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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-

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

[82 FR 8110, Jan. 23, 2017]

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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

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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;