

## § 390.446

## 12 CFR Ch. III (1–1–12 Edition)

### § 390.446 Enforcement.

Institutions and institution-affiliated parties, including staff appraisers and fee appraisers, who violate this subpart may be subject to removal and/or prohibition orders, cease and desist orders, and the imposition of civil money penalties pursuant to the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*, as amended, or other applicable law.

### § 390.447 Appraisal policies and practices of State savings associations and subsidiaries.

(a) *Introduction.* The soundness of a State savings association's mortgage loans and real estate investments, and those of its subsidiary(ies), depends to a great extent upon the adequacy of the loan underwriting used to support these transactions. An appraisal standard is one of several critical components of a sound underwriting policy because appraisal reports contain estimates of the value of collateral held or assets owned. This section sets forth the responsibilities of management to develop, implement, and maintain appraisal standards in determining compliance with the appraisal requirements of § 390.350.

(b) *Definition.* For purposes of this section, management means: the directors and officers of a State savings association or subsidiary(ies) of such State savings association as those terms are defined in §§ 390.291 and 390.302, respectively.

(c) *Responsibilities of management.* An appraisal is a critical component of the loan underwriting or real estate investment decision. Therefore, management shall develop, implement, and maintain appraisal policies to ensure that appraisals reflect professional competence and to facilitate the reporting of estimates of market value upon which State savings associations may rely to make lending decisions. To achieve these results:

(1) Management shall develop written appraisal policies, subject to formal adoption by the State savings association's board of directors, that it shall implement in consultation with other appropriate personnel. These policies shall ensure that adequate appraisals are obtained and proper appraisal pro-

cedures are followed consistent with the requirements of this subpart.

(2) Management shall develop and adopt guidelines and institute procedures pertaining to the hiring of appraisers to perform appraisal services for the State savings association consistent with the requirements of this subpart. These guidelines shall set forth specific factors to be considered by management including, but not limited to, an appraiser's State certification or licensing, professional education, and type of experience. An appraiser's membership in professional appraisal organizations may be considered consistent with the requirements of subpart X.

(3) Management shall review on an annual basis the performance of all approved appraisers used within the preceding 12-month period for compliance with:

(i) The State savings association's appraisal policies and procedures; and

(ii) The reasonableness of the value estimates reported.

(d) *Exemptions.* The requirements of § 390.443(b) through (d) shall not apply with respect to appraisals on nonresidential properties prepared on form reports approved by the FDIC and completed in accordance with the applicable instructional booklet.

## Subpart Y—Prompt Corrective Action

### § 390.450 Authority, purpose, scope, other supervisory authority, and disclosure of capital categories.

(a) *Authority.* This subpart is issued by the FDIC pursuant to section 38 of the Federal Deposit Insurance Act (FDI Act) as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o).

(b) *Purpose.* Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized. The principal purpose of this subpart is to define, for State savings associations, the capital measures and capital levels that are used for determining the supervisory actions authorized under section 38 of the FDI Act.

This subpart also establishes procedures for submission and review of capital restoration plans and for issuance and review of directives and orders pursuant to section 38.

(c) *Scope.* This subpart implements the provisions of section 38 of the FDI Act as they apply to State savings associations. Certain of these provisions also apply to officers, directors and employees of State savings associations.

(d) *Other supervisory authority.* Neither section 38 nor this subpart in any way limits the authority of the FDIC under any other provision of law to take supervisory actions to address unsafe or unsound practices, deficient capital levels, violations of law, unsafe or unsound conditions, or other practices. Action under section 38 of the FDI Act and this subpart may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the FDIC, including issuance of cease and desist orders, capital directives, approval or denial of applications or notices, assessment of civil money penalties, or any other actions authorized by law.

(e) *Disclosure of capital categories.* The assignment of a State savings association under this subpart within a particular capital category is for purposes of implementing and applying the provisions of section 38. Unless permitted by the FDIC or otherwise required by law, no State savings association may state in any advertisement or promotional material its capital category under this subpart or that the FDIC or any other federal banking agency has assigned the State savings association to a particular category.

#### § 390.451 Definitions.

For purposes of this subpart, except as modified in this section or unless the context otherwise requires, the terms used in this subpart have the same meanings as set forth in sections 38 and 3 of the FDI Act.

(a)(1) *Control* has the same meaning assigned to it in section 2 of the Bank Holding Company Act (12 U.S.C. 1841), and the term “controlled” shall be construed consistently with the term “control.”

(2) *Exclusion for fiduciary ownership.* No insured depository institution or

company controls another insured depository institution or company by virtue of its ownership or control of shares in a fiduciary capacity. Shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring insured depository institution or company has sole discretionary authority to exercise voting rights with respect thereto.

(3) *Exclusion for debts previously contracted.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The two-year period may be extended at the discretion of the appropriate federal banking agency for up to three one-year periods.

(b) *Controlling person* means any person having control of an insured depository institution and any company controlled by that person.

(c) *Leverage ratio* means the ratio of Tier 1 capital to adjusted total assets, as calculated in accordance with subpart Z.

(d) *Management fee* means any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice to the State savings association or related overhead expenses, including payments related to supervisory, executive, managerial or policymaking functions, other than compensation to an individual in the individual’s capacity as an officer or employee of the State savings association.

(e) *Risk-weighted assets* means total risk-weighted assets, as calculated in accordance with subpart Z.

(f) *Tangible equity* means the amount of a State savings association’s core capital as computed in subpart Z plus the amount of its outstanding cumulative perpetual preferred stock (including related surplus), minus intangible assets as defined in § 390.461, except mortgage servicing assets to the extent they are includable under § 390.471. Non-mortgage servicing assets that have not been previously deducted