

thing of value, whether tangible or intangible (including any substitution), upon default in payment of any loan involved or any part thereof or to withhold or to have withheld from the seller a sum of money or anything of value by way of security against default. The recourse liability resulting from a sale with recourse shall be the total book value of any loan sold with recourse less:

(1) The amount of any insurance or guarantee against loss in the event of default provided by a third party,

(2) The amount of any loss to be borne by the purchaser in the event of default, and

(3) The amount of any loss resulting from a recourse obligation entered on the books and records of the savings association.

(b) The term *with recourse* does not include loans or interests therein where the agreement of sale provides for the savings association directly or indirectly:

(1) To hold or retain a subordinate interest in a specified percentage of the loans or interests; or

(2) To guarantee against loss up to a specified percentage of the loans or interests, which specified percentage shall not exceed ten percent of the outstanding balance of the loans or interests at the time of sale: *Provided*, That the savings association designates adequate reserves for the subordinate interest or guarantee.

(c) This definition does not apply for purposes of determining the capital adequacy requirements under 12 CFR part 3.

[76 FR 49043, Aug. 9, 2011, as amended at 79 FR 11313, Feb. 28, 2014; 84 FR 56376, Oct. 22, 2019]

## PART 162—ACCOUNTING AND DISCLOSURE STANDARDS

AUTHORITY: 12 U.S.C. 1463, 5412(b)(2)(B).

### § 162.1 Accounting and disclosure standards.

A Federal savings association shall follow U.S. generally accepted accounting principles (GAAP) and the disclosure standards included therein when complying with all applicable regula-

tions, unless otherwise required by statute, regulation, or the OCC.

[82 FR 8110, Jan. 23, 2017]

## PART 163—SAVINGS ASSOCIATIONS—OPERATIONS

### Subpart A—Accounts

Sec.

163.4 [Reserved]

163.5 Securities: Statement of non-insurance.

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### Subpart G—Reporting and Bonding

163.180 Suspicious Activity Reports and other reports and statements.

163.200 Conflicts of interest.

163.201 Corporate opportunity.

AUTHORITY: 12 U.S.C. 1, 93a, 1462a, 1463, 1464, 1467a, 1817, 1820, 1828, 1831o, 3806, 5101 *et seq.*, 5412(b)(2)(B); 31 U.S.C. 5318; 42 U.S.C. 4106.

SOURCE: 76 FR 49047, Aug. 9, 2011, unless otherwise noted.

### Subpart A—Accounts

§ 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

#### § 163.27 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 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 Tying restriction exception.

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

#### § 163.39 [Reserved]

#### § 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 mate-

rial 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 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 Office of the Comptroller of the Currency (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.

[76 FR 49047, Aug. 9, 2011, as amended at 85 FR 42643, July 14, 2020]

### 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:

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(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 12 CFR part 3 if a Federal savings association, or 12 CFR part 324 or part 390, subpart Z, as applicable, 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 cap-

ital 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 12 CFR part 3 if a Federal savings association, or 12 CFR part 324 or part 390, subpart Z, as applicable, 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 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.

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

**§ 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 §16.32 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.]

Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

(d) For purposes of this section, an “office” of an association means any premises used by the association that are identified to the public through advertising or signage using the association’s name, trade name, or logo.

[76 FR 49047, Aug. 9, 2011, as amended at 85 FR 42643, July 14, 2020]

#### § 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 accord-

ance 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 Federal Deposit Insurance Corporation (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 12 CFR part 3 if a Federal savings association or 12 CFR part 324 or part 390, subpart Z, as applicable, 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.

[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.*

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 cor-

poration 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.* 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 du-

ties” 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

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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.

(f) *Exemptions.* (1) The OCC may grant a Federal savings association or service corporation an exemption from the requirements of this section. A Federal savings association or service corporation requesting an exemption must submit a request in writing to the OCC. In reviewing such requests, the OCC will consider whether the exemption is consistent with the purposes of the Bank Secrecy Act (if applicable) and safe and sound banking, and may consider other appropriate factors. Any exemption will apply only as expressly stated in the exemption. (A Federal savings association or service corporation requesting an exemption that also requires relief from the requirements of applicable regulations issued by the Department of the Treasury at 31 CFR chapter X must submit a request in writing to both the OCC and FinCEN for approval.)

(2) The OCC will respond in writing to the Federal savings association or service corporation that submits a request pursuant to paragraph (f)(1) of this section after considering whether the exemption is consistent with the factors in paragraph (f)(1) of this section. Any exemption granted by the OCC under paragraph (f)(1) of this section will continue for the time specified by the OCC.

(3) The OCC may extend the period of time or may revoke an exemption granted under paragraph (f)(1) of this section. Exemptions or extensions may be revoked in the sole discretion of the OCC. Before revoking an exemption, the OCC will provide written notice to the Federal savings association or service corporation of the OCC’s intention to revoke an exemption. Such notice will include the basis for the revocation and will provide an opportunity for the Federal savings association or service corporation to submit a re-

sponse to the OCC. The OCC will consider any response before deciding whether or not to revoke an exemption and provide written notice to the Federal savings association or service corporation of the OCC’s final decision to revoke an exemption.

(4) With respect to requests for exemptions that will also require relief from the requirements of applicable regulations issued by the Department of the Treasury at 31 CFR chapter X, upon receiving approval from both the OCC and FinCEN, the requestor will be relieved of its obligations under this section to the extent stated in such approvals.

[76 FR 49047, Aug. 9, 2011, as amended at 82 FR 8111, Jan. 23, 2017; 85 FR 42643, July 14, 2020; 87 FR 15332, Mar. 18, 2022]

**§ 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.

## PART 165—PROMPT CORRECTIVE ACTION

Sec.

165.1–165.7 [Reserved]

165.8 Procedures for reclassifying a Federal savings association based on criteria other than capital.

165.9 Order to dismiss a director or senior executive officer.

165.10 [Reserved]

AUTHORITY: 12 U.S.C. 1831o, 5412(b)(2)(B).

SOURCE: 76 FR 49065, Aug. 9, 2011, unless otherwise noted.

### §§ 165.1–165.7 [Reserved]

#### § 165.8 Procedures for reclassifying a Federal savings association based on criteria other than capital.

(a) *Reclassification based on unsafe or unsound condition or practice*—(1) *Issuance of notice of proposed reclassification*—(i) *Grounds for reclassification*. (A) Pursuant to 12 CFR 6.4(d), the OCC may reclassify a well capitalized Federal savings association as adequately capitalized or subject an adequately capitalized or undercapitalized institution to the supervisory actions applicable to the next lower capital category if:

(1) The OCC determines that the savings association is in an unsafe or unsound condition; or

(2) The OCC deems the savings association to be engaged in an unsafe or unsound practice and not to have corrected the deficiency.

(B) Any action pursuant to this paragraph (a)(1)(i) shall hereinafter be referred to as “reclassification.”

(ii) *Prior notice to institution*. Prior to taking action pursuant to 12 CFR 6.4(d), the OCC shall issue and serve on the Federal savings association a written notice of the OCC's intention to reclassify the savings association.

(2) *Contents of notice*. A notice of intention to reclassify a Federal savings association based on unsafe or unsound condition shall include:

(i) A statement of the savings association's capital measures and capital levels and the category to which the savings association would be reclassified;

(ii) The reasons for reclassification of the savings association;

(iii) The date by which the savings association subject to the notice of reclassification may file with the OCC a written appeal of the proposed reclassification and a request for a hearing, which shall be at least 14 calendar days from the date of service of the notice unless the OCC determines that a shorter period is appropriate in light of the financial condition of the savings association or other relevant circumstances.

(3) *Response to notice of proposed reclassification*. A Federal savings association may file a written response to a notice of proposed reclassification within the time period set by the OCC. The response should include:

(i) An explanation of why the savings association is not in unsafe or unsound condition or otherwise should not be reclassified; and

(ii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the savings association or company regarding the reclassification.

(4) *Failure to file response*. Failure by a Federal savings association to file, within the specified time period, a written response with the OCC to a notice of proposed reclassification shall constitute a waiver of the opportunity