

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.

[76 FR 49047, Aug. 9, 2011, as amended at 79 FR 11314, Feb. 28, 2014; 84 FR 56376, Oct. 22, 2019; 85 FR 42643, July 14, 2020]

**Subparts D–E [Reserved]**

**Subpart F—Financial Management Policies**

**§ 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 corpora-

tion 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

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(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 notify 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) *Definition.* 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 contracts, 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) *Permissible financial derivatives transactions.* A Federal savings association may engage in a transaction involving a financial derivative if the savings association is authorized to invest in the assets underlying the financial derivative, the transaction is safe and sound, and the requirements in paragraphs (c) through (e) of this section are met. In general, a Federal savings association that engages in a transaction involving a financial derivative should do so to reduce its risk exposure.

(c) *Board of directors' responsibilities.* (1) A Federal savings association's board of directors is responsible for effective oversight of financial derivatives activities.

(2) Before a savings association may engage in any transaction involving a financial derivative, your board of directors must establish written policies and procedures governing authorized financial derivatives. The board of directors should review applicable guidance issued by the OCC on establishing a sound risk management program.

(3) The 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 the savings association's operations and existing market conditions.

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

(d) *Management responsibilities.* (1) The management of a Federal savings association is responsible for daily oversight and management of financial derivatives activities. The management of a Federal savings association 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) *Recordkeeping requirement.* A Federal savings association must maintain records adequate to demonstrate compliance with this section and with its board of directors' policies and procedures on financial derivatives.

[76 FR 49047, Aug. 9, 2011, as amended at 82 FR 8110, Jan. 23, 2017]

**§ 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 procedures 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.

**Subpart G—Reporting and Bonding**

**§ 163.180 Suspicious Activity Reports and other reports and statements.**

(a) [Reserved]

(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, owner-

ship, safety, or soundness, or other affairs of the association.

(c) [Reserved]

(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.*