

(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.

EDITORIAL NOTE: At 76 FR 49047, Aug. 9, 2011, §163.180 was added; however, there are two paragraphs (d)(12)(i)(A).

§ 163.190 Bonds for directors, officers, employees, and agents; form of and amount of bonds.

(a) Each Federal savings association shall maintain fidelity bond coverage. The bond shall cover each director, officer, employee, and agent who has control over or access to cash, securities, or other property of the savings association.

(b) The amount of coverage to be required for each Federal savings association shall be determined by the association’s management, based on its assessment of the level that would be safe and sound in view of the association’s potential exposure to risk; provided, such determination shall be subject to approval by the association’s board of directors.

(c) Each Federal savings association may maintain bond coverage in addition to that provided by the insurance underwriter industry’s standard forms, through the use of endorsements, riders, or other forms of supplemental coverage, if, in the judgment of the association’s board of directors, additional coverage is warranted.

(d) The board of directors of each Federal savings association shall formally approve the association’s bond coverage. In deciding whether to approve the bond coverage, the board shall review the adequacy of the standard coverage and the need for supplemental coverage. Documentation of the board’s approval shall be included as a part of the minutes of the meeting at which the board approves coverage. Additionally, the board of directors shall review the association’s bond coverage at least annually to assess the continuing adequacy of coverage.

§ 163.191 Bonds for agents.

In lieu of the bond provided in §163.190 of this part in the case of agents appointed by a Federal savings association, a fidelity bond may be provided in an amount at least twice the average monthly collections of such agents, provided such agents shall be required to make settlement with the savings association at least monthly, and provided such bond is approved by the board of directors of the savings association. No bond need be obtained for any agent that is a financial institution insured by the Federal Deposit Insurance Corporation.

§ 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:

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(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.

Subpart H—Notice of Change of Director or Senior Executive Officer

§ 163.550 What does this subpart do?

This subpart implements 12 U.S.C. 1831i, which requires certain Federal savings associations to notify the OCC before appointing or employing directors and senior executive officers.

§ 163.555 What definitions apply to this subpart?

The following definitions apply to this subpart:

Director means an individual who serves on the board of directors of a Federal savings association. This term does not include an advisory director who:

- (1) Is not elected by the shareholders;
- (2) Is not authorized to vote on any matters before the board of directors or any committee of the board of directors;
- (3) Provides only general policy advice to the board of directors or any committee of the board of directors; and
- (4) Has not been identified by the OCC or the OTS in writing as an individual who performs the functions of a director, or who exercises significant influence over, or participates in, major policymaking decisions of the board of directors.

Senior executive officer means an individual who holds the title or performs the function of one or more of the following positions (without regard to

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title, salary, or compensation): President, chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer. *Senior executive officer* also includes any other person identified by the OCC or the OTS in writing as an individual who exercises significant influence over, or participates in, major policymaking decisions, whether or not hired as an employee.

Troubled condition means:

(1) A Federal savings association that has a composite rating of 4 or 5, as composite rating is defined in §116.5(c) of this chapter;

(2) A Federal savings association that is subject to a capital directive, a cease-and-desist order, a consent order, a formal written agreement, or a prompt corrective action directive relating to the safety and soundness or financial viability of the savings association, unless otherwise informed in writing by the OCC; or

(3) A Federal savings association that is informed in writing by the OCC that it is in troubled condition based on information available to the OCC.

§ 163.560 Who must give prior notice?

(a) *Federal savings association*. Except as provided under §163.590, you must notify your OCC supervisory office at least 30 days before adding or replacing any member of your board of directors, employing any person as a senior executive officer, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive position if you are a Federal savings association and at least one of the following circumstances apply:

(1) You do not comply with all minimum capital requirements under 12 CFR part 3 or part 167, as applicable;

(2) Are in troubled condition; or

(3) The OCC has notified you, in connection with its review of a capital restoration plan required under section 38 of the Federal Deposit Insurance Act or 12 CFR part 6 or otherwise, that a notice is required under this subpart.

(b) *Notice by individual*. If you are an individual seeking election to the board of directors of a Federal savings association described in paragraph (a)