

and approved undertakings, the savings association's obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions or resolution of questions of fact or law at issue between the account party and the beneficiary. A savings association may also confirm or otherwise undertake to honor or purchase specified documents upon their presentation under another person's independent undertaking within the scope of such laws or rules.

(b) *Safety and soundness considerations*—(1) *Terms*. As a matter of safe and sound banking practice, savings associations that issue letters of credit or approved undertakings should not be exposed to undue risk. At a minimum, savings associations should consider the following:

(i) The independent character of the letter of credit or approved undertaking should be apparent from its terms (such as terms that subject it to laws or rules providing for its independent character);

(ii) The letter of credit or approved undertaking should be limited in amount;

(iii) The letter of credit or approved undertaking should:

(A) Be limited in duration; or

(B) Permit the savings association to terminate the letter of credit or approved undertaking, either on a periodic basis (consistent with the savings association's ability to make any necessary credit assessments) or at will upon either notice or payment to the beneficiary; or

(C) Entitle the savings association to cash collateral from the account party on demand (with a right to accelerate the customer's obligations, as appropriate); and

(iv) The savings association either should be fully collateralized or have a post-honor right of reimbursement from its customer or from another issuer of a letter of credit or an independent undertaking. Alternatively, if

signed by the U.S. in 1997) (available from the U.N. Commission on International Trade Law, 212/963-5353); and the Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits (ICC Publication No. 525) (available from ICC Publishing, Inc., 212/206-1150).

the savings association's undertaking is to purchase documents of title, securities, or other valuable documents, it should obtain a first priority right to realize on the documents if the savings association is not otherwise to be reimbursed.

(2) *Additional considerations in special circumstances*. Certain letters of credit and approved undertakings require particular protections against credit, operational, and market risk:

(i) In the event that the undertaking is to honor by delivery of an item of value other than money, the savings association should ensure that market fluctuations that affect the value of the item will not cause the savings association to assume undue market risk;

(ii) In the event that the undertaking provides for automatic renewal, the terms for renewal should allow the savings association to make any necessary credit assessment prior to renewal;

(iii) In the event that a savings association issues an undertaking for its own account, the underlying transaction for which it is issued must be within the savings association's authority and comply with any safety and soundness requirements applicable to that transaction.

(3) *Operational expertise*. The savings association should possess operational expertise that is commensurate with the sophistication of its letter of credit or independent undertaking activities.

(4) *Documentation*. The savings association must accurately reflect its letters of credit or approved undertakings in its records, including any acceptance or deferred payment or other absolute obligation arising out of its contingent undertaking.

[61 FR 50971, Sept. 30, 1996, as amended at 64 FR 46565, Aug. 26, 1999]

§ 560.121 Investment in State housing corporations.

(a) Any savings association to the extent it has legal authority to do so, may make investments in, commitments to invest in, loans to, or commitments to lend to any state housing corporation; provided, that such obligations or loans are secured directly, or indirectly through a fiduciary, by a first lien on improved real estate which

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is insured under the National Housing Act, as amended, and that in the event of default, the holder of such obligations or loans has the right directly, or indirectly through a fiduciary, to subject to the satisfaction of such obligations or loans the real estate described in the first lien, or the insurance proceeds.

(b) Any savings association that is adequately capitalized may, to the extent it has legal authority to do so, invest in obligations (including loans) of, or issued by, any state housing corporation incorporated in the state in which such savings association has its home or a branch office; provided (except with respect to loans), that:

(1) The obligations are rated in one of the four highest grades as shown by the most recently published rating made of such obligations by a nationally recognized rating service; or

(2) The obligations, if not rated, are approved by the Office. The aggregate outstanding direct investment in obligations under paragraph (b) of this section shall not exceed the amount of the savings association's total capital.

(c) Each state housing corporation in which a savings association invests under the authority of paragraph (b) of this section shall agree, before accepting any such investment (including any loan or loan commitment), to make available at any time to the Office such information as the Office may consider to be necessary to ensure that investments are properly made under this section.

§ 560.130 Prohibition on loan procurement fees.

If you are a director, officer, or other natural person having the power to direct the management or policies of a savings association, you must not receive, directly or indirectly, any commission, fee, or other compensation in connection with the procurement of any loan made by the savings association or a subsidiary of the savings association.

[61 FR 60178, Nov. 27, 1996]

§ 560.160 Asset classification.

(a)(1) Each savings association must evaluate and classify its assets on a regular basis in a manner consistent

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with, or reconcilable to, the asset classification system used by OTS in its Thrift Activities Handbook (Available at the address of Washington Headquarters Office at § 516.40(b) of this chapter).

(2) In connection with the examination of a savings association or its affiliates, OTS examiners may identify problem assets and classify them, if appropriate. The association must recognize such examiner classifications in its subsequent reports to OTS.

(b) Based on the evaluation and classification of its assets, each savings association shall establish adequate valuation allowances or charge-offs, as appropriate, consistent with generally accepted accounting principles and the practices of the federal banking agencies.

[61 FR 50971, Sept. 30, 1996, as amended at 66 FR 13007, Mar. 2, 2001]

§ 560.170 Records for lending transactions.

In establishing and maintaining its records pursuant to § 563.170 of this chapter, each savings association and service corporation should establish and maintain loan documentation practices that:

(a) Ensure that the institution can make an informed lending decision and can assess risk on an ongoing basis;

(b) Identify the purpose and all sources of repayment for each loan, and assess the ability of the borrower(s) and any guarantor(s) to repay the indebtedness in a timely manner;

(c) Ensure that any claims against a borrower, guarantor, security holders, and collateral are legally enforceable;

(d) Demonstrate appropriate administration and monitoring of its loans; and

(e) Take into account the size and complexity of its loans.

§ 560.172 Re-evaluation of real estate owned.

A savings association shall appraise each parcel of real estate owned at the earlier of in-substance foreclosure or at the time of the savings association's acquisition of such property, and at such times thereafter as dictated by