

**§ 563.170 Examinations and audits; appraisals; establishment and maintenance of records.**

(a) *Examinations and audits.* Each savings association and affiliate thereof shall be examined periodically, and may be examined at any time, by the Office, with appraisals when deemed advisable, in accordance with general policies from time to time established by the Office. The costs, as computed by the Office, of any examinations made by it, including office analysis, overhead, per diem, travel expense, other supervision by the Office, and other indirect costs, shall be paid by the savings associations examined, except that in the case of service corporations of Federal savings associations the cost of examinations, as determined by the Office, shall be paid by the service corporations. Payments shall be made in accordance with a schedule of annual assessments based upon each savings association's total assets and of rates for examiner time in amounts determined by the Office.

(b) *Appraisals.* (1) Unless otherwise ordered by the Office, appraisal of real estate by the Office in connection with any examination or audit of a savings association, affiliate, or service corporation shall be made by an appraiser, or by appraisers, selected by the Office's Regional Director of the Region in which such savings association is located. The cost of such appraisal shall promptly be paid by such savings association, affiliate, or service corporation direct to such appraiser or appraisers upon receipt by the savings association, affiliate, or service corporation of a statement of such cost as approved by such Regional Director. A copy of the report of each appraisal made by the Office pursuant to any of the foregoing provisions of this section shall be furnished to the savings association, affiliate, or service corporation, as appropriate within a reasonable time, not to exceed 90 days, following the completion of such appraisals and the filing of a report thereof by the appraiser, or appraisers, with such Regional Director.

(2) The Office may obtain at any time, at its expense, such appraisals of any of the assets, including the security therefor, of a savings association,

affiliate, or service corporation as the Office deems appropriate.

(c) *Establishment and maintenance of records.* To enable the Office to examine savings associations and affiliates and audit savings associations, affiliates, and service corporations pursuant to the provisions of paragraph (a) of this section, each savings association, affiliate, and service corporation shall establish and maintain such accounting and other records as will provide an accurate and complete record of all business it transacts. This includes, without limitation, establishing and maintaining such other records as are required by statute or any other regulation to which the savings association, affiliate, or service corporation is subject. The documents, files, and other material or property comprising said records shall at all times be available for such examination and audit wherever any of said records, documents, files, material, or property may be.

(d) *Change in location of records.* A savings association shall not transfer the location of any of its general accounting or control records, or the maintenance thereof, from its home office to a branch or service office, or from a branch or service office to its home office or to another branch or service office unless prior to the date of transfer its board of directors has:

(1) By resolution authorized the transfer or maintenance and;

(2) Sent a certified copy of the resolution to the Regional Director of the OTS Region in which the principal office of the savings association is located.

(e) *Use of data processing services for maintenance of records.* A savings association which determines to maintain any of its records by means of data processing services shall so notify the Regional Director of the Region in which the principal office of such savings association is located, in writing, at least 90 days prior to the date on which such maintenance of records will begin. Such notification shall include identification of the records to be maintained by data processing services and a statement as to the location at which such records will be maintained.

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Any contract, agreement, or arrangement made by a savings association pursuant to which data processing services are to be performed for such savings association shall be in writing and shall expressly provide that the records to be maintained by such services shall at all times be available for examination and audit.

[54 FR 49552, Nov. 30, 1989, as amended at 55 FR 34547, Aug. 23, 1990; 57 FR 14335, Apr. 20, 1992; 57 FR 40092, Sept. 2, 1992; 58 FR 28348, May 13, 1993; 59 FR 29502, June 7, 1994; 59 FR 53571, Oct. 25, 1994; 59 FR 60304, Nov. 23, 1994; 60 FR 66718, Dec. 26, 1995; 61 FR 50984, Sept. 30, 1996]

### § 563.171 Frequency of safety and soundness examination.

(a) *General.* The OTS examines savings associations pursuant to authority conferred by 12 U.S.C. 1463 and the requirements of 12 U.S.C. 1820(d). The OTS is required to conduct a full-scope, on-site examination of every savings association at least once during each 12-month period.

(b) *18-month rule for certain small institutions.* The OTS may conduct a full-scope, on-site examination of a savings association at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the following conditions are satisfied:

(1) The savings association has total assets of \$250 million or less;

(2) The savings association is well capitalized as defined in § 565.4 of this chapter;

(3) At its most recent examination, the OTS found the savings association to be well managed;

(4) At its most recent examination, OTS determined that the savings association was in outstanding or good condition, that is, it received a composite rating of 1 or 2, as composite rating defined in § 516.5(c) of this chapter;

(5) The savings association currently is not subject to a formal enforcement proceeding or order; and

(6) No person acquired control of the savings association during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

(c) *Authority to conduct more frequent examinations.* This section does not

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limit the authority of the OTS to examine any savings association as frequently as the agency deems necessary.

[63 FR 16381, Apr. 2, 1998, as amended at 64 FR 69185, Dec. 10, 1999; 66 FR 13008, Mar. 2, 2001]

### § 563.172 Financial derivatives.

(a) *What is a financial derivative?* A financial derivative is a financial contract whose value depends on the value of one or more underlying assets, indices, or reference rates. The most common types of financial derivatives are futures, forward commitments, options, and swaps. A mortgage derivative security, such as a collateralized mortgage obligation or a real estate mortgage investment conduit, is not a financial derivative under this section.

(b) *May I engage in transactions involving financial derivatives?* (1) If you are a Federal savings association, you may engage in a transaction involving a financial derivative if you are authorized to invest in the assets underlying the financial derivative, the transaction is safe and sound, and you otherwise meet the requirements in this section.

(2) If you are a state-chartered savings association, you may engage in a transaction involving a financial derivative if your charter or applicable State law authorizes you to engage in such transactions, the transaction is safe and sound, and you otherwise meet the requirements in this section.

(3) In general, if you engage in a transaction involving a financial derivative, you should do so to reduce your risk exposure.

(c) *What are my board of directors' responsibilities with respect to financial derivatives?* (1) Your board of directors is responsible for effective oversight of financial derivatives activities.

(2) Before you may engage in any transaction involving a financial derivative, your board of directors must establish written policies and procedures governing authorized financial derivatives. Your board of directors should review Thrift Bulletin 13a, "Management of Interest Rate Risk, Investment Securities, and Derivatives Activities," and other applicable agency guidance on establishing a sound risk management program.