§ 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.

(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;

(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.
(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 order, and may propose that the order be rescinded or modified. Unless otherwise ordered by the FDIC, the order shall continue in place while such request is pending before the FDIC.

§ 391.14 Enforcement of orders.

(a) Judicial remedies. Whenever a State savings association fails to comply with an order issued under section 39 of the FDI Act, the FDIC may seek enforcement of the order in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) Administrative remedies. Pursuant to section 8(i)(2)(A) of the FDI Act, the FDIC may assess a civil money penalty against any State savings association that violates or otherwise fails to comply with any final order issued under section 39 and against any State savings association-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 FDIC may seek enforcement of the provisions of section 39 of the FDI Act or this part through any other judicial or administrative proceeding authorized by law.

APPENDIX A TO SUBPART B OF PART 391—INTERAGENCY GUIDELINES ESTABLISHING STANDARDS FOR SAFETY AND SOUNDNESS

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