

instructions provided in the TFR, guidance contained in OTS 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 OTS 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 Director 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 OTS pursuant to the Securities and Exchange Act of 1934 or parts 563b, 563d, or 563g of this chapter.

(3) *Compliance.* When the OTS 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 OTS.

§ 562.4 Audit of savings associations and savings association holding companies.

(a) *General.* The OTS may require, at any time, an independent audit of the financial statements of, or the application of procedures agreed upon by the OTS to a savings association, savings

and loan holding company, or affiliate (as defined by 12 CFR 563.41(b)(1)) by qualified independent public accountants when needed for any safety and soundness reason identified by the Director.

(b) *Audits required for safety and soundness purposes.* The OTS requires an independent audit for safety and soundness purposes:

(1) If a savings association has received a composite rating of 3, 4 or 5, as defined at § 516.3(c) of this chapter; or

(2) If, as of the beginning of its fiscal year, a savings and loan holding company controls savings association subsidiary(ies) with aggregate consolidated assets of \$500 million or more.

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

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

(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 OTS with access to and copies of any work papers, policies, and procedures relating to the services performed;

(3) Is in compliance with the American Institute of Certified Public Accountants' (AICPA) Code of Professional Conduct and meets the independence requirements and interpretations of the Securities and Exchange Commission and its staff; and

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

(e) *Voluntary audits.* When a savings association, savings and loan holding company, or affiliate (as defined by 12 CFR 563.41(b)(1)) obtains an independent audit voluntarily, it shall be performed only by an independent public accountant who satisfies the requirements of paragraphs (d)(1), (d)(2), and (d)(3) of this section.

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AUTHORITY: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831i, 3806; 42 U.S.C. 4106.

SOURCE: 54 FR 49552, Nov. 30, 1989, unless otherwise noted.

Subpart A—Accounts

§563.1 Chartering documents.

(a) *Submission for approval.* Any *de novo* savings association prior to commencing operations shall file its charter and bylaws with the OTS for approval, together with a certification that such charter and bylaws are permissible under all applicable laws, rules and regulations.

(b) *Availability of chartering documents.* Each savings association shall cause a true copy of its charter and bylaws and all amendments thereto to be