

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