this paragraph (b)(4) need not be included in an employment contract if prior written approval is secured from the Comptroller or his or her designee.

(5) All obligations under the contract shall be terminated, except to the extent determined that continuation of the contract is necessary for the continued operation of the association;

(i) By the Comptroller, or his or her designee, at the time the Federal Deposit Insurance Corporation enters into an agreement to provide assistance to or on behalf of the association under the authority contained in 13(c) of the Federal Deposit Insurance Act; or

(ii)(A) By the Comptroller or his or her designee, at the time the Comptroller, or his or her designee approves a supervisory merger to resolve problems related to operation of the association or when the association is determined by the Comptroller to be in an unsafe or unsound condition.

(B) Any rights of the parties that have already vested, however, shall not be affected by such action.

§ 163.41 Transactions with affiliates.

For applicable rules, see regulations of the Board of Governors of the Federal Reserve System.

§ 163.43 Loans by savings associations to their executive officers, directors and principal shareholders.

For applicable rules, see Regulation O of the Board of Governors of the Federal Reserve System.

§ 163.47 Pension plans.

(a) *General.* No Federal savings association or service corporation thereof shall sponsor an employee pension plan which, because of unreasonable costs or any other reason, could lead to material financial loss or damage to the sponsor. For purposes of this section, an employee pension plan is defined in section 3(2) of the Employee Retirement Income Security Act of 1974, as amended. The prospective obligation or liability of a plan sponsor to each plan participant shall be stated in or determinable from the plan, and, for a de-

defined benefit plan, shall also be based upon an actuarial estimate of future experience under the plan.

(b) *Funding.* Actuarial cost methods permitted under the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954, as amended, shall be used to determine plan funding.

(c) *Plan amendment.* A plan may be amended to provide reasonable annual cost-of-living increases to retired participants: *Provided*, That

(1) Any such increase shall be for a period and amount determined by the sponsor's board of directors, but in no event shall it exceed the annual increase in the Consumer Price Index published by the Bureau of Labor Statistics; and

(2) No increase shall be granted unless:

(i) Anticipated charges to net income for future periods have first been found by such board of directors to be reasonable and are documented by appropriate resolution and supporting analysis; and

(ii) The increase will not reduce the association's regulatory capital below its regulatory capital requirement.

(d) *Termination.* The plan shall permit the sponsor's board of directors and its successors to terminate such plan. Notice of intent to terminate shall be filed with the OCC at least 60 days prior to the proposed termination date.

(e) *Records.* Each Federal savings association or service corporation maintaining a plan not subject to record-keeping and reporting requirements of the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1954, as amended, shall establish and maintain records containing the following:

- (1) Plan description;
- (2) Schedule of participants and beneficiaries;
- (3) Schedule of participants and beneficiaries' rights and obligations;
- (4) Plan's financial statements; and
- (5) Except for defined contribution plans, an opinion signed by an enrolled actuary (as defined by the Employee Retirement Income Security Act of 1974) affirming that actuarial assumptions in the aggregate are reasonable, take into account the plan's experience

and expectations, and represent the actuary's best estimate of the plan's projected experiences.

Subpart C—Securities and Borrowings

§ 163.74 Mutual capital certificates.

(a) *General.* No savings association that is in the mutual form shall issue mutual capital certificates pursuant to this section or amend the terms of such certificates unless it has obtained written approval of the appropriate Federal banking agency. No approval shall be granted unless the proposed issuance of the mutual capital certificates and the form and manner of filing of the application are in accordance with the provisions of this section.

(b) *Eligibility Requirements.* The appropriate Federal banking agency will consider and process an application for approval of the issuance of mutual capital certificates pursuant to this section only if the issuance is authorized by applicable law and regulation and is not inconsistent with any provision of the applicant's charter, constitution or bylaws.

(c) *Application form; supporting information.* An application for approval of the issuance of mutual capital certificates pursuant to this section shall be in the form prescribed by the appropriate Federal banking agency. Such application and instructions may be obtained from the appropriate Federal banking agency. Information and exhibits shall be furnished in support of the application in accordance with such instructions, setting forth all of the terms and provisions relating to the proposed issue and showing that all of the requirements of this section have been or will be met.

(d) *Charter amendment.* No application for approval of the issuance of mutual capital certificates pursuant to this section may be filed unless the amendment to the mutual association's charter, constitution or bylaws or other actions conferring such authority shall have been approved pursuant to the procedures and requirements set forth in the mutual association's charter, constitution or bylaws, or as may otherwise be required by applicable law.

(e) *Filing requirements.* The application for issuance of mutual capital certificates shall be publicly filed with the appropriate Federal banking agency.

(f) *Supervisory objection.* No application or approval of the issuance of mutual capital certificates pursuant to this section shall be approved if, in the opinion of the appropriate Federal banking agency, the policies, condition, or operation of the applicant afford a basis for supervisory objection to the application.

(g) *Limitation on offering period.* Following the date of the approval of the application by the appropriate Federal banking agency, the association shall have an offering period of not more than one year in which to complete the sale of the mutual capital certificates issued pursuant to this section. The appropriate Federal banking agency may in its discretion extend such offering period if a written request showing good cause for such extension is filed with it not later than 30 days before the expiration of such offering period or any extension thereof.

(h) *Reports.* Within 30 days after completion of the sale of mutual capital certificates issued pursuant to this section, the association shall transmit to the appropriate Federal banking agency a written report stating the total dollar amount of securities sold, and the amount of net proceeds received by the association, and within 90 days it shall transmit a written report stating the number of purchasers.

(i) *Requirements as to mutual capital certificates—(1) Form of certificate.* Each mutual capital certificate and any governing agreement evidencing a mutual capital certificate issued by an association pursuant to this section:

(i) Shall bear on its face, in bold-face type, the following legend: "This security is not a savings account or a deposit and it is not insured by the United States or any agency or fund of the United States"; and

(ii) Shall clearly state that the certificate is subject to the requirements of § 163.74(i)(2).

(2) *Legal requirements.* Mutual capital certificates issued pursuant to this section shall:

(i) Be subordinate to all claims against the association having the

same priority as savings accounts, savings certificates, debt obligations or any higher priority;

(ii) Not be eligible for use as collateral for any loan made by the issuing association;

(iii) Constitute a claim in liquidation not exceeding the face value plus accrued dividends of the certificates, on the general reserves, surplus and undivided profits of the association remaining after the payment in full of all savings accounts, savings certificates and debt obligations;

(iv) Be entitled to the payment of dividends, which may be fixed, variable, participating, or cumulative, or any combination thereof, only if, when and as declared by the association's board of directors out of funds legally available for that purpose, provided that no dividend may be declared or paid without the approval of the appropriate Federal banking agency if such payment would cause the association to fail to meet its regulatory capital requirements under part 167 of this chapter if a Federal savings association or 12 CFR part 390, subpart Z if a state savings association, and provided further that no dividend may be paid if such payment would constitute a violation of 12 U.S.C. 1828(b);

(v) Not be redeemable, except: where the dollar weighted average term of each issue of mutual capital certificates to be redeemed is seven years or more and redemption is to be made pursuant to a redemption schedule; in the event of a merger, consolidation or reorganization approved by the appropriate Federal banking agency; or where the funds for redemption are raised by the issuance of mutual capital certificates approved pursuant to this section, or in conjunction with the issuance of capital stock pursuant to part 192 of this chapter: *Provided*, that mandatory redemption shall not be required; that mutual capital certificates shall not be redeemable on the demand or at the option of the holder; and that mutual capital certificates shall not receive, benefit from, be credited with or otherwise be entitled to or due payments in or for redemption if such payments would cause the association to fail to meet its regulatory capital requirements under part 167 of this chap-

ter if a Federal savings association or 12 CFR part 390, subpart Z if a state savings association; *And Provided further*, for the purposes of this paragraph (i)(2)(v), the "dollar weighted average term" of an issue of mutual capital certificates shall be the sum of the products calculated for each year that the mutual capital certificates in the issue have been redeemed or are scheduled to be redeemed. Each product shall be calculated by multiplying the number of years of each mutual capital certificate of a given term by a fraction, the numerator of which shall be the total dollar amount of each mutual capital certificate in the issue with the same term and the denominator of which shall be the total dollar amount of mutual capital certificates in the entire issue;

(vi) Not have preemptive rights;

(vii) Not have voting rights, except that an association may provide for voting rights if:

(A) The savings association fails to pay dividends for a minimum of three consecutive dividend periods, and then the holders of the class or classes of mutual capital certificates granted such voting rights, and voting as a single class, with one vote for each outstanding certificate, may elect by a majority vote a maximum of one-third of the association's board of directors, the directors so elected to serve until the next annual meeting of the association succeeding the payment of all current and past dividends;

(B) Any merger, consolidation, or reorganization (except in a supervisory case) is sought to be authorized, where the issuing association is not the survivor, provided that the regulatory capital of the resulting association available for payment of any class of mutual capital certificate on liquidation is less than the regulatory capital available for such class prior to the merger, consolidation, or reorganization;

(C) Action is sought to be authorized which would create any class of mutual capital certificates having a preference or priority over an outstanding class or classes of mutual capital certificates;

(D) Any action is sought to be authorized which would adversely change

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the specific terms of any class of mutual capital certificates;

(E) Action is sought to be authorized which would increase the number of a class of mutual capital certificates, or the number of a class of mutual capital certificates ranking prior to or on parity with another class of mutual capital certificates; or

(F) Action is sought which would authorize the issuance of an additional class or classes of mutual capital certificates without the association having met specific financial standards;

(viii) Not constitute an obligation of the association and shall confer no rights which would give rise to any claim of or action for default;

(ix) Not be convertible into any account, security, or interest, except that mutual capital certificates may be surrendered in exchange for preferred stock issued in connection with the conversion of the issuing savings association to the stock form pursuant to part 192 of this chapter, provided that the preferred stock shall have substantially the same voting rights, designations, preferences and relative, participating optional, or other special rights, and qualifications, limitations, and restrictions, as the mutual capital certificates exchanged for the preferred stock.

(x) Provide for charging of losses after the exhaustion of all other items in the regulatory capital account.

§ 163.76 Offers and sales of securities at an office of a Federal savings association.

(a) A Federal saving association may not offer or sell debt or equity securities issued by the association or an affiliate of the association at an office of the association; except that equity securities issued by the association or an affiliate in connection with the association's conversion from the mutual to stock form of organization in a conversion approved pursuant to part 192 of this chapter may be offered and sold at the association's offices: *Provided*, That:

(1) The OCC does not object on supervisory grounds to the offer and sale of the securities at the offices of the association;

(2) No commissions, bonuses, or comparable payments are paid to any employee of the savings association or its affiliates or to any other person in connection with the sale of securities at an office of a savings association; except that compensation and commissions consistent with industry norms may be paid to securities personnel of registered broker-dealers;

(3) No offers or sales are made by tellers or at the teller counter, or by comparable persons at comparable locations;

(4) Sales activity is conducted in a segregated or separately identifiable area of the savings association's offices apart from the area accessible to the general public for the purposes of making or withdrawing deposits;

(5) Offers and sales are made only by regular, full-time employees of the savings association or by securities personnel who are subject to supervision by a registered broker-dealer;

(6) An acknowledgment, in the form set forth in paragraph (c) of this section, is signed by any customer to whom the security is sold in the savings association's offices prior to the sale of any such securities;

(7) A legend that the security is not a deposit or account and is not Federally insured or guaranteed appears conspicuously on the security and in all offering documents and advertisements for the securities; the legend must state in bold or other prominent type at least as large as other textual type in the document that "This security is not a deposit or account and is not Federally insured or guaranteed"; and

(8) The savings association will be in compliance with its current capital requirements upon completion of the conversion stock offering.

(b) Securities sales practices, advertisements, and other sales literature used in connection with offers and sales of securities by Federal savings associations shall be subject to §197.10 of this chapter.

(c) Offers and sales of securities of a savings association or its affiliates in any office of the savings association must use a one-page, unambiguous, certification in substantially the following form:

FORM OF CERTIFICATION

I ACKNOWLEDGE THAT THIS SECURITY IS NOT A DEPOSIT OR ACCOUNT AND IS NOT FEDERALLY INSURED, AND IS NOT GUARANTEED BY [insert name of savings association] OR BY THE FEDERAL GOVERNMENT.

If anyone asserts that this security is Federally insured or guaranteed, or is as safe as an insured deposit, I should call the Office of the Comptroller of the Currency].

I further certify that, before purchasing the [description of security being offered] of [name of issuer, name of savings association and affiliation to issuer (if different)], I received an offering circular.

The offering circular that I received contains disclosure concerning the nature of the security being offered and describes the risks involved in the investment, including:

[List briefly the principal risks involved and cross reference certain specified pages of the offering circular where a more complete description of the risks is made.]

§ 163.80 Borrowing limitations.

(a) *General.* Except as the appropriate Federal banking agency otherwise may permit by advice in writing, a savings association may borrow only in accordance with the provisions of this section.

(b) *Amount of borrowing.* A savings association may borrow up to the amount authorized by the laws under which the savings association operates.

(c) *Security.* An association may give security for borrowings subject to any requirements imposed by the appropriate Federal banking agency or the FDIC regarding notice of default on borrowings and any FDIC right of first refusal to purchase collateral.

(d) *Required statement for all securities evidencing outside borrowings.* Each security shall bear on its face, in a prominent place, the following legend:

This security is not a savings account or a deposit and it is not insured by the United States or any agency or fund of the United States.

(e) *Filing requirements for outside borrowings with maturities in excess of one year.* (1) Unless the savings association meets its capital requirement under

part 167 of this chapter if a Federal savings association or 12 CFR part 390, subpart Z if a state savings association, it shall, at least ten business days prior to issuance, file a notice of intent to issue securities evidencing such borrowings with the appropriate OCC licensing office if a Federal savings association, or with the appropriate regional director of the FDIC if a state savings association. Such notice shall contain a summary of the items of the security, including:

- (i) Principal amount of the securities;
- (ii) Anticipated interest rate range and price range at which the securities are to be sold;
- (iii) Minimum denomination;
- (iv) Stated and average effective maturity;
- (v) Mandatory and optional prepayment provisions;
- (vi) Description, amount, and maintenance of collateral if any;
- (vii) Trustee provisions if any;
- (viii) Events of default and remedies of default;
- (ix) Any provisions which restrict, conditionally or otherwise, the operations of the association.

(2) The appropriate Federal banking agency shall have 10 business days after receipt of such filing to object to the issuance of such securities. The appropriate Federal banking agency shall object if the terms or covenants of the proposed issue place unreasonable burdens on, or control over, the operations of the association. If no objection is taken, the savings association shall have 120 calendar days within which to issue such securities.

(f) *Note accounts.* For purposes of this section, note accounts are not borrowings.

§ 163.81 Inclusion of subordinated debt securities and mandatorily redeemable preferred stock as supplementary capital.

(a) *Scope.* A Federal savings association must comply with this section in order to include subordinated debt securities or mandatorily redeemable preferred stock ("covered securities") in supplementary capital (tier 2 capital) under part 167 of this chapter. If a savings association does not include covered securities in supplementary

capital, it is not required to comply with this section.

(b) *Application and notice procedures.*

(1) A Federal savings association must file an application or notice under 12 CFR part 116, subpart A seeking the OCC's approval of, or non-objection to, the inclusion of covered securities in supplementary capital. The savings association may file its application or notice before or after it issues covered securities, but may not include covered securities in supplementary capital until the OCC approves the application or does not object to the notice.

(2) A savings association must also comply with the securities offering rules at 12 CFR part 197 by filing an offering circular for a proposed issuance of covered securities, unless the offering qualifies for an exemption under that part.

(c) *Securities requirements.* To be included in supplementary capital, covered securities must meet the following requirements:

(1) *Form.* (i) Each certificate evidencing a covered security must:

(A) Bear the following legend on its face, in bold type: "This security is *not* a savings account or deposit and it is *not* insured by the United States or any agency or fund of the United States;"

(B) State that the security is subordinated on liquidation, as to principal, interest, and premium, to all claims against the savings association that have the same priority as savings accounts or a higher priority;

(C) State that the security is not secured by the savings association's assets or the assets of any affiliate of the savings association. An affiliate means any person or company which controls, is controlled by, or is under common control with the savings association;

(D) State that the security is not eligible collateral for a loan by the savings association;

(E) State the prohibition on the payment of dividends or interest at 12 U.S.C. 1828(b) and, in the case of subordinated debt securities, state the prohibition on the payment of principal and interest at 12 U.S.C. 1831o(h);

(F) For subordinated debt securities, state or refer to a document stating the terms under which the savings as-

sociation may prepay the obligation; and

(G) State or refer to a document stating that the savings association must obtain OCC's approval before the voluntary prepayment of principal on subordinated debt securities, the acceleration of payment of principal on subordinated debt securities, or the voluntarily redemption of mandatorily redeemable preferred stock (other than scheduled redemptions), if the savings association is undercapitalized, significantly undercapitalized, or critically undercapitalized as described in §165.4(b) of this chapter, fails to meet the regulatory capital requirements at 12 CFR part 167, or would fail to meet any of these standards following the payment.

(ii) A Federal savings association must include such additional statements as the OCC may prescribe for certificates, purchase agreements, indentures, and other related documents.

(2) *Maturity requirements.* Covered securities must have an original weighted average maturity or original weighted average period to required redemption of at least five years.

(3) *Mandatory prepayment.* Subordinated debt securities and related documents may not provide events of default or contain other provisions that could result in a mandatory prepayment of principal, other than events of default that:

(i) Arise from the Federal savings association's failure to make timely payment of interest or principal;

(ii) Arise from its failure to comply with reasonable financial, operating, and maintenance covenants of a type that are customarily included in indentures for publicly offered debt securities; or

(iii) Relate to bankruptcy, insolvency, receivership, or similar events.

(4) *Indenture.* (i) Except as provided in paragraph (c)(4)(ii) of this section, a Federal savings association must use an indenture for subordinated debt securities. If the aggregate amount of subordinated debt securities publicly offered (excluding sales in a non-public offering as defined in 12 CFR 197.4) and sold in any consecutive 12-month or 36-month period exceeds \$5,000,000 or \$10,000,000 respectively (or such lesser

amount that the Securities and Exchange Commission shall establish by rule or regulation under 15 U.S.C. 77ddd), the indenture must provide for the appointment of a trustee other than the savings association or an affiliate of the savings association (as defined in subsection (c)(1)(i)(C) of this section) and for collective enforcement of the security holders' rights and remedies.

(ii) A Federal savings association is not required to use an indenture if the subordinated debt securities are sold only to accredited investors, as that term is defined in 15 U.S.C. 77d(6). A savings association must have an indenture that meets the requirements of paragraph (c)(4)(i) of this section in place before any debt securities for which an exemption from the indenture requirement is claimed, are transferred to any non-accredited investor. If a savings association relies on this exemption from the indenture requirement, it must place a legend on the debt securities indicating that an indenture must be in place before the debt securities are transferred to any non-accredited investor.

(d) *Review by the OCC.* (1) The OCC will review notices and applications under 12 CFR part 116, subpart E.

(2) In reviewing notices and applications under this section, the OCC will consider whether:

(i) The issuance of the covered securities is authorized under applicable laws and regulations and is consistent with the savings association's charter and bylaws.

(ii) The savings association is at least adequately capitalized under §165.4(b) of this chapter and meets the regulatory capital requirements at part 167 of this chapter.

(iii) The savings association is or will be able to service the covered securities.

(iv) The covered securities are consistent with the requirements of this section.

(v) The covered securities and related transactions sufficiently transfer risk from the Deposit Insurance Fund.

(vi) The OCC has no objection to the issuance based on the savings association's overall policies, condition, and operations.

(3) The OCC's approval or non-objection is conditioned upon no material changes to the information disclosed in the application or notice submitted to the OCC. The OCC may impose such additional requirements or conditions as it may deem necessary to protect purchasers, the savings association, the OCC, or the Deposit Insurance Fund.

(e) *Amendments.* If a Federal savings association amends the covered securities or related documents following the completion of the OCC's review, it must obtain the OCC's approval or non-objection under this section before it may include the amended securities in supplementary capital.

(f) *Sale of covered securities.* The Federal savings association must complete the sale of covered securities within one year after the OCC's approval or non-objection under this section. A savings association may request an extension of the offering period by filing a written request with the OCC. The savings association must demonstrate good cause for the extension and file the request at least 30 days before the expiration of the offering period or any extension of the offering period.

(g) *Reports.* A Federal savings association must file the following information with the OCC within 30 days after the savings association completes the sale of covered securities includable as supplementary capital. If the savings association filed its application or notice following the completion of the sale, it must submit this information with its application or notice:

(1) A written report indicating the number of purchasers, the total dollar amount of securities sold, the net proceeds received by the savings association from the issuance, and the amount of covered securities, net of all expenses, to be included as supplementary capital;

(2) Three copies of an executed form of the securities and a copy of any related documents governing the issuance or administration of the securities; and

(3) A certification by the appropriate executive officer indicating that the savings association complied with all applicable laws and regulations in connection with the offering, issuance, and sale of the securities.

Subpart D [Reserved]

Subpart E—Capital Distributions

§ 163.140 What does this subpart cover?

This subpart applies to all capital distributions by a Federal savings association (“you”).

§ 163.141 What is a capital distribution?

A capital distribution is:

(a) A distribution of cash or other property to your owners made on account of their ownership, but excludes:

(1) Any dividend consisting only of your shares or rights to purchase your shares; or

(2) If you are a Federal mutual savings association, any payment that you are required to make under the terms of a deposit instrument and any other amount paid on deposits that the OCC determines is not a distribution for the purposes of this section;

(b) Your payment to repurchase, redeem, retire or otherwise acquire any of your shares or other ownership interests, any payment to repurchase, redeem, retire, or otherwise acquire debt instruments included in your total capital under part 167 of this chapter, and any extension of credit to finance an affiliate’s acquisition of your shares or interests;

(c) Any direct or indirect payment of cash or other property to owners or affiliates made in connection with a corporate restructuring. This includes your payment of cash or property to shareholders of another association or to shareholders of its holding company to acquire ownership in that association, other than by a distribution of shares;

(d) Any other distribution charged against your capital accounts if you would not be well capitalized, as set forth in §165.4(b)(1) of this chapter, following the distribution; and

(e) Any transaction that the OCC determines, by order or regulation, to be in substance a distribution of capital.

§ 163.142 What other definitions apply to this subpart?

The following definitions apply to this subpart:

Affiliate means an affiliate, as defined under §563.41(b) until superseded by regulations of the Board of Governors of the Federal Reserve System regarding transactions with affiliates.

Capital means total capital, as computed under part 167 of this chapter.

Net income means your net income computed in accordance with generally accepted accounting principles.

Retained net income means your net income for a specified period less total capital distributions declared in that period.

Shares means common and preferred stock, and any options, warrants, or other rights for the acquisition of such stock. The term “share” also includes convertible securities upon their conversion into common or preferred stock. The term does not include convertible debt securities prior to their conversion into common or preferred stock or other securities that are not equity securities at the time of a capital distribution.

§ 163.143 Must I file with the OCC?

Whether and what you must file with the OCC depends on whether you and your proposed capital distribution fall within certain criteria.

(a) *Application required.*

| If: | Then you: |
|---|--|
| (1) You are not eligible for expedited treatment under § 116.5 of this chapter. | Must file an application with the OCC. |
| (2) The total amount of all of your capital distributions (including the proposed capital distribution) for the applicable calendar year exceeds your net income for that year to date plus your retained net income for the preceding two years. | Must file an application with the OCC. |
| (3) You would not be at least adequately capitalized, as set forth in § 165.4(b)(2) of this chapter, following the distribution. | Must file an application with the OCC. |

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| If: | Then you: |
| (4) Your proposed capital distribution would violate a prohibition contained in any applicable statute, regulation, or agreement between you and the OCC or the OTS, or violate a condition imposed on you in an application or notice approved by the OCC or the OTS. | Must file an application with the OCC. |

(b) Notice required.

| | |
|--|---|
| If you are not required to file an application under paragraph (a) of this section, but: | Then you: |
| (1) You would not be well capitalized, as set forth under § 165.4(b)(1), following the distribution. | Must file a notice with the OCC. |
| (2) Your proposed capital distribution would reduce the amount of or retire any part of your common or preferred stock or retire any part of debt instruments such as notes or debentures included in capital under part 167 of this chapter (other than regular payments required under a debt instrument approved under § 163.81). | Must file a notice with the OCC. |
| (3) You are a subsidiary of a savings and loan holding company. | Except as provided in (d), you must file a notice with the OCC. |

(c) No prior notice required.

| | |
|--|--|
| If neither you nor your proposed capital distribution meet any of the criteria listed in paragraphs (a) and (b) of this section. | Then you do not need to file a notice or an application with the OCC before making a capital distribution. |
|--|--|

(d) Informational copy of notice required.

| | |
|---|---|
| If you are a subsidiary of a stock savings and loan holding company that is filing a notice with the Board of Governors of the Federal Reserve System (Board) for a cash dividend pursuant to 12 U.S.C. 1467a(f) and neither an application under (a), nor a notice under (b)(1) or (b)(2) is required, | Then you do not file a notice under (b)(3) but you must provide an informational copy to the OCC of the notice filed with the Board, at the same time it is filed with the Board. |
|---|---|

§ 163.144 How do I file with the OCC?

(a) *Contents.* Your notice or application must:

- (1) Be in narrative form.
- (2) Include all relevant information concerning the proposed capital distribution, including the amount, timing, and type of distribution.
- (3) Demonstrate compliance with § 163.146.

(b) *Schedules.* Your notice or application may include a schedule proposing capital distributions over a specified period, not to exceed 12 months.

(c) *Timing.* You must file your notice or application at least 30 days before the proposed declaration of dividend or approval of the proposed capital distribution by your board of directors.

§ 163.145 May I combine my notice or application with other notices or applications?

You may combine the notice or application required under § 163.143 with any other notice or application, if the capital distribution is a part of, or is proposed in connection with, another transaction requiring a notice or application under this chapter. If you submit a combined filing, you must:

- (a) State that the related notice or application is intended to serve as a notice or application under this subpart; and
- (b) Submit the notice or application in a timely manner.

§ 163.146 Will the OCC permit my capital distribution?

The OCC will review your notice or application under the review procedures in 12 CFR part 116, subpart E, except that the OCC will not act on informational copies of the notice submitted to the OCC pursuant to § 163.143(d). The OCC may disapprove your notice or deny your application filed under § 163.143, in whole or in part, if it makes any of the following determinations.

(a) You will be undercapitalized, significantly undercapitalized, or critically undercapitalized as set forth in § 165.4(b) of this chapter, following the capital distribution. If so, the OCC will determine if your capital distribution is permitted under 12 U.S.C. 1831o(d)(1)(B).

(b) Your proposed capital distribution raises safety or soundness concerns.

(c) Your proposed capital distribution violates a prohibition contained in any statute, regulation, agreement between you and the OCC or the OTS, or a condition imposed on you in an application or notice approved by the OCC or the OTS. If so, the OCC will determine whether it may permit your capital distribution notwithstanding the prohibition or condition.

Subpart F—Financial Management Policies

§ 163.161 Management and financial policies.

(a)(1) For the protection of depositors and other savings associations, each Federal savings association and each service corporation must be well managed and operate safely and soundly. Each also must pursue financial policies that are safe and consistent with economical home financing and the purposes of savings associations. In implementing this section, the OCC will consider that service corporations may be authorized to engage in activities that involve a higher degree of risk than activities permitted to savings associations.

(2) As part of meeting its requirements under paragraph (a)(1) of this section, each Federal savings association and service corporation must

maintain sufficient liquidity to ensure its safe and sound operation.

(b) Compensation to officers, directors, and employees of each Federal savings association and its service corporations shall not be in excess of that which is reasonable and commensurate with their duties and responsibilities. Former officers, directors, and employees of savings association or its service corporation who regularly perform services therefore under consulting contracts are employees thereof for purposes of this paragraph (b).

§ 163.170 Examinations and audits; appraisals; establishment and maintenance of records.

(a) *Examinations and audits.* Each Federal savings association and affiliate thereof shall be examined periodically, and may be examined at any time, by the OCC, with appraisals when deemed advisable, in accordance with general policies from time to time established by the OCC. The costs, as computed by the OCC, of any examinations made by it, including office analysis, overhead, per diem, travel expense, other supervision by the OCC, and other indirect costs, shall be paid by the savings associations examined, except that in the case of service corporations of Federal savings associations the cost of examinations, as determined by the OCC, shall be paid by the service corporations. Payments shall be made in accordance with a schedule of annual assessments based upon each savings association's total assets and of rates for examiner time in amounts determined by the OCC.

(b) *Appraisals.* (1) Unless otherwise ordered by the OCC, appraisal of real estate by the OCC in connection with any examination or audit of a savings association, affiliate, or service corporation shall be made by an appraiser, or by appraisers, selected by the OCC. The cost of such appraisal shall promptly be paid by such savings association, affiliate, or service corporation direct to such appraiser or appraisers upon receipt by the savings association, affiliate, or service corporation of a statement of such cost as approved by the OCC. A copy of the report of each appraisal made by the OCC

pursuant to any of the foregoing provisions of this section shall be furnished to the savings association, affiliate, or service corporation, as appropriate within a reasonable time, not to exceed 90 days, following the completion of such appraisals and the filing of a report thereof by the appraiser, or appraisers, with the OCC.

(2) The OCC may obtain at any time, at its expense, such appraisals of any of the assets, including the security therefore, of a savings association, affiliate, or service corporation as the OCC deems appropriate.

(c) *Establishment and maintenance of records.* To enable the OCC to examine Federal savings associations and affiliates and audit savings associations, affiliates, and service corporations pursuant to the provisions of paragraph (a) of this section, each savings association, affiliate, and service corporation shall establish and maintain such accounting and other records as will provide an accurate and complete record of all business it transacts. This includes, without limitation, establishing and maintaining such other records as are required by statute or any other regulation to which the savings association, affiliate, or service corporation is subject. The documents, files, and other material or property comprising said records shall at all times be available for such examination and audit wherever any of said records, documents, files, material, or property may be.

(d) *Change in location of records.* A Federal savings association shall not transfer the location of any of its general accounting or control records, or the maintenance thereof, from its home office to a branch or service office, or from a branch or service office to its home office or to another branch or service office unless prior to the date of transfer its board of directors has:

(1) By resolution authorized the transfer or maintenance; and

(2) Sent a certified copy of the resolution to the OCC.

(e) *Use of data processing services for maintenance of records.* A Federal savings association which determines to maintain any of its records by means of data processing services shall so no-

tify the OCC in writing, at least 90 days prior to the date on which such maintenance of records will begin. Such notification shall include identification of the records to be maintained by data processing services and a statement as to the location at which such records will be maintained. Any contract, agreement, or arrangement made by a savings association pursuant to which data processing services are to be performed for such savings association shall be in writing and shall expressly provide that the records to be maintained by such services shall at all times be available for examination and audit.

§ 163.171 [Reserved]

§ 163.172 Financial derivatives.

(a) *What is a financial derivative?* A financial derivative is a financial contract whose value depends on the value of one or more underlying assets, indices, or reference rates. The most common types of financial derivatives are futures, forward commitments, options, and swaps. A mortgage derivative security, such as a collateralized mortgage obligation or a real estate mortgage investment conduit, is not a financial derivative under this section.

(b) *May I engage in transactions involving financial derivatives?* (1) If you are a Federal savings association, you may engage in a transaction involving a financial derivative if you are authorized to invest in the assets underlying the financial derivative, the transaction is safe and sound, and you otherwise meet the requirements in this section.

(2) [Reserved]

(3) In general, if you engage in a transaction involving a financial derivative, you should do so to reduce your risk exposure.

(c) *What are my board of directors' responsibilities with respect to financial derivatives?* (1) Your board of directors is responsible for effective oversight of financial derivatives activities.

(2) Before you may engage in any transaction involving a financial derivative, your board of directors must establish written policies and procedures governing authorized financial derivatives. Your board of directors should review applicable guidance issued by

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the OCC on establishing a sound risk management program.

(3) Your board of directors must periodically review:

(i) Compliance with the policies and procedures established under paragraph (c)(2) of this section; and

(ii) The adequacy of these policies and procedures to ensure that they continue to be appropriate to the nature and scope of your operations and existing market conditions.

(4) Your board of directors must ensure that management establishes an adequate system of internal controls for transactions involving financial derivatives.

(d) *What are management's responsibilities with respect to financial derivatives?*

(1) Management is responsible for daily oversight and management of financial derivatives activities. Management must implement the policies and procedures established by the board of directors and must establish a system of internal controls. This system of internal controls should, at a minimum, provide for periodic reporting to the board of directors and management, segregation of duties, and internal review procedures.

(2) Management must ensure that financial derivatives activities are conducted in a safe and sound manner and should review applicable guidance issued by the OCC on implementing a sound risk management program.

(e) *What records must I keep on financial derivative transactions?* You must maintain records adequate to demonstrate compliance with this section and with your board of directors' policies and procedures on financial derivatives.

§ 163.176 Interest-rate-risk-management procedures.

Federal savings associations shall take the following actions:

(a) The board of directors or a committee thereof shall review the savings association's interest-rate-risk exposure and devise a policy for the savings association's management of that risk.

(b) The board of directors shall formally adopt a policy for the management of interest-rate risk. The management of the savings association shall establish guidelines and proce-

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dures to ensure that the board's policy is successfully implemented.

(c) The management of the savings association shall periodically report to the board of directors regarding implementation of the savings association's policy for interest-rate-risk management and shall make that information available upon request to the OCC.

(d) The savings association's board of directors shall review the results of operations at least quarterly 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.

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

(a) *Purpose.* The purpose of this regulation is to require savings associations (as defined by § 161.43 of this chapter) 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 Chapter X.

(b) *Establishment of a BSA compliance program—(1) Program requirement.* Each 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 Chapter X. The compliance program must be written, approved by the savings association's board of directors, and reflected in the minutes of the savings association.

(2) *Customer identification program.* Each savings association is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the OCC and the Department of the Treasury at 31 CFR 1020.220, 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.

Subpart G—Reporting and Bonding

§ 163.180 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 appropriate Federal banking agency may prescribe. The appropriate Federal banking agency 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 appropriate Federal banking agency or to an agent, representative or employee of the appropriate Federal banking agency 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 appropriate Federal banking agency 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 § 163.190 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 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.

(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 on the form prescribed by the appropriate Federal banking agency and 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 shall immediately notify, by telephone, an appropriate law enforcement authority and the appropriate Federal banking agency 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. A savings association or service corporation shall make all supporting documentation available to the appropriate Federal banking agency, FinCEN, or any Federal, state, or local law enforcement agency, or any Federal regulatory authority that examines the savings association or service corporation for compliance with the Bank Secrecy Act, or any state regulatory authority administering a state law that requires the savings association or service corporation to comply with the Bank Secrecy Act or otherwise authorizes the state authority to ensure that the institution complies

with the Bank Secrecy Act, 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 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 savings association or service corporation, its directors, officers, employees, agents, or other institution-affiliated parties to supervisory action.

(11) *Obtaining SARs.* A savings association or service corporation may obtain SARs and the instructions from the appropriate Federal banking agency.

(12) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential, and shall not be disclosed except as authorized in this paragraph (d)(12).

(i) *Prohibition on disclosure by savings associations or service corporations.—(A) General rule.* No savings association or service corporation, and no director, officer, employee, or agent of a savings association or service corporation, shall disclose a SAR or any information that would reveal the existence of a SAR. Any savings association or service corporation, and any director, officer, employee, or agent of any savings association or service corporation that is subpoenaed or otherwise requested to disclose a SAR, or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i),

and shall notify the following of any such request and the response thereto:

(A) Director, Litigation Division, Office of the Comptroller of the Currency or the appropriate FDIC region, as appropriate and

(B) The Financial Crimes Enforcement Network (FinCEN).

(ii) *Rules of construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, paragraph (d)(1) of this section shall not be construed as prohibiting:

(A) The disclosure by a savings association or service corporation, or any director, officer, employee or agent of a savings association or service corporation of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or the appropriate Federal banking agency or any Federal, state, or local law enforcement agency; or any Federal regulatory authority that examines the savings association or service corporation for compliance with the Bank Secrecy Act, or any state regulatory authority administering a state law that requires compliance with the Bank Secrecy Act or otherwise authorizes the state authority to ensure that the institution complies with the Bank Secrecy Act; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including, but not limited to, disclosures:

(i) To another financial institution, or any director, officer, employee or agent of a financial institution, for the preparation of a joint SAR; or

(ii) In connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. 5318(g)(2)(B); or

(B) The sharing by a savings association or service corporation, or any director, officer, employee, or agent of a savings association or service corporation, of a SAR, or any information that would reveal the existence of a SAR, within the corporate organizational structure of the savings association or service corporation, for purposes consistent with title II of the Bank Secrecy Act as determined by regulation or in guidance.

(iii) *Prohibition on disclosure by the appropriate Federal banking agency.* The appropriate Federal banking agency will not, and no officer, employee or agent of appropriate Federal banking agency shall disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with title II of the Bank Secrecy Act. For purposes of this section, “official duties” shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for use in a private legal proceeding or in response to a request for disclosure of non-public information under 12 CFR 4.33 or 12 CFR part 309, as appropriate.

(iv) *Limitation on liability.* A savings association or service corporation and any director, officer, employee or agent of a savings association or service corporation that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(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 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 and Income, as appropriate, 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.

EDITORIAL NOTE: At 76 FR 49047, Aug. 9, 2011, §163.180 was added; however, there are two paragraphs (d)(12)(i)(A).

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

(a) Each Federal 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 Federal 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 Federal 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 Federal savings association shall formally approve the association’s bond coverage. In deciding whether to ap-

prove 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 association’s bond coverage at least annually to assess the continuing adequacy of coverage.

§ 163.191 Bonds for agents.

In lieu of the bond provided in §163.190 of this part in the case of agents appointed by a Federal 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 savings association at least monthly, and provided such bond is approved by the board of directors of the savings association. No bond need be obtained for any agent that is a financial institution insured by the Federal Deposit Insurance Corporation.

§ 163.200 Conflicts of interest.

If you are a director, officer, or employee 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:

(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).

§ 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:

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(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

Sec.

164.1 Purpose, and scope.

164.2 Definitions.

164.3 Appraisals required; transactions requiring a state certified or licensed appraiser.

164.4 Minimum appraisal standards.

164.5 Appraiser independence.

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164.6 Professional association membership; competency.

164.7 Enforcement.

164.8 Appraisal policies and practices of Federal savings associations and subsidiaries.

Subpart B—Appraisals for Higher-Priced Mortgage Loans

164.20 Authority, purpose and scope.

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