

§ 30.5

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shall provide written notice to the national bank or Federal savings association of whether the plan has been approved or seek additional information from the bank or savings association regarding the plan. The OCC may extend the time within which notice regarding approval of a plan will be provided.

(d) *Failure to submit or implement a compliance plan*—(1) *Supervisory actions.* If a national bank or Federal savings association fails to submit an acceptable plan within the time specified by the OCC or fails in any material respect to implement a compliance plan, then the OCC shall, by order, require the bank or savings association to correct the deficiency and may take further actions provided in section 39(e)(2)(B). Pursuant to section 39(e)(3), the OCC may be required to take certain actions if the national bank or Federal savings association commenced operations or experienced a change in control within the previous 24-month period, or the bank or savings association experienced extraordinary growth during the previous 18-month period.

(2) *Extraordinary growth.* For purposes of paragraph (d)(1) of this section, extraordinary growth means an increase in assets of more than 7.5 percent during any quarter within the 18-month period preceding the issuance of a request for submission of a compliance plan, by a national bank or Federal savings association that is not well capitalized for purposes of section 38 of the FDI Act. For purposes of calculating an increase in assets, assets acquired through merger or acquisition approved pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) will be excluded.

(e) *Amendment of compliance plan.* A national bank or Federal savings association that has filed an approved compliance plan may, after prior written notice to and approval by the OCC, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank or savings association shall implement the compliance plan as previously approved.

[60 FR 35680, July 10, 1995, as amended at 79 FR 54543, Sept. 11, 2014]

§ 30.5 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 OCC shall provide a national bank or Federal savings association prior written notice of the OCC's intention to issue an order requiring the bank or 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 national bank or Federal savings association shall have such time to respond to a proposed order as provided by the OCC under paragraph (c) of this section.

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

(b) *Content 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 national bank or Federal savings association;

(2) A description of any restrictions, prohibitions, or affirmative actions that the OCC 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 national bank or Federal savings association subject to the order may file with the OCC a written response to the notice.

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

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

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

(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 national bank or Federal savings association regarding the proposed order.

(d) *Agency consideration of response*. After considering the response, the OCC may:

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

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

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

(e) *Failure to file response*. Failure by a national bank or Federal savings association to file with the OCC, 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 national bank or Federal savings association that is subject to an order under this part may, upon a change in circumstances, request in writing that the OCC reconsider the terms of the order, and may propose that the order be rescinded or modified.

Unless otherwise ordered by the OCC, the order shall continue in place while such request is pending before the OCC.

[60 FR 35680, July 10, 1995, as amended at 79 FR 54544, Sept. 11, 2014]

§ 30.6 Enforcement of orders.

(a) *Judicial remedies*. Whenever a national bank or Federal savings association fails to comply with an order issued under section 39, the OCC may seek enforcement of the order in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act, 12 U.S.C. 1818(i)(1).

(b) *Failure to comply with order*. Pursuant to section 8(i)(2)(A) of the FDI Act, 12 U.S.C. 1818(i)(2)(A), the OCC may assess a civil money penalty against any national bank or Federal savings association that violates or otherwise fails to comply with any final order issued under section 39 and against any institution-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action*. In addition to the actions described in paragraphs (a) and (b) of this section, the OCC may seek enforcement of the provisions of section 39 or this part through any other judicial or administrative proceeding authorized by law.

[60 FR 35680, July 10, 1995, as amended at 79 FR 54544, Sept. 11, 2014]

APPENDIX A TO PART 30—INTERAGENCY GUIDELINES ESTABLISHING STANDARDS FOR SAFETY AND SOUNDNESS

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