

the Interagency Guidelines Establishing Information Security Standards at appendix B to this subpart implement the provisions of section 39 of the FDI Act as they apply to State savings associations.

(d) *Preservation of existing authority.* Neither section 39 of the FDI Act 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, violations of law, unsafe or unsound conditions, or other practices. Action under section 39 and this subpart may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the FDIC.

§ 391.11 Determination and notification of failure to meet safety and soundness standards and request for compliance plan.

(a) *Determination.* The FDIC may, based upon an examination, inspection, or any other information that becomes available to the FDIC, determine that a State savings association has failed to satisfy the safety and soundness standards contained in the Interagency Guidelines Establishing Standards for Safety and Soundness as set forth in appendix A to this subpart or the Interagency Guidelines Establishing Information Security Standards as set forth in appendix B to this subpart.

(b) *Request for compliance plan.* If the FDIC determines that a State savings association has failed to meet a safety and soundness standard pursuant to paragraph (a) of this section, the FDIC may request by letter or through a report of examination, the submission of a compliance plan. The State savings association shall be deemed to have notice of the request three days after mailing or delivery of the letter or report of examination by the FDIC.

§ 391.12 Filing of safety and soundness compliance plan.

(a) *Schedule for filing compliance plan—(1) In general.* A State savings association shall file a written safety and soundness compliance plan with the FDIC within 30 days of receiving a request for a compliance plan pursuant to § 391.11(b), unless the FDIC notifies

the State savings association in writing that the plan is to be filed within a different period.

(2) *Other plans.* If a State savings association is obligated to file, or is currently operating under, a capital restoration plan submitted pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), a cease-and-desist order entered into pursuant to section 8 of the FDI Act, a formal or informal agreement, or a response to a report of examination, it may, with the permission of the FDIC, submit a compliance plan under this section as part of that plan, order, agreement, or response, subject to the deadline provided in paragraph (a)(1) of this section.

(b) *Contents of plan.* The compliance plan shall include a description of the steps the State savings association will take to correct the deficiency and the time within which those steps will be taken.

(c) *Review of safety and soundness compliance plans.* Within 30 days after receiving a safety and soundness compliance plan under this subpart, the FDIC shall provide written notice to the State savings association of whether the plan has been approved or seek additional information from the State savings association regarding the plan. The FDIC may extend the time within which notice regarding approval of a plan will be provided.

(d) *Failure to submit or implement a compliance plan.* If a State savings association fails to submit an acceptable plan within the time specified by the FDIC or fails in any material respect to implement a compliance plan, then the FDIC shall, by order, require the State savings association to correct the deficiency and may take further actions provided in section 39(e)(2)(B) of the FDI Act. Pursuant to section 39(e)(3), the FDIC may be required to take certain actions if the State savings association commenced operations or experienced a change in control within the previous 24-month period, or the State savings association experienced extraordinary growth during the previous 18-month period.

(e) *Amendment of compliance plan.* A State savings association that has filed an approved compliance plan may,

after prior written notice to and approval by the FDIC, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the State savings association shall implement the compliance plan as previously approved.

§ 391.13 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.

(a) *Notice of intent to issue order*—(1) *In general.* The FDIC shall provide a State savings association prior written notice of the FDIC's intention to issue an order requiring the State savings association to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act. The State savings association shall have such time to respond to a proposed order as provided by the FDIC under paragraph (c) of this section.

(2) *Immediate issuance of final order.* If the FDIC finds it necessary in order to carry out the purposes of section 39 of the FDI Act, the FDIC may, without providing the notice prescribed in paragraph (a)(1) of this section, issue an order requiring a State savings association immediately to take actions to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39. A State savings association that is subject to such an immediately effective order may submit a written appeal of the order to the FDIC. Such an appeal must be received by the FDIC within 14 calendar days of the issuance of the order, unless the FDIC permits a longer period. The FDIC shall consider any such appeal, if filed in a timely manner, within 60 days of receiving the appeal. During such period of review, the order shall remain in effect unless the FDIC, in its sole discretion, stays the effectiveness of the order.

(b) *Contents of notice.* A notice of intent to issue an order shall include:

(1) A statement of the safety and soundness deficiency or deficiencies that have been identified at the State savings association;

(2) A description of any restrictions, prohibitions, or affirmative actions that the FDIC proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of any required action; and

(4) The date by which the State savings association subject to the order may file with the FDIC a written response to the notice.

(c) *Response to notice*—(1) *Time for response.* A State savings association may file a written response to a notice of intent to issue an order within the time period set by the FDIC. Such a response must be received by the FDIC within 14 calendar days from the date of the notice unless the FDIC determines that a different period is appropriate in light of the safety and soundness of the State savings association or other relevant circumstances.

(2) *Contents of response.* The response should include:

(i) An explanation why the action proposed by the FDIC is not an appropriate exercise of discretion under section 39 of the FDI Act;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the State savings association regarding the proposed order.

(d) *The FDIC's consideration of response.* After considering the response, the FDIC may:

(1) Issue the order as proposed or in modified form;

(2) Determine not to issue the order and so notify the State savings association; or

(3) Seek additional information or clarification of the response from the State savings association, or any other relevant source.

(e) *Failure to file response.* Failure by a State savings association to file with the FDIC, within the specified time period, a written response to a proposed order shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the order.

(f) *Request for modification or rescission of order.* Any State savings association that is subject to an order under this subpart may, upon a change in circumstances, request in writing that the FDIC reconsider the terms of the