

## § 161.50

may be engaged in by a service corporation in which a Federal savings association may invest under part 159 of this chapter.

### § 161.50 State.

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

### § 161.51 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.

### § 161.52 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.

### § 161.53 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.

### § 161.54 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Account* means a non-interest-bearing account maintained in the name of the United States Treasury which may not be withdrawn prior to the expiration of 30 days' written notice from the United States Treasury, or such other period of notice as the Treasury may require.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.

## 12 CFR Ch. I (1-1-12 Edition)

### § 161.55 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 receive 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 167 of this chapter.

## PART 162—REGULATORY REPORTING STANDARDS

Sec.

162.1 Regulatory reporting requirements.

162.2 Regulatory reports.

162.4 Audit of Federal savings associations.

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

## Comptroller of the Currency, Treasury

## § 162.4

SOURCE: 76 FR 49046, Aug. 9, 2011, unless otherwise noted.

### § 162.1 Regulatory reporting requirements.

(a) *Authority and scope.* This part is issued by the Office of the Comptroller of the Currency (OCC) pursuant to section 4(b) and 4(c) of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1463(b) and 1463(c)). It applies to all Federal savings associations regulated by the OCC.

(b) *Records and reports—general—(1) Records.* Each savings association and its affiliates shall maintain accurate and complete records of all business transactions. Such records shall support and be readily reconcilable to any regulatory reports submitted to the OCC and financial reports prepared in accordance with GAAP. The records shall be maintained in the United States and be readily accessible for examination and other supervisory purposes within 5 business days upon request by the OCC, at a location acceptable to the OCC.

(2) *Reports.* For purposes of examination by and regulatory reports to the OCC and compliance with this chapter, all savings associations shall use such forms and follow such regulatory reporting requirements as the OCC may require by regulation or otherwise.

### § 162.2 Regulatory reports.

(a) *Definition and scope.* This section applies to all regulatory reports, as defined herein. A regulatory report is any report that the OCC prepares, or is submitted to, or is used by the OCC, to determine compliance with its rules and regulations, and to evaluate the safe and sound condition and operation of savings associations. The Report of Examination is an example of a regulatory report. Regulatory reports are regulatory documents, not accounting documents.

(b) *Regulatory reporting requirements—(1) General.* The instructions to regulatory reports are referred to as “regulatory reporting requirements.” Regulatory reporting requirements include, but are not limited to, guidance contained in OCC regulations, bulletins, and examination handbooks; and safe and sound practices. Regulatory reporting requirements are not limited

to the minimum requirements under generally accepted accounting principles (GAAP) because of the special supervisory, regulatory, and economic policy needs served by such reports. Regulatory reporting by savings associations that purports to comply with GAAP shall incorporate the GAAP that best reflects the underlying economic substance of the transaction at issue. Regulatory reporting requirements shall, at a minimum:

(i) Incorporate GAAP whenever GAAP is the referenced accounting instruction for regulatory reports to the Federal banking agencies;

(ii) Incorporate safe and sound practices contained in OCC regulations, bulletins, examination handbooks and instructions to regulatory reports. Such safety and soundness requirements shall be no less stringent than those applied by the Comptroller of the Currency for national banks; and

(iii) Incorporate additional safety and soundness requirements more stringent than GAAP, as the Comptroller may prescribe.

(2) *Exceptions.* Regulatory reporting requirements that are not consistent with GAAP, if any, are not required to be reflected in audited financial statements, including financial statements contained in securities filings submitted to the OCC pursuant to the Securities and Exchange Act of 1934 or parts 192, 194, or 197 of this chapter.

(3) *Compliance.* When the OCC determines that a savings association's regulatory reports did not conform to regulatory reporting requirements in previous reporting periods, the association shall correct its regulatory reports in accordance with the directions of the OCC.

### § 162.4 Audit of savings associations.

(a) *General.* The OCC may require, at any time, an independent audit of the financial statements of, or the application of procedures agreed upon by the OCC to a savings association or affiliate (as defined by 12 CFR 563.41, or upon issuance of superseding regulations by the Board of Governors of the

Federal Reserve System, such superseding regulations) by qualified independent public accountants when needed for any safety and soundness reason identified by the OCC.

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

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

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

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

(d) *Qualifications for independent public accountants.* The audit shall be conducted by an independent public accountant who:

(1) Is registered or licensed to practice as a public accountant, and is in good standing, under the laws of the state or other political subdivision of the United States in which the savings association's or holding company's principal office is located;

(2) Agrees in the engagement letter to provide the OCC with access to and copies of any work papers, policies, and procedures relating to the services performed;

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

(ii) Meets the independence requirements and interpretations of the Secu-

rities and Exchange Commission and its staff; and

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

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

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