

### § 390.333

must be deemed approved automatically by the FDIC 30 days after receipt, unless the FDIC advises the applicant in writing prior to the expiration of such period that the proposed transaction may not be consummated without the FDIC's approval of an application under paragraphs (h)(2)(ii) or (h)(2)(iii) of this section.

(ii) *Standard treatment.* An application in conformity with §390.105(b) and paragraph (d) of this section must be submitted to the appropriate FDIC region, as defined in §303.2 of this chapter, under §390.108 by each State savings association participating in a transaction under paragraph (b)(2) or (c) of this section, where any constituent State savings association does not meet the conditions for expedited treatment under §390.101. Applications under this paragraph must be processed in accordance with §§390.103 through 390.110 and §§390.126 through 390.135.

### § 390.333 Advertising.

No State savings association shall use advertising (which includes print or broadcast media, displays or signs, stationery, and all other promotional materials), or make any representation which is inaccurate in any particular or which in any way misrepresents its services, contracts, investments, or financial condition.

### § 390.334 Directors, officers, and employees.

(a) *Directors—(1) Requirements.* The composition of the board of directors of a State savings association must be in accordance with the following requirements:

(i) A majority of the directors must not be salaried officers or employees of the State savings association or of any subsidiary or (except in the case of a State savings association having 80% or more of any class of voting shares owned by a holding company) any holding company affiliate thereof.

(ii) Not more than two of the directors may be members of the same immediate family.

(iii) Not more than one director may be an attorney with a particular law firm.

(2) *Prospective application.* In the case of an association whose board of direc-

### 12 CFR Ch. III (1–15 Edition)

tors does not conform with any requirement set forth in paragraph (a)(1) of this section as of October 5, 1983, this paragraph (a) shall not prohibit the uninterrupted service, including re-election and re-appointment, of any person serving on the board of directors at that date.

(b) [Reserved]

### § 390.335 Tying restriction exception.

For applicable rules, see the regulations issued by the Board of Governors of the Federal Reserve System.

### § 390.336 Employment contracts.

(a) *General.* A State savings association may enter into an employment contract with its officers and other employees only in accordance with the requirements of this section. All employment contracts shall be in writing and shall be approved specifically by a State savings association's board of directors. A State savings association shall not enter into an employment contract with any of its officers or other employees if such contract would constitute an unsafe or unsound practice. The making of such an employment contract would be an unsafe or unsound practice if such contract could lead to material financial loss or damage to the State savings association or could interfere materially with the exercise by the members of its board of directors of their duty or discretion provided by law, charter, bylaw or regulation as to the employment or termination of employment of an officer or employee of the State savings association. This may occur, depending upon the circumstances of the case, where an employment contract provides for an excessive term.

(b) *Required provisions.* Each employment contract shall provide that:

(1) The State savings association's board of directors may terminate the officer or employee's employment at any time, but any termination by the State savings association's board of directors other than termination for cause, shall not prejudice the officer or employee's right to compensation or other benefits under the contract. The officer or employee shall have no right to receive compensation or other benefits for any period after termination

## Federal Deposit Insurance Corporation

## § 390.339

for cause. Termination for cause shall include termination because of the officer or employee's personal dishonesty, incompetence, willful misconduct, breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, willful violation of any law, rule, or regulation (other than traffic violations or similar offenses) or final cease-and-desist order, or material breach of any provision of the contract.

(2) If the officer or employee is suspended and/or temporarily prohibited from participating in the conduct of the State savings association's affairs by a notice served under section 8(e)(3) or (g)(1) of Federal Deposit Insurance Act (12 U.S.C. 1818(e)(3) and (g)(1)), the State savings association's obligations under the contract shall be suspended as of the date of service unless stayed by appropriate proceedings. If the charges in the notice are dismissed, the State savings association may in its discretion:

(i) Pay the officer or employee all or part of the compensation withheld while its contract obligations were suspended; and

(ii) Reinstate (in whole or in part) any of its obligations which were suspended.

(3) If the officer or employee is removed and/or permanently prohibited from participating in the conduct of the State savings association's affairs by an order issued under section 8(e)(4) or (g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(4) or (g)(1)), all obligations of the State savings association under the contract shall terminate as of the effective date of the order, but vested rights of the contracting parties shall not be affected.

(4) If the State savings association is in default (as defined in section 3(x)(1) of the Federal Deposit Insurance Act), all obligations under the contract shall terminate as of the date of default, but this paragraph (b)(4) shall not affect any vested rights of the contracting parties: *Provided*, that this paragraph (b)(4) need not be included in an employment contract if prior written approval is secured from the FDIC.

(5)(i) All obligations under the contract shall be terminated, except to the extent determined that continuation of

the contract is necessary of the continued operation of the State savings association

(A) By the FDIC, at the time the FDIC enters into an agreement to provide assistance to or on behalf of the State savings association under the authority contained in 13(c) of the Federal Deposit Insurance Act; or

(B) By the FDIC, at the time the FDIC approves a supervisory merger to resolve problems related to operation of the State savings association or when the State savings association is determined by the FDIC to be in an unsafe or unsound condition.

(ii) Any rights of the parties that have already vested, however, shall not be affected by such action.

### § 390.337 Transactions with affiliates.

For applicable rules, see the regulations issued by the Board of Governors of the Federal Reserve System.

### § 390.338 Loans by State savings associations to their executive officers, directors, and principal shareholders.

For applicable rules, see the regulations issued by the Board of Governors of the Federal Reserve System.

### § 390.339 Pension plans.

(a) *General.* No State savings association shall sponsor an employee pension plan which, because of unreasonable costs or any other reason, could lead to material financial loss or damage to the sponsor. For purposes of this section, an employee pension plan is defined in section 3(2) of the Employee Retirement Income Security Act of 1974, as amended. The prospective obligation or liability of a plan sponsor to each plan participant shall be stated in or determinable from the plan, and, for a defined benefit plan, shall also be based upon an actuarial estimate of future experience under the plan.

(b) *Funding.* Actuarial cost methods permitted under the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954, as amended, shall be used to determine plan funding.

(c) *Plan amendment.* A plan may be amended to provide reasonable annual