See FFIEC BSA/AML Handbook for guidance on Bank Secrecy Act

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Bank Protection Act

The purpose of the Bank Protection Act of 1968 (BPA) is to discourage robberies, burglaries and larcenies committed against financial institutions. The BPA requires the Federal financial institution supervisory agencies to establish minimum standards for the installation, maintenance, and operation of security devices and procedures to discourage these crimes, and to assist in the identification and apprehension of persons who commit them.

To fulfill the statutory mandate, OTS adopted implementing regulations in 1969, contained in 12 CFR Part 568. The regulations, substantially revised in 1991, contain several requirements for savings associations. A savings association's board of directors is responsible for compliance with the regulations. It is the board's responsibility to ensure that a written security program for the association's main office and branches is developed and maintained. In addition, the board must designate a security officer who has the authority, subject to board approval, to develop and administer a written security program.

LINKS

Program

Appendix A

The regulations establish minimum standards by specifying the contents of a security program and by requiring four specific security devices. Finally, to ensure that an association's security program is substantively reviewed on a timely basis, the regulations require the security officer to report at least annually to the board on the implementation, administration and effectiveness of the security program. Among other things, the report should contain information such as the status of employee training, the number of offenses committed against the association, and the success of prosecution for such offenses.

The timely filing of the required reports to the appropriate regulatory and enforcement agencies is a necessary function after a crime against an association has been committed. The primary form for reporting a crime is the Suspicious Activity Report (SAR), OTS Form 1601 (Exhibit A). The conditions under which this form is filed include any known or suspected criminal activity whether by insiders or those outside the association or service corporation.

Security Program

To comply with the regulations, each association's security program must:

- Establish procedures for opening and closing for business;

- Establish procedures for the safekeeping of all currency, negotiable securities, and other valuables;

- Provide for initial and periodic training of officers and employees in their responsibilities under the security program and in proper employee conduct during and after a burglary, robbery, or larceny;

- Provide for selecting, testing, operating and maintaining appropriate security devices; and

- Establish procedures that will assist in identifying persons that commit a burglary, robbery, or larceny.

The regulations offer additional guidance as to specific procedures that may assist in the identification of persons that commit crimes: procedures may include the use of a camera to record activity in the office, the use of identification devices (e.g., prerecorded serial-numbered bills or chemical and electronic devices), and the retention of a record of any robbery, burglary, or larceny committed against the association.

Security Devices

The regulations require each association to have, at a minimum, the following security devices:

- A means of protecting cash and other assets, such as a vault;

- A lighting system for illuminating the vault during the hours of darkness;

- An alarm system or other appropriate device for promptly notifying law enforcement officials; and

- Tamper-resistant locks on exterior doors and windows that may be opened.

Additional Considerations

The above are the minimum standards for security devices and procedures that should comprise an association's security program. However, the security officer has the discretion under the regulations to determine which additional security devices will best meet the needs of the program. In this way, the security officer can choose the most up-to-date equipment that meets the requirements of a particular association, based on the level of risk. For example, the risk of robbery, etc. will generally be lower for an association in a small, rural environment where the incidence of crime is demonstrably low, and higher for an association in a dense, urban environment with a high incidence of crime. To assist an association in establishing its program, the regulations suggest certain factors to consider in the selection of additional security devices. These include the:

- Incidence of crimes against financial institutions in the area;
- Amount of currency and other valuables exposed to robbery, burglary, or larceny;
- Distance of the office from the nearest law enforcement officers;
- Cost of the security devices;
- Other security measures in effect at the office; and
- Physical characteristics of the office and its surroundings.

Provisions of the security program, including training for all employees, should be carefully monitored by management as well as examiners. Inadequate employee training could easily nullify the most comprehensive and detailed security program. In addition, an association that becomes careless in the area of maintenance may find that its security devices are nonoperative or ineffective simply because equipment is not tested periodically.

Suspicious Activity Report

Effective April 1, 1996, savings associations and their service corporations are required by §563.180 to file a SAR when they detect a known or suspected violation of Federal law or a suspicious transaction related to a money laundering activity or a violation of the Bank Secrecy Act.

A SAR is required to be filed for any known or suspected Federal criminal violation, or pattern of criminal violations: (1) involving insider abuse in any amount, (2) aggregating $5,000 or more where a suspect can be identified, or (3) aggregating $25,000 or more regardless of a potential suspect. A SAR is also required to be filed for any transaction aggregating $5,000 or more that involves potential money laundering or violations of the Bank Secrecy Act.

A SAR is filed with the Financial Crimes Enforcement Network of the Department of the Treasury. A savings association or service corporation is required to file a SAR no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of detection of the incident requiring the filing, a savings association or service corporation may delay filing a SAR for an additional 30 calendar days to identify a suspect, but in no case can the reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction. In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, the savings association or service corporation should immediately notify, by telephone, an appropriate law enforcement authority and the OTS in addition to filing a timely SAR.

A savings association or service corporation is not required to file a SAR under §563.180 for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities under the Bank Protection Act.

While the primary responsibility for filing a SAR rests with the association, examiners should ensure that the form has been appropriately filed in all applicable cases. Examiners should prepare a criminal referral form in the following situations:

- When the association has failed to file a SAR (note why it was not filed);
- If the report made by the association is deemed inadequate; or
- When the examiner discovers criminal activity.

A record of filing the form is required to be kept at the association's main office for five years.

The purpose of the report is to provide appropriate law enforcement authorities with complete and accurate information relating to known or suspected criminal activity. All required information should be supplied at the time of the referral unless such information is not known or can only be supplied at a later date subject to the Right to Financial Privacy Act. The provisions of the Right to Financial Privacy Act prohibit examiners from disclosing identifying information concerning the financial records of individuals and partnerships of five or less individuals who are customers of an insured institution to another governmental agency, unless the customer is notified. To avoid having to notify the customer, examiners should delete the customer's name and account number from any records transferred with the completed SAR. The report should indicate the existence of the protected information and documents not included. In the latter case, documents not provided with this form should be segregated and safeguarded in order that they might be subsequently supplied.

Examiners are not required to make any initial finding that such referrals would, if pursued, result in a criminal conviction. That judgment will be made by responsible law enforcement authorities. Any questions regarding whether or not any particular activity would constitute a crime for purposes of making a criminal referral should be resolved through communications with the Regional Office.

Monitoring and Enforcement

OTS Regional staff should review for Bank Protection Act and Criminal Referral Reporting compliance by savings associations under their jurisdiction. Compliance determination by the staff may be derived from monitoring reports of examination, independent audit reports, SARs, and newspaper articles.

When the monitoring reveals significant deficiencies, substantial losses, or repeated incidents, staff may recommend an expansion of scope for this program area at the next regularly scheduled examination. Other corrective actions that the staff may wish to pursue include:

- Require an audit of the functions or accounts affected by the criminal acts and provide a report of action taken in response to the independent or internal audit findings;

- Report the status of the association's recovery of losses filed under its surety bond;
- Refer criminal acts by employees to the appropriate OTS authorities for possible suspension proceedings or removal;
- Direct the board of directors of the association to review and, where applicable, establish procedures to correct the deficiency.

Whenever the security devices or procedures used by a savings association are deficient in meeting the minimum requirements, the association may be required to take necessary corrective action. Pursuant to section 5 of the BPA, an association that violates OTS regulations is subject to a civil penalty not to exceed $100 for each day of the violation.

REFERENCES

Law

12 USC 1881-1884	Bank Protection Act

Regulations

12 CFR §568	Minimum Security Devices and Procedures
12 CFR §563.180	Suspicious Activity Reports and Other Reports and Statements

List of Exhibits

Exhibit A Form 1601	Suspicious Activity Report

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Bank Protection Act

Program

EXAMINATION OBJECTIVES

Determine whether the association has a security program and has provided for appropriate security devices and procedures in accordance with minimum regulatory requirements.

Determine whether known or suspected criminal violations have been identified and properly reported.

EXAMINATION PROCEDURES

1. Review the association's security program:

   - Ascertain whether its contents are in compliance with the requirements of 12 CFR §568.3(a);
   - Verify that the installation and maintenance of the security devices satisfy the requirements of 12 CFR §568.3(b); and
   - Determine whether the program is revised as appropriate to reflect changes in circumstances, e.g., the addition of a new facility, changes made to a facility, employee turnover, increased cash exposure, the responsiveness of law enforcement agencies, technological advances in security devices, etc.

2. Interview management and staff to ascertain if association personnel have adequate knowledge of policies and sufficient training to implement procedures.

3. Determine whether the security officer reports at least annually to the board of directors on the implementation, administration, and effectiveness of the security program.

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	

WKP. REF.

4. Review security reports and records to ascertain whether criminal or suspected criminal violations have been reported to the proper authorities. Determine if the Suspicious Activity Report has been prepared where appropriate, and filed on a timely basis.

5. Determine the impact of criminal violations on the association and whether controls have been established to insure against the possibility of further violations.

EXAMINER'S SUMMARY, RECOMMENDATIONS, AND COMMENTS

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	

Exhibit A

Suspicious Activity Report

1

FRB:	FR 2230	OMB No. 7100-0212
FDIC:	6710/06	OMB No. 3064-0077
OCC:	8010-9,8010-1	OMB No. 1557-0180
OTS:	1601	OMB No. 1550-0003
NCUA:	2362	OMB No. 3133-0094
TREASURY:	TD F 90-22.47	OMB No. 1506-0001

Expires September 30, 1998

ALWAYS COMPLETE ENTIRE REPORT

1 Check appropriate box:
a ☐ Initial Report b ☐ Corrected Report c ☐ Supplemental Report

Part I Reporting Financial Institution Information

2 Name of Financial Institution

3 Primary Federal Regulator
a ☐ Federal Reserve d ☐ OCC
b ☐ FDIC e ☐ OTS
c ☐ NCUA

4 Address of Financial Institution

5 City | 6 State | 7 Zip Code | 8 EIN or TIN

9 Address of Branch Office(s) where activity occurred | 10 Asset size of financial institution $ .00

11 City | 12 State | 13 Zip Code | 14 If institution closed, date closed (MMDDYY) ____ / ____ / ____

15 Account number(s) affected, if any
a _____
b _____

16 Have any of the institution's accounts related to this matter been closed?
a ☐ Yes b ☐ No If yes, identify _____

Part II Suspect Information

17 Last Name or Name of Entity | 18 First Name | 19 Middle Initial

20 Address | 21 SSN, EIN or TIN (as applicable)

22 City | 23 State | 24 Zip Code | 25 Country | 26 Date of Birth (MMDDYY) ____ / ____ / ____

27 Phone Number - Residence (include area code) ( )

28 Phone Number - Work (include area code) ( )

29 Occupation

30 Forms of Identification for Suspect:
a ☐ Driver's License b ☐ Passport c ☐ Alien Registration d ☐ Other _____
e Number _____ f Issuing Authority _____

31 Relationship to Financial Institution:
a ☐ Accountant d ☐ Attorney g ☐ Customer j ☐ Officer
b ☐ Agent e ☐ Borrower h ☐ Director k ☐ Shareholder
c ☐ Appraiser f ☐ Broker i ☐ Employee l ☐ Other _____

32 Is insider suspect still affiliated with the financial institution?
a ☐ Yes b ☐ No If no, specify { c ☐ Suspended d ☐ Terminated e ☐ Resigned

33 Date of Suspension, Termination, Resignation (MMDDYY) ____ / ____ / ____

34 Admission/Confession
a ☐ Yes b ☐ No

Part III Suspicious Activity Information 2

35 Date of suspicious activity (MMDDYY) ____ / ____ / ____

36 Dollar amount involved in known or suspicious activity
$ .00

37 Summary characterization of suspicious activity:

a ☐ Bank Secrecy Act/Structuring/ Money Laundering
b ☐ Bribery/Gratuity
c ☐ Check Fraud
d ☐ Check Kiting
e ☐ Commercial Loan Fraud
f ☐ Consumer Loan Fraud
g ☐ Counterfeit Check
h ☐ Counterfeit Credit/Debit Card
i ☐ Counterfeit Instrument (other)
j ☐ Credit Card Fraud
k ☐ Debit Card Fraud
l ☐ Defalcation/Embezzlement
m ☐ False Statement
n ☐ Misuse of Position or Self-Dealing
o ☐ Mortgage Loan Fraud
p ☐ Mysterious Disappearance
q ☐ Wire Transfer Fraud
r ☐ Other _____

38 Amount of loss prior to recovery (if applicable)
$ .00

39 Dollar amount of recovery (if applicable)
$ .00

40 Has the suspicious activity had a material impact on or otherwise affected the financial soundness of the institution?
a ☐ Yes b ☐ No

41 Has the institution's bonding company been notified?
a ☐ Yes b ☐ No

42 Has any law enforcement agency already been advised by telephone, written communication, or otherwise? If so, list the agency and local address.
Agency _____

43 Address

44 City

45 State

46 Zip Code

Part IV Witness Information

47 Last Name

48 First Name

49 Middle Initial

50 Address

51 SSN

52 City

53 State

54 Zip Code

55 Date of Birth (MMDDYY) ____ / ____ / ____

56 Title

57 Phone Number (include area code) ( )

58 Interviewed
a ☐ Yes b ☐ No

Part V Preparer Information

59 Last Name

60 First Name

61 Middle Initial

62 Title

63 Phone Number (include area code) ( )

64 Date (MMDDYY) ____ / ____ / ____

Part VI Contact for Assistance (If different than Preparer Information in Part V)

65 Last Name

66 First Name

67 Middle Initial

68 Title

69 Phone Number (include area code) ( )

70 Agency (If applicable)

Part VII **Suspicious Activity Information Explanation/Description**	3

Explanation/description of known or suspected violation of law or suspicious activity. This section of the report is **critical**. The care with which it is written may make the difference in whether or not the described conduct and its possible criminal nature are clearly understood. Provide below a chronological and **complete** account of the possible violation of law, including what is unusual, irregular or suspicious about the transaction, using the following checklist as you prepare your account. If necessary, continue the narrative on a duplicate of this page.

a **Describe** supporting documentation and retain for 5 years.
b **Explain** who benefited, financially or otherwise, from the transaction, how much, and how.
c **Retain** any confession, admission, or explanation of the transaction provided by the suspect and indicate to whom and when it was given.
d **Retain** any confession, admission, or explanation of the transaction provided by any other person and indicate to whom and when it was given.
e **Retain** any evidence of cover-up or evidence of an attempt to deceive federal or state examiners or others.
f **Indicate** where the possible violation took place (e.g., main office, branch, other).
g **Indicate** whether the possible violation is an isolated incident or relates to other transactions.
h **Indicate** whether there is any related litigation; if so, specify.
i **Recommend** any further investigation that might assist law enforcement authorities.
j **Indicate** whether any information has been excluded from this report; if so, why?

For Bank Secrecy Act/Structuring/Money Laundering reports, include the following additional information:

k **Indicate** whether currency and/or monetary instruments were involved. If so, provide the amount and/or description.
l **Indicate** any account number that may be involved or affected.

Paperwork Reduction Act Notice: The purpose of this form is to provide an effective and consistent means for financial institutions to notify appropriate law enforcement agencies of known or suspected criminal conduct or suspicious activities that take place at or were perpetrated against financial institutions. This report is required by law, pursuant to authority contained in the following statutes. Board of Governors of the Federal Reserve System: 12 U.S.C. 324, 334, 611a, 1844(b) and (c), 3105(c) (2) and 3106(a). Federal Deposit Insurance Corporation: 12 U.S.C. 93a, 1818, 1881-84, 3401-22. Office of the Comptroller of the Currency: 12 U.S.C. 93a, 1818, 1881-84, 3401-22. Office of Thrift Supervision: 12 U.S.C. 1463 and 1464. National Credit Union Administration: 12 U.S.C. 1766(a), 1786(q). Financial Crimes Enforcement Network: 31 U.S.C. 5318(g). Information collected on this report is confidential (5 U.S.C. 552(b)(7) and 552a(k)(2), and 31 U.S.C. 5318(g)). The Federal financial institutions regulatory agencies and the U.S. Departments of Justice and Treasury may use and share the information. Public reporting and recordkeeping burden for this information collection is estimated to average 36 minutes per response, and includes time to gather and maintain data in the required report, review the instructions, and complete the information collection. Send comments regarding this burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503 and, depending on your primary Federal regulatory agency, to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; or Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429; or Legislative and Regulatory Analysis Division, Office of the Comptroller of the Currency, Washington, DC 20219; or Office of Thrift Supervision, Enforcement Office, Washington, DC 20552; or National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314; or Office of the Director, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, VA 22182.

Suspicious Activity Report Instructions

Safe Harbor Federal law (31 U.S.C. 5318(g)(3)) provides complete protection from civil liability for all reports of suspected or known criminal violations and suspicious activities to appropriate authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this report's instructions or are filed on a voluntary basis. Specifically, the law provides that a financial institution, and its directors, officers, employees and agents, that make a disclosure of any possible violation of law or regulation, including in connection with the preparation of suspicious activity reports, "shall not be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure."

Notification Prohibited Federal law (31 U.S.C. 5318(g)(2)) requires that a financial institution, and its directors, officers, employees and agents who, voluntarily or by means of a suspicious activity report, report suspected or known criminal violations or suspicious activities may not notify any person involved in the transaction that the transaction has been reported.

In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, the financial institution shall immediately notify, by telephone, appropriate law enforcement and financial institution supervisory authorities in addition to filing a timely suspicious activity report.

WHEN TO MAKE A REPORT:

1. All financial institutions operating in the United States, including insured banks, savings associations, savings association service corporations, credit unions, bank holding companies, nonbank subsidiaries of bank holding companies, Edge and Agreement corporations, and U.S. branches and agencies of foreign banks, are required to make this report following the discovery of:

   a. **Insider abuse involving any amount.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, and the financial institution has a substantial basis for identifying one of its directors, officers, employees, agents or other institution-affiliated parties as having committed or aided in the commission of a criminal act regardless of the amount involved in the violation.

   b. **Violations aggregating $5,000 or more where a suspect can be identified.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution and involving or aggregating $5,000 or more in funds or other assets, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, and the financial institution has a substantial basis for identifying a possible suspect or group of suspects. If it is determined prior to filing this report that the identified suspect or group of suspects has used an "alias," then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as drivers' licenses or social security numbers, addresses and telephone numbers, must be reported.

   c. **Violations aggregating $25,000 or more regardless of a potential suspect.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution and involving or aggregating $25,000 or more in funds or other assets, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.

   d. **Transactions aggregating $5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.** Any transaction (which for purposes of this subsection means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or

[redacted]

sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected) conducted or attempted by, at or through the financial institution and involving or aggregating $5,000 or more in funds or other assets, if the financial institution knows, suspects, or has reason to suspect that:

i. The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any law or regulation or to avoid any transaction reporting requirement under Federal law;

ii. The transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or

iii. The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the financial institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

The Bank Secrecy Act requires all financial institutions to file currency transaction reports (CTRs) in accordance with the Department of the Treasury's implementing regulations (31 CFR Part 103). These regulations require a financial institution to file a CTR whenever a currency transaction exceeds $10,000. If a currency transaction exceeds $10,000 and is suspicious, the institution must file both a CTR (reporting the currency transaction) and a suspicious activity report (reporting the suspicious or criminal aspects of the transaction). If a currency transaction equals or is below $10,000 and is suspicious, the institution should only file a suspicious activity report.

2. A financial institution is required to file a suspicious activity report no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a suspicious activity report. If no suspect was identified on the date of detection of the incident requiring the filing, a financial institution may delay filing a suspicious activity report for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction.

3. This suspicious activity report does not need to be filed for those robberies and burglaries that are reported to local authorities, or (except for savings associations and service corporations) for lost, missing, counterfeit or stolen securities that are reported pursuant to the requirements of 17 CFR 240.17f-1.

HOW TO MAKE A REPORT:

1. Send each completed suspicious activity report to:

   FinCEN, Detroit Computing Center, P.O. Box 33980, Detroit, MI 48232

2. For items that do not apply or for which information is not available, leave blank.

3. Complete each suspicious activity report in its entirety, even when the suspicious activity report is a corrected or supplemental report.

4. Do not include supporting documentation with the suspicious activity report. Identify and retain a copy of the suspicious activity report and all original supporting documentation or business record equivalent for 5 years from the date of the suspicious activity report. All supporting documentation must be made available to appropriate authorities upon request.

5. If more space is needed to complete an item (for example, to report an additional suspect or witness), a copy of the page containing the item should be used to provide the information.

6. Financial institutions are encouraged to provide copies of suspicious activity reports to state and local authorities, where appropriate.

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See FFIEC BSA/AML Handbook for guidance on Economic Sanctions/OFAC

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Interest on Deposits

In 1993, the OTS made numerous changes to its regulations pursuant to the adoption of Regulation DD implementing the Truth in Savings Act, and the actions taken under the Regulatory Review Program. To reduce regulatory burden, the OTS reviewed its regulations to identify those provisions which were unnecessary and onerous. Sections pertaining to premiums, give-aways, advertising, and disclosures on fixed term accounts have either been removed or amended, as reflected in the revised narrative and examination procedures for this section of the handbook.

The effective annual yield formula previously used to determine the amount of interest paid on deposits has been replaced by the Annual Percentage Yield calculation contained in Regulation DD. In addition, Regulation DD restricts the method by which institutions determine the account balance for interest calculation purposes. Refer to section 1365 of this handbook for discussion on Regulation DD.

LINKS

Program

While many of the deposit restrictions, such as mandatory early withdrawal penalties, are not included in the OTS's regulations, it should be noted that associations under the OTS's jurisdiction are subject to the FRB reserve requirements set forth in Regulation D. In this regard for example, the presence and amount of early withdrawal penalties will affect the classification of deposits for reserve purposes.

Note: Compliance with Regulation D is currently covered during safety and soundness examinations. For examination procedures, see Examination Handbook, Section 561.

REQUIREMENTS

Accounts

Federally chartered savings associations may issue demand deposit accounts and savings accounts for indefinite or fixed terms. Savings associations are also authorized to issue Money Market Deposit Accounts (MMDAs) and negotiable order of withdrawal accounts (NOWs) by 12 U.S.C. 1464(b)(1) and 12 U.S.C. 1832, respectively. There are no interest-rate ceilings on any accounts offered by savings associations and under OTS regulations there are no requirements for early withdrawal penalties. (The OTS believes, however, that early withdrawal penalties are useful in maintaining stability in all classes of Certificate of Deposits (CDs).)

Following is a list of the authorized types of accounts and the requirements associated with each:

1. Regular Savings Account (Passbook Account) – Section 561.42 provides that a savings account is any withdrawable account, except a demand account, a tax and loan account, a note account, a United States Treasury general account, or a United States Treasury time deposit-open account. There are essentially no specific limitations on these accounts imposed by OTS, with the exception that the savings association must reserve the right to require at least seven days' notice prior to withdrawal. These accounts must, however, meet certain requirements to qualify for lower reserve requirements as a savings account under Regulation D.

2. Fixed-term Account (Certificate Account) – Pursuant to §563.7, a certificate account must have a term of at least seven days. (Note: Accounts with fixed terms of less than seven days would be considered a demand deposit.)

   An association may prohibit withdrawal of any portion of a certificate account prior to maturity. An association may not, however, restrict withdrawal or impose an early withdrawal penalty under the following circumstances:

   - After the death of an account owner, if the withdrawal is requested by any other owner of the account or by the authorized representative of the decedent's estate; or

   - After an account owner is determined by a court or other administrative body of proper jurisdiction to be legally incompetent, if the account was issued before the date of such determination and not extended or renewed after that date.

3. Money Market Deposit Account (MMDA) – These accounts can be made available to any depositor, including individuals, corporations, government entities, and not-for-profit organizations. The association must reserve the right to require seven days' notice prior to withdrawal.

   Pursuant to §561.28(a)(2), depositors are restricted to no more than six transfers per calendar month or statement cycle of at least four weeks by means of preauthorized, automatic, telephonic, or data transmission agreement, order, or instruction to another account of the depositor at the same insured association, to the association itself, or to a third party. No more than three of these transfers may be by check, draft, debit card, or similar order made by the depositor and payable to third parties. The depositors may, however, make unlimited transfers for the purpose of repaying loans and associated expenses at the association, for interaccount transfers in person or at an ATM from the MMDA account to accounts of the same account holder at the same association, and for cash or check withdrawals made in person, by mail, messenger, ATM, or telephone (via check mailed to the depositor).

   In order to ensure that these requirements are met the association must either prevent transfers in excess of the limitations or adopt procedures to monitor transfers after-the-fact. In the second case, the association must take necessary steps to ensure that the excessive transfers do not continue. In the event that a depositor continues to make transfers in excess of the limitations subsequent to

being contacted by the association in that regard, the association must either restrict access to the account or transfer the funds into another account the depositor is eligible to maintain.

4. Negotiable Order of Withdrawal Account (NOW) – NOW accounts may only be held by one or more individuals, government entities depositing public funds, and not-for-profit organizations operated primarily for religious, philanthropic, charitable, educational, political, or other similar purposes. These eligible "not for profit" organizations are described in §§501(c)(3) through (13), 501(c)(19), or 528 of the Internal Revenue Code. The Internal Revenue Service (IRS) has ruled that a nonprofit housing organization created to aid low and moderate income families may qualify for a tax exemption under §501(c)(3), and pursuant to this ruling the IRS has deemed many public housing authorities eligible for such exemption. Sole proprietorships and unincorporated businesses owned by a husband and wife are considered to be for the benefit of "one or more individuals" for purposes of eligibility for NOW accounts.

   The association must reserve the right to require at least seven days' notice prior to withdrawal or transfer of any funds in the account. A depository institution is authorized by 12 USC 1832 to permit the eligible owner, as described above, to make withdrawals from these accounts by negotiable or transferable instruments for the purpose of making transfers to third parties. Any depository institution which violates §1832 could be subject to a fine of $1,000 for each violation.

5. Checking Accounts (Demand Deposit Accounts) – Federal savings associations are authorized to issue demand deposits accounts by §§545.11 and 545.12, but restricted from paying interest on such deposits by §545.12 (b). They may be issued to any person.

   Section 561.16 defines the term "demand accounts" to mean non-interest bearing demand deposits that are subject to check or to withdrawal or transfer on negotiable or transferable order to the savings association and which are permitted to be issued by statute, regulation or otherwise and are payable on demand as provided in §563.6(b).

Finders' and Brokers' Fees

As provided in §561.16(b), finders' and brokers' fees paid by savings associations for demand deposits will not be considered to be a payment of interest on the account if:

- the fee is a bonus in cash or merchandise to the insured association's employees for participation in an account drive, contest or other incentive plan where the bonus is based on the total amount of deposits solicited; or

- if the fee is paid to a bona fide broker, which is considered to be one who is principally engaged in the business of brokering deposits, securities, or money market instruments, there is a written agreement between the broker and the association, and an officer of the broker gives written certification that no portion of the fee paid is directly or indirectly passed on to the depositor.

Lotteries

Section 410 of the National Housing Act of 1934, 12 USC 1730c, prohibits SAIF insured institutions from dealing in lottery tickets. The Home Owner's Loan Act, 12 USC 1463(4)(e), prohibits federal savings associations from dealing in lottery tickets. These statutes define "lottery" to include any arrangement under which three or more persons (participants) advance money or credit to another in exchange for the possibility or expectation that one or more but not all participants (winners) will receive by reason of their advances more than the amounts they have advanced; the identity of the winners is determined by any means which includes a random selection; a game, race or contest. . . . The term "lottery ticket" includes any right, privilege, or possibility . . . of becoming a winner in a lottery.

Advertising

Interest on Deposits

The rules governing the advertising of interest on deposits are set forth in §230.8 of Regulation DD. Refer to section 1365 of this handbook for guidance.

REFERENCES

Laws

12 USC 1463(4)(e)	Home Owner's Loan Act, Supervision of Savings Associations, Participation by savings associations in lotteries and related activities
12 USC 1464(b)(1)	Home Owner's Loan Act, Federal Savings Associations Deposits and Related Powers
12 USC 1730c	National Housing Act of 1934, Insurance of Savings and Loan Accounts, Participation by insured institutions in lotteries and related activities
12 USC 1832	Federal Deposit Insurance Act, NOW Accounts: Transfers from Interest Bearing Savings Accounts, Prohibition on certain activities by depository institutions

Regulations

12 CFR 545	Office of Thrift Supervision, Department of the Treasury, Operations Regulation
12 CFR 561	Office of Thrift Supervision, Department of the Treasury, Definitions Regulation
12 CFR 563	Office of Thrift Supervision, Department of the Treasury, Operations Regulation
12 CFR 230	Federal Reserve System, Regulation DD

Interest on Deposits Program

EXAMINATION OBJECTIVES

To determine whether the savings association is meeting all requirements for different types of accounts.

EXAMINATION PROCEDURES

1. Determine if the savings association is reserving the right to require at least the minimum advance notice on its accounts in its account contracts.

2. Determine through a review of savings association policies, procedures, and practices if any early withdrawal restrictions or penalties imposed by the savings association on certificate accounts are waived under the following circumstances:

   - After the death of an account owner, if the withdrawal is requested by any other owner of the account or by the authorized representative of the decedent's estate; or
   - After an account owner is determined by a court or other administrative body of proper jurisdiction to be legally incompetent, if the account was issued before the date of such determination and not extended or renewed after that date.

3. Review the savings association's policies, procedures, and practices to determine if they adequately restrict the number of transactions allowable in MMDA accounts.

4. Determine if the savings association allows only individuals, government entities (public units), or not-for-profit organizations operated primarily for religious, philanthropic, charitable, educational, political, or similar purposes to hold NOW accounts.

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	

WKP. REF.

5. Determine if the savings association refrains from paying interest on demand deposit accounts.

6. Determine if the payment of finders' or brokers' fees on demand deposit accounts meet the limitations in order not to be considered interest payments.

EXAMINER'S SUMMARY, RECOMMENDATIONS, AND COMMENTS

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	

Advertising

The Federal Reserve Board's Regulation DD, which implements the Truth in Savings Act, contains detailed advertising provisions that apply all savings associations. Subsequent to publication of the new regulation, the OTS amended its advertising regulations in order to eliminate conflicting, duplicative, or obsolete regulatory provisions. Since Regulation DD contains the newly adopted advertising provisions, §563.27(a) of the OTS Regulations was removed.

In addition, obsolete §§563.29 and 563.27(b)(2) were removed from the OTS Regulations. Since both insurance funds are governed by the same FDIC rules, OTS determined that the corporate title and name restrictions contained in the above-cited sections were no longer necessary for consumer protection. The revised regulation §563.27 only addresses the accuracy of savings associations' advertising of services, contracts, investments, and financial condition. Refer to Section 1365 of this handbook for information on Truth in Savings.

LINKS

Program

Part 328 of the Federal Deposit Insurance Corporation regulations also apply to insured savings associations.

REQUIREMENTS

Advertising of Services, Contracts, Investments or Financial Condition

Section 563.27 restricts any kind of advertisement or representation that is inaccurate or in any way misrepresents the savings association's services, contracts, investments, or financial conditions. This section defines advertising as including print or broadcast media, displays and signs, stationery, and all other promotional materials.

Misleading advertising regarding tax-deferred annuity plans

Savings associations offering annuity plans through their service corporations, where an underwriting insurance company receives for their reinvestment purposes the depositors-annuitants' invested funds, must ensure that the associations' advertising of such accounts are not misleading.

To meet the requirements of §563.27, that advertising must be accurate and must avoid misrepresentation, SAIF-insured associations that advertise such tax-deferred annuity plans:

- must affirmatively state that the investments are not insured; and

- may not imply that the annuity is an "account" in the association. In describing such annuity plans, this prohibition would preclude the use of such terms as "account," "deposits," "savings," "savings instruments," "savings products," and the like.

These requirements do not apply to annuity plans wherein the invested funds are held as SAIF-insured savings accounts in an association, such as where an insurance company acts as an agent for a depositor-annuitant, or where the depositor-annuitant's SAIF-insured savings account is held by a custodian in trust for an insurance company.

Advertisement of Membership

Savings associations insured under the FDIC's Savings Associations Insurance Fund (SAIF) are also subject to the FDIC's rules regarding advertisement of membership (12 CFR 328). Section 328.1(b) specifies the size and design of the official sign that SAIF-insured savings associations must use. Generally, §328.4(a) requires that this sign be continuously displayed in a savings association at each station or window where insured deposits are usually and normally received in its principal place of business and at all of its branches (except at automated service facilities including automated teller machines, cash dispensing machines, point-of-sale terminals, and other electronic facilities where deposits are received). Section 328.4(b) includes specific information as to how a savings association may obtain official signs. Savings associations are prohibited from displaying the FDIC official bank sign at its principal place of business or at any of its branches.

Advertising of Debt Securities

Savings associations' advertisements of debt securities are subject to Rule 134 and 135 issued under the Securities Act of 1933. These Rules are applied to savings associations' offerings through the securities offering regulations at 12 CFR 563g.

The OTS has also issued a Sales of Securities regulation at §563.76. This section generally prohibits the sale of debt or equity securities issued by a savings association or its affiliates in the offices of the savings association. A limited exception applies to the offer and sale of equity securities during a mutual to stock conversion. Other limited exceptions are enumerated in Thrift Bulletin 23a.

Part 563g generally prohibits any offer or sale of a security unless the offer or sale is accompanied or preceded by an offering circular that meets certain specified requirements and is filed with and declared effective by the OTS. However, several exemptions are available under the regulations, such as if the offer involves certain fully collateralized securities, is made in a non-public offering, or involves a security that is exempt from registration. In addition, certain communications (e.g., media advertisements, sales literature and other forms of publicity) are not considered to be an offer if (1) prior to the filing of an offering circular the requirements of SEC Rule 135 are met, or (2) subsequent to the filing an offering circular, the communications satisfy the requirements of SEC Rule 134.

Thrift Bulletin 31-2 provides guidance on the advertising of debt offerings and equity securities. As stated in TB 31-2, the following is a list of permitted and required disclosures:

Permitted Disclosures

1. The name of the issuer;
2. The title of the security;
3. The amount of the securities being offered;
4. A brief indication of the general type of business of the issuer;
5. The price of the security, the method by which the price will be determined, or probable price range;
6. If a fixed interest debt security, the yield, or the probable yield;
7. The name and address of the sender of the communications and the fact that the sender is participating in the distribution of the security (if true);
8. The names of the managing underwriters, if any;
9. The approximate date upon which the distribution will commence;
10. Whether, in the opinion of counsel, the security is a legal investment for savings banks, fiduciaries, insurance companies or other investors under the laws of any state;
11. Whether, in the opinion of counsel, the security is exempt from specified taxes;
12. Whether the security is being offered through rights, and if so, certain information about the rights offering;
13. Any statement or legend required by state law or administrative authority;
14. For debt securities or preferred stock, the rating from a nationally recognized statistical rating organization and the name of the rating agency, if any.

Required Disclosures

1. If the registration statement (offering circular) has not yet become effective, a prescribed legend is mandated;
2. A statement whether the security is being offered in connection with a distribution by the issuer, or by a security holder, or both, and whether the issue represents a new financing, or refunding, or both;

3. The name and address of a person or persons from whom a written prospectus meeting the requirements of the Securities Act (Part 563g in the case of securities issued by a savings association) may be obtained.

   In addition, for "over-the-counter" debt offerings, i.e., where the security may be purchased at or through facilities of the savings association or an affiliate of the savings association, the following disclosures must be included in all communications in order to avoid their being considered materially misleading:

   a. A legend, in type at least as large as the largest type size used in the communication, that the security is not federally insured;

   b. A statement that the investment in such debt securities is subject to certain "investment considerations" or "risk factors" (whichever is appropriate), such as the absence of any indenture, trustee, or market for the securities, the fact that the securities are unsecured and subordinated to all other obligations of the institution, the probability of redemption if interest rates decline, etc.

   c. A statement that any "Cash Bonus" or "Cash Premium" offered as a sales incentive could result in certain tax consequences to the purchaser.

   d. A legend stating that potential investors should obtain and read a copy of the offering circular before making an investment in the securities.

Disclosures Not in Compliance with Rule 134

1. Statements designed to have or having the effect of implying that the security is an insured account (i.e., statements that the yield or interest rate of the security being offered is "higher than those offered on our other insured accounts");

2. Statements comparing the security being offered to insured accounts available at the savings association, including attention-getting headlines;

3. Statements implying that the security is likely to remain outstanding until "maturity" (since if the savings association is able to borrow money more cheaply elsewhere, it will likely immediately redeem these high-interest rate debt securities).

REFERENCES

Regulations

12 CFR 563.27	Office of Thrift Supervision, Department of the Treasury, Operations Regulation, Advertising

12 CFR 563.76	Office of Thrift Supervision, Department of the Treasury, Offers and Sales of Securities
12 CFR 563g	Office of Thrift Supervision, Department of the Treasury, Securities Offerings Regulation
12 CFR 328	Federal Deposit Insurance Corporation, Advertisement of Membership Regulation

Memoranda, Bulletins, Resolutions, and Opinions

TB 23a	Sales of Securities
TB 31-2	Application of Securities Offering Rule to Materials for Offering of Debt

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Advertising Program

EXAMINATION OBJECTIVES

To determine if the savings association's advertisements are accurate, not misleading, and in compliance with applicable rules.

To determine if the savings association's advertising of debt securities is accurate, not misleading, and in compliance with applicable rules.

EXAMINATION PROCEDURES

1. Review copies of the savings association's advertisements to determine if they are accurate and fairly represent its services, contracts, investments, and/or financial condition, and are not in any way misleading

2. Determine if the savings association is properly displaying the official sign for SAIF-insured savings associations as required by FDIC regulations.

3. For debt securities:

   - Review copies of the savings association's advertisements to determine that they clearly disclose the features of the secured debt instrument and comply with the advertising requirements.
   - Determine if the savings association sells its securities "over-the-counter"; if so, determine if all communications materials disclose that the security is not federally insured, and is subject to certain "investment considerations" or "risk factors."
   - If a "Cash-Bonus" or "Cash Premium" is offered as a sales incentive for purchasing debt securities, determine if all communications state that the receipt of such a bonus could result in certain tax consequences to the potential purchaser.

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	

WKP. REF.

- Determine if all communications relating to the sale of secured debt include a legend stating that the potential investor should obtain and read a copy of the offering circular before making an investment in the security.
- Determine if any communication material contains information which may mislead the general public as to the nature of the debt security or makes comparison to an insured account offered at the savings association.
- Determine if any communication material makes a statement which implies that the security is likely to remain outstanding until "maturity."

EXAMINER'S SUMMARY, RECOMMENDATIONS, AND COMMENTS

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	

Branch Closings

This section contains the examination procedures used to assess compliance with the branch closing requirements of Section 42 of the Federal Deposit Insurance Act. These procedures are drawn from the joint policy statement on branch closings (Policy Statement) adopted on September 21, 1993, by the OTS, FRB, OCC and FDIC in order to provide appropriate guidance to insured depository institutions on this matter. The evaluation of an institution's policy for providing appropriate prior notice of branch closings as outlined in the Policy Statement was originally incorporated within the Community Reinvestment Act (CRA) examination procedures under Assessment Factor G, which focused on the institution's record of opening and closing offices and providing services at its offices.

The branch closing requirements were not included in either the new CRA examination procedures disseminated by the OTS in December 1995 or the new CRA regulation published on September 21, 1993. Policy considerations lead the OTS, FRB, OCC and FDIC to eliminate the branch closing notification provisions from the CRA examination process since these provisions did not appear to further the primary objective of the new regulation to evaluate institutions based on actual performance in helping to meet the credit needs of their communities. Accordingly, the branch closing notice provisions have been completely separated from the CRA regulation and are now reflected in the examination procedures of this section. These provisions require that institutions (1) adhere to certain notification procedures prior to closing any branch and (2) establish an internal policy reflecting such procedures.

LINKS

Program

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Branch Closings Program

EXAMINATION OBJECTIVES

To determine whether the institution is in compliance with the statutory requirements for branch closings, including those relating to the following:

- Providing prior notification of any branch closing to its appropriate Federal banking agency and customers of the branch.
- Establishing internal policies for branch closings.

EXAMINATION PROCEDURES

1. Determine whether the institution has adopted a branch closing policy that ensures compliance with the Policy Statement regarding branch closings and Section 42 of the FDI Act.

2. Determine whether the institution's procedures for closing a branch have been followed since the latter of December 19, 1991 or the last examination in which compliance was assessed with the Policy Statement concerning branch closing notices and Section 42 of the FDI Act.

3. Determine whether the institution provided adequate notice of any branch closing to its appropriate Federal banking agency at least 90 days prior to the proposed closing of any branch closed on or after December 19, 1991.

4. Determine if the institution mailed an adequate notice to its customers at least 90 days prior to the proposed closing of any branch closed on or after December, 19, 1991.

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	

WKP. REF.

5. Determine if the institution posted a notice to the branch customers in a conspicuous manner on the branch premises at least 30 days prior to the proposed closing of any branch closed on or after December, 19, 1991.

EXAMINER'S SUMMARY, RECOMMENDATIONS, AND COMMENTS

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	