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under the particular circumstances. The foregoing requirement shall not apply to any parcel of real estate that is sold and reacquired less than 12 months subsequent to the most recent appraisal made pursuant to this part. A dated, signed copy of each report of appraisal made pursuant to any provisions of this part shall be retained in the savings association's records.

### Subpart C—Alternative Mortgage Transactions

#### § 560.210 Disclosures for variable rate transactions.

A savings association must provide the initial disclosures described at 12 CFR 226.19(b) and the adjustment notices described at 12 CFR 226.20(c) for variable rate transactions, as described in those regulations. The OTS administers and enforces those provisions for savings associations.

[63 FR 38463, July 17, 1998]

#### § 560.220 Alternative Mortgage Parity Act.

Pursuant to 12 U.S.C. 3803, housing creditors that are not commercial banks, credit unions, or Federal savings associations may make alternative mortgage transactions as defined by that section and further defined and described by applicable regulations identified in this section, notwithstanding any state constitution, law, or regulation. In accordance with section 807(b) of Public Law 97-320, 12 U.S.C. 3801 note, §§ 560.33, 560.34, 560.35, and 560.210 of this part are identified as appropriate and applicable to the exercise of this authority and all regulations not so identified are deemed inappropriate and inapplicable. Housing creditors engaged in credit sales should read the term "loan" as "credit sale" wherever applicable.

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AUTHORITY: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

SOURCE: 54 FR 49545, Nov. 30, 1989, unless otherwise noted.

#### § 561.1 General.

Unless another definition is provided in this chapter, definitions in part 541 of this chapter apply.

#### § 561.2 Account.

The term *account* means any savings account, demand account, certificate account, tax and loan account, note account, United States Treasury general account or United States Treasury time deposit-open account, whether in the form of a deposit or a share, held by an accountholder in a savings association.

#### § 561.3 Accountholder.

The term *accountholder* means the holder of an account or accounts in a savings association insured by the SAIF. The term does not include the

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holder of any subordinated debt security or any mortgage-backed bond issued by the savings association.

### § 561.4 Affiliate.

The term *affiliate* of a savings association, unless otherwise defined, means any corporation, business trust, association, or other similar organization:

(a) Of which a savings association, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 percentum of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions; or

(b) Of which control is held, directly or indirectly through stock ownership or in any other manner, by the shareholders of a savings association who own or control either a majority of the shares of such savings association or more than 50 per centum of the number of shares voted for the election of directors of such savings association at the preceding election, or by trustees for the benefit of the shareholders of any such savings association; or

(c) Of which a majority of its directors, trustees, or other persons exercising similar functions are directors of any one savings association.

### § 561.5 Affiliated person.

The term *affiliated person* of a savings association means the following:

(a) A director, officer, or controlling person of such association;

(b) A spouse of a director, officer, or controlling person of such association;

(c) A member of the immediate family of a director, officer, or controlling person of such association, who has the same home as such person or who is a director or officer of any subsidiary of such association or of any holding company affiliate of such association;

(d) Any corporation or organization (other than the savings association or a corporation or organization through which the savings association operates) of which a director, officer or the controlling person of such association:

(1) Is chief executive officer, chief financial officer, or a person performing similar functions;

(2) Is a general partner;

(3) Is a limited partner who, directly or indirectly either alone or with his or her spouse and the members of his or her immediate family who are also affiliated persons of the association, owns an interest of 10 percent or more in the partnership (based on the value of his or her contribution) or who, directly or indirectly with other directors, officers, and controlling persons of such association and their spouses and their immediate family members who are also affiliated persons of the association, owns an interest of 25 percent or more in the partnership; or

(4) Directly or indirectly either alone or with his or her spouse and the members of his or her immediate family who are also affiliated persons of the association, owns or controls 10 percent or more of any class of equity securities or owns or controls, with other directors, officers, and controlling persons of such association and their spouses and their immediate family members who are also affiliated persons of the association, 25 percent or more of any class of equity securities; and

(5) Any trust or other estate in which a director, officer, or controlling person of such association or the spouse of such person has a substantial beneficial interest or as to which such person or his or her spouse serves as trustee or in a similar fiduciary capacity.

[59 FR 18476, Apr. 19, 1994]

### § 561.6 Audit period.

The *audit period* of a savings association means the twelve month period (or other period in the case of a change in audit period) covered by the annual audit conducted to satisfy § 563.170.

### § 561.7 BIF.

The term *BIF* means the Bank Insurance Fund established by the Federal Deposit Insurance Act. (12 U.S.C. 1821 *et seq.*)

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### § 561.8 [Reserved]

### § 561.9 Certificate account.

The term *certificate account* means a savings account evidenced by a certificate that must be held for a fixed or minimum term.

### § 561.12 Consumer credit.

The term *consumer credit* means credit extended to a natural person for personal, family, or household purposes, including loans secured by liens on real estate and chattel liens secured by mobile homes and leases of personal property to consumers that may be considered the functional equivalent of loans on personal security: *Provided*, the savings association relies substantially upon other factors, such as the general credit standing of the borrower, guaranties, or security other than the real estate or mobile home, as the primary security for the loan. Appropriate evidence to demonstrate justification for such reliance should be retained in a savings association's files. Among the types of credit included within this term are consumer loans; educational loans; unsecured loans for real property alteration, repair or improvement, or for the equipping of real property; loans in the nature of overdraft protection; and credit extended in connection with credit cards.

### § 561.14 Controlling person.

The term *controlling person* of a savings association means any person or entity which, either directly or indirectly, or acting in concert with one or more other persons or entities, owns, controls, or holds with power to vote, or holds proxies representing, ten percent or more of the voting shares or rights of such savings association; or controls in any manner the election or appointment of a majority of the directors of such savings association. However, a director of a savings association will not be deemed to be a controlling person of such savings association based upon his or her voting, or acting in concert with other directors in voting, proxies:

- (a) Obtained in connection with an annual solicitation of proxies, or
- (b) Obtained from savings account holders and borrowers if such proxies

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are voted as directed by a majority vote of the entire board of directors of such association, or of a committee of such directors if such committee's composition and authority are controlled by a majority vote of the entire board and if its authority is revocable by such a majority.

### § 561.15 Corporation.

The terms *Corporation* and *FDIC* mean the Federal Deposit Insurance Corporation.

### § 561.16 Demand accounts.

(a) The term *demand accounts* means non-interest-bearing demand deposits which are subject to check or to withdrawal or transfer on negotiable or transferable order to the savings association and which are permitted to be issued by statute, regulation, or otherwise and are payable on demand.

(b) A fee paid by a savings association to a person who introduces a depositor to the savings association shall not be deemed a payment of interest to the depositor if the fee:

(1) Consists of bonuses in cash or merchandise to the savings association's employees for participation in an account drive, contest or other incentive plan: *Provided, That* such bonuses are tied to the total amount of deposits solicited; or

(2) Is paid to a bona fide broker if:

(i) The broker is principally engaged in the business of acting as a broker or dealer in regard to deposits, securities, or money market instruments;

(ii) The relationship between the broker and savings association is memorialized in a written agreement, a copy of which is retained by the savings association and made available to examiners; and

(iii) An officer of the broker certifies that no portion of the fee paid to the broker is directly or indirectly passed on to the depositor, and a copy of the certification is given to the savings association to be retained on file with the agreement.

[54 FR 49545, Nov. 30, 1989, as amended at 58 FR 4313, Jan. 14, 1993; 62 FR 54765, Oct. 22, 1997]

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**§ 561.18 Director.**

(a) The term *director* means any director, trustee, or other person performing similar functions with respect to any organization whether incorporated or unincorporated. Such term does not include an advisory director, honorary director, director emeritus, or similar person, unless the person is otherwise performing functions similar to those of a director.

(b) The term *Director* means the Director of the Office of Thrift Supervision as established in section 3 of the Act.

**§ 561.19 Financial institution.**

The term *financial institution* has the same meaning as the term *depository institution* set forth in 12 U.S.C. 1813(c)(1).

**§ 561.24 Immediate family.**

The term *immediate family* of any natural person means the following (whether by the full or half blood or by adoption):

(a) Such person's spouse, father, mother, children, brothers, sisters, and grandchildren;

(b) The father, mother, brothers, and sisters of such person's spouse; and

(c) The spouse of a child, brother, or sister of such person.

**§ 561.26 Land loan.**

The term *land loan* means a loan:

(a) Secured by real estate upon which all facilities and improvements have been completely installed, as required by local regulations and practices, so that it is entirely prepared for the erection of structures;

(b) To finance the purchase of land and the accomplishment of all improvements required to convert it to developed building lots; or

(c) Secured by land upon which there is no structure.

**§ 561.27 Low-rent housing.**

The term *low-rent housing* means real estate which is, or which is being constructed, remodeled, rehabilitated, modernized, or renovated to be, the subject of an annual contributions contract for low-rent housing under the

provisions of the United States Housing Act of 1937, as amended.

**§ 561.28 Money Market Deposit Accounts.**

(a) Money Market Deposit Accounts (*MMDAs*) offered by Federal savings associations in accordance with 12 U.S.C. 1464(b)(1) and by state-chartered savings associations in accordance with applicable state law are savings accounts on which interest may be paid if issued subject to the following limitations:

(1) The savings association shall reserve the right to require at least seven days' notice prior to withdrawal or transfer of any funds in the account; and

(2)(i) The depositor is authorized by the savings association to make no more than six transfers per calendar month or statement cycle (or similar period) of at least four weeks by means of preauthorized, automatic, telephonic, or data transmission agreement, order, or instruction to another account of the depositor at the same savings association to the savings association itself, or to a third party: *Provided, That* no more than three of the six transfers provided for in this paragraph (a)(2)(i) may be by check, draft, debit card, or similar order made by the depositor and payable to third parties.

(ii) Savings associations may permit holders of *MMDAs* to make unlimited transfers for the purpose of repaying loans (except overdraft loans on the depositor's demand account) and associated expenses at the same savings association (as originator or servicer), to make unlimited transfers of funds from this account to another account of the same depositor at the same savings association or to make unlimited payments directly to the depositor from the account when such transfers or payments are made by mail, messenger, automated teller machine, or in person, or when such payments are made by telephone (via check mailed to the depositor).

(3) In order to ensure that no more than the number of transfers specified in paragraph (a)(2)(i) of this section are made, a savings association must either:

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(i) Prevent transfers of funds in excess of the limitations; or

(ii) Adopt procedures to monitor those transfers on an after-the-fact basis and contact customers who exceed the limits on more than an occasional basis. For customers who continue to violate those limits after being contacted by the depository savings association the depository savings association must either place funds in another account that the depositor is eligible to maintain or take away the account's transfer and draft capacities.

(iii) Insured savings association at their option, may use on a consistent basis either the date on a check or the date it is paid in determining whether the transfer limitations within the specified interval are exceeded.

(b) Federal savings associations may offer MMDAs to any depositor, and state-chartered savings associations may offer MMDAs to any depositor not inconsistent with applicable state law.

### § 561.29 Negotiable Order of Withdrawal Accounts.

(a) Negotiable Order of Withdrawal (NOW) accounts are savings accounts authorized by 12 U.S.C. 1832 on which the savings association reserves the right to require at least seven days' notice prior to withdrawal or transfer of any funds in the account.

(b) For purposes of 12 U.S.C. 1832:

(1) An organization shall be deemed "operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and \* \* \* not \* \* \* for profit" if it is described in sections 501(c)(3) through (13), 501(c)(19), or 528 of the Internal Revenue Code; and

(2) The funds of a sole proprietorship or unincorporated business owned by a husband and wife shall be deemed beneficially owned by "one or more individuals."

### § 561.30 Nonresidential construction loan.

The term *nonresidential construction loan* means a loan for construction of other than one or more dwelling units.

### § 561.31 Nonwithdrawable account.

The term *nonwithdrawable account* means an account which by the terms of the contract of the accountholder

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with the savings association or by provisions of state law cannot be paid to the accountholder until all liabilities, including other classes of share liability of the savings association have been fully liquidated and paid upon the winding up of the savings association is referred to as a *nonwithdrawable account*.

### § 561.33 Note account.

The term *note account* means a note, subject to the right of immediate call, evidencing funds held by depositories electing the note option under applicable United States Treasury Department regulations. Note accounts are not savings accounts or savings deposits.

### § 561.34 Office.

The term *Office* means the Office as established in section 3 of the Act or any official duly authorized to act on its behalf. Where appropriate in context, it also refers to the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation as predecessor agencies to the Office.

### § 561.35 Officer.

The term *Officer* means the president, any vice-president (but not an assistant vice-president, second vice-president, or other vice president having authority similar to an assistant or second vice-president), the secretary, the treasurer, the comptroller, and any other person performing similar functions with respect to any organization whether incorporated or unincorporated. The term *officer* also includes the chairman of the board of directors if the chairman is authorized by the charter or by-laws of the organization to participate in its operating management or if the chairman in fact participates in such management.

### § 561.37 Parent company; subsidiary.

The terms *parent company* and *subsidiary* have the meanings given to them by §§ 583.15 and 583.23 of this chapter, respectively.

### § 561.38 Political subdivision.

The term *political subdivision* includes any subdivision of a public unit, any

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principal department of such public unit:

(a) The creation of which subdivision or department has been expressly authorized by state statute,

(b) To which some functions of government have been delegated by state statute, and

(c) To which funds have been allocated by statute or ordinance for its exclusive use and control. It also includes drainage, irrigation, navigation, improvement, levee, sanitary, school or power districts and bridge or port authorities and other special districts created by state statute or compacts between the states. Excluded from the term are subordinate or nonautonomous divisions, agencies or boards within principal departments.

### § 561.39 Principal office.

The term *principal office* means the home office of a savings association established as such in conformity with the laws under which the savings association is organized.

### § 561.40 Public unit.

The term *public unit* means the United States, any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, the Virgin Islands, any county, any municipality or any political subdivision thereof.

### § 561.41 SAIF.

The term *SAIF* means the Savings Association Insurance Fund, established by the Federal Deposit Insurance Act. (12 U.S.C. 1811 *et seq.*).

### § 561.42 Savings account.

The term *savings account* means any withdrawable account, except a demand account as defined in § 561.16 of this chapter, a tax and loan account, a note account, a United States Treasury general account, or a United States Treasury time deposit-open account.

[54 FR 49545, Nov. 30, 1989, as amended at 62 FR 54765, Oct. 22, 1997]

### § 561.43 Savings association.

The term *savings association* means a savings association as defined in section 3 of the Federal Deposit Insurance

Act, the deposits of which are insured by the Corporation. It includes a Federal savings association or Federal savings bank, chartered under section 5 of the Act, or a building and loan, savings and loan, or homestead association, or a cooperative bank (other than a cooperative bank which is a State bank as defined in section 3(a)(2) of the Federal Deposit Insurance Act) organized and operating according to the laws of the State in which it is chartered or organized, or a corporation (other than a bank as defined in section 3(a)(1) of the Federal Deposit Insurance Act) that the Board of Directors of the Federal Deposit Insurance Corporation and the Director of the Office of Thrift Supervision jointly determine to be operating substantially in the same manner as a savings association.

### § 561.44 Security.

The term *security* means any non-withdrawable account, note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, or, in general, any interest or instrument commonly known as a *security*, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing, except that a *security* shall not include an account or deposit insured by the Federal Deposit Insurance Corporation.

### § 561.45 Service corporation.

The term *service corporation* means any corporation, the majority of the capital stock of which is owned by one or more savings associations and which engages, directly or indirectly, in any activities similar to activities which may be engaged in by a service corporation in which a Federal savings association may invest under part 559 of this chapter.

[54 FR 49545, Nov. 30, 1989, as amended at 62 FR 66262, Dec. 18, 1997]

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### § 561.50 State.

The term *State* means a State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.

### § 561.51 Subordinated debt security.

The term *subordinated debt security* means any unsecured note, debenture, or other debt security issued by a savings association and subordinated on liquidation to all claims having the same priority as account holders or any higher priority.

### § 561.52 Tax and loan account.

The term *tax and loan account* means an account, the balance of which is subject to the right of immediate withdrawal, established for receipt of payments of Federal taxes and certain United States obligations. Such accounts are not savings accounts or savings deposits.

### § 561.53 United States Treasury General Account.

The term *United States Treasury General Account* means an account maintained in the name of the United States Treasury the balance of which is subject to the right of immediate withdrawal, except in the case of the closure of the member, and in which a zero balance may be maintained. Such accounts are not savings accounts or savings deposits.

### § 561.54 United States Treasury Time Deposit Open Account.

The term *United States Treasury Time Deposit Open Account* means a non-interest-bearing account maintained in the name of the United States Treasury which may not be withdrawn prior to the expiration of 30 days' written notice from the United States Treasury, or such other period of notice as the Treasury may require. Such accounts are not savings accounts or savings deposits.

### § 561.55 With recourse.

(a) The term *with recourse* means, in connection with the sale of a loan or a participation interest in a loan, an agreement or arrangement under which the purchaser is to be entitled to re-

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ceive from the seller a sum of money or 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 part 567 of this chapter.

[54 FR 49545, Nov. 30, 1989, as amended at 57 FR 33437, July 29, 1992]

## PART 562—REGULATORY REPORTING STANDARDS

Sec.

562.1 Regulatory reporting requirements.

562.2 Regulatory reports.

562.4 Audit of savings associations and savings association holding companies.

AUTHORITY: 12 U.S.C. 1463.

SOURCE: 57 FR 40090, Sept. 2, 1992, unless otherwise noted.