

the State savings association designates adequate reserves for the subordinate interest or guarantee.

(c) This definition does not apply for purposes of determining the capital adequacy requirements under subpart Z.

Subpart R—Regulatory Reporting Standards

§ 390.320 Regulatory reporting requirements.

(a) *Authority and scope.* This subpart is issued by the FDIC pursuant to 12 U.S.C. sections 1831m; 1831n(a)(2); 1831p–1;1464(v)(1). It applies to all State savings associations regulated by the FDIC.

(b) *Records and reports—general—(1) Records.* Each State savings association and its affiliates shall maintain accurate and complete records of all business transactions. Such records shall support and be readily reconcilable to any regulatory reports submitted to the FDIC and financial reports prepared in accordance with GAAP. The records shall be maintained in the United States and be readily accessible for examination and other supervisory purposes within 5 business days upon request by the FDIC, at a location acceptable to the FDIC.

(2) *Reports.* For purposes of examination by and regulatory reports to the FDIC and compliance with this section, all State savings associations shall use such forms and follow such regulatory reporting requirements as the FDIC may require by regulation or otherwise.

§ 390.321 Regulatory reports.

(a) *Definition and scope.* This section applies to all regulatory reports, as defined herein. A regulatory report is any report that the FDIC prepares, or is submitted to, or is used by the FDIC, to determine compliance with its rules and regulations, and to evaluate the safe and sound condition and operation of State savings associations. Regulatory reports are regulatory documents, not accounting documents.

(b) *Regulatory reporting requirements—(1) General.* The instructions to regulatory reports are referred to as “regulatory reporting requirements.” Regu-

latory reporting requirements include, but are not limited to, the accounting instructions, guidance contained in FDIC regulations, financial institution letters, manuals, bulletins, 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 State 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 FDIC regulations, financial institution letters, bulletins, examination handbooks, manuals, and instructions to regulatory reports; and

(iii) Incorporate additional safety and soundness requirements more stringent than GAAP, as the FDIC 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 FDIC pursuant to the Securities and Exchange Act of 1934 or subparts U and W and 12 CFR part 192.

(3) *Compliance.* When the FDIC determines that a State 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 FDIC.

§ 390.322 Audit of State savings associations.

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

Federal Deposit Insurance Corporation

§ 390.332

qualified independent public accountants when needed for any safety and soundness reason identified by the FDIC.

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

(1) If a State savings association has received a composite rating of 3, 4 or 5, as defined at § 390.101(c).

(2) [Reserved]

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

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

(3) When the FDIC requires the application of procedures agreed upon by the FDIC for safety and soundness purposes, the FDIC shall identify the procedures to be performed. The FDIC shall also determine whether the agreed upon procedures were conducted and filed in a manner satisfactory to the FDIC.

(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 State savings association's or holding company's principal office is located;

(2) Agrees in the engagement letter to provide the FDIC with access to and copies of any work papers, policies, and procedures relating to the services performed;

(3)(i) Is in compliance with the American Institute of Certified Public Accountants' (AICPA) Code of Professional Conduct; and

(ii) 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 FDIC.

(e) *Voluntary audits.* When a State savings association obtains an independent audit voluntarily, it must be performed by an independent public accountant who satisfies the requirements of paragraphs (d)(1), (2), and (3)(i) of this section.

Subpart S—State Savings Associations—Operations

§ 390.330 Chartering documents.

(a) *Submission for approval.* Any *de novo* State savings association prior to commencing operations shall file its charter and bylaws with the FDIC 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 State savings association shall cause a true copy of its charter and bylaws and all amendments thereto to be available to accountholders at all times in each office of the State savings association, and shall upon request deliver to any accountholders a copy of such charter and bylaws or amendments thereto.

§ 390.331 Securities: Statement of non-insurance.

Every security issued by a State savings association must include in its provisions a clear statement that the security is not insured by the Federal Deposit Insurance Corporation.

§ 390.332 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

(a) No State savings association may, without application to and approval by the FDIC:

(1) Combine with any insured depository institution, if the acquiring or resulting institution is to be a State savings association; or

(2) Assume liability to pay any deposit made in, any insured depository institution.

(b)(1) No State savings association may, without notifying the FDIC, as provided in paragraph (h)(1) of this section: