

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

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cost-of-living increases to retired participants: *Provided*, That

(1) Any such increase shall be for a period and amount determined by the sponsor's board of directors, but in no event shall it exceed the annual increase in the Consumer Price Index published by the Bureau of Labor Statistics; and

(2) No increase shall be granted unless:

(i) Anticipated charges to net income for future periods have first been found by such board of directors to be reasonable and are documented by appropriate resolution and supporting analysis; and

(ii) The increase will not reduce the State savings association's regulatory capital below its regulatory capital requirement.

(d) *Termination*. The plan shall permit the sponsor's board of directors and its successors to terminate such plan. Notice of intent to terminate shall be filed with the FDIC at least 60 days prior to the proposed termination date.

(e) *Records*. Each State savings association maintaining a plan not subject to recordkeeping and reporting requirements of the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1954, as amended, shall establish and maintain records containing the following:

(1) Plan description;

(2) Schedule of participants and beneficiaries;

(3) Schedule of participants and beneficiaries' rights and obligations;

(4) Plan's financial statements; and

(5) Except for defined contribution plans, an opinion signed by an enrolled actuary (as defined by the Employee Retirement Income Security Act of 1974) affirming that actuarial assumptions in the aggregate are reasonable, take into account the plan's experience and expectations, and represent the actuary's best estimate of the plan's projected experiences.

§ 390.340 Offers and sales of securities at an office of a State savings association.

(a) A State saving association may not offer or sell debt or equity securities issued by the State savings association or an affiliate of the State sav-

ings association at an office of the State savings association; except that equity securities issued by the State savings association or an affiliate in connection with the State savings association's conversion from the mutual to stock form of organization in a conversion approved pursuant to 12 CFR part 192 may be offered and sold at the State savings association's offices: *Provided*, That:

(1) The FDIC does not object on supervisory grounds that the offer and sale of the securities at the offices of the State savings association;

(2) No commissions, bonuses, or comparable payments are paid to any employee of the State savings association or its affiliates or to any other person in connection with the sale of securities at an office of a State savings association; except that compensation and commissions consistent with industry norms may be paid to securities personnel of registered broker-dealers;

(3) No offers or sales are made by tellers or at the teller counter, or by comparable persons at comparable locations;

(4) Sales activity is conducted in a segregated or separately identifiable area of the State savings association's offices apart from the area accessible to the general public for the purposes of making or withdrawing deposits;

(5) Offers and sales are made only by regular, full-time employees of the State savings association or by securities personnel who are subject to supervision by a registered broker-dealer;

(6) An acknowledgment, in the form set forth in paragraph (c) of this section, is signed by any customer to whom the security is sold in the State savings association's offices prior to the sale of any such securities;

(7) A legend that the security is not a deposit or account and is not federally insured or guaranteed appears conspicuously on the security and in all offering documents and advertisements for the securities; the legend must state in bold or other prominent type at least as large as other textual type in the document that "This security is not a deposit or account and is not federally insured or guaranteed"; and