

Comptroller of the Currency, Treasury

§ 163.47

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 Comptroller or his or her designee.

(5) All obligations under the contract shall be terminated, except to the extent determined that continuation of the contract is necessary for the continued operation of the association;

(i) By the Comptroller, or his or her designee, at the time the Federal Deposit Insurance Corporation enters into an agreement to provide assistance to or on behalf of the association under the authority contained in 13(c) of the Federal Deposit Insurance Act; or

(ii)(A) By the Comptroller or his or her designee, at the time the Comptroller, or his or her designee approves a supervisory merger to resolve problems related to operation of the association or when the association is determined by the Comptroller to be in an unsafe or unsound condition.

(B) Any rights of the parties that have already vested, however, shall not be affected by such action.

§ 163.41 Transactions with affiliates.

For applicable rules, see regulations of the Board of Governors of the Federal Reserve System.

§ 163.43 Loans by savings associations to their executive officers, directors and principal shareholders.

For applicable rules, see Regulation O of the Board of Governors of the Federal Reserve System.

§ 163.47 Pension plans.

(a) *General*. No Federal savings association or service corporation thereof 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 de-

finied 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 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 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 OCC at least 60 days prior to the proposed termination date.

(e) *Records*. Each Federal savings association or service corporation maintaining a plan not subject to record-keeping 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.

Subpart C—Securities and Borrowings

§ 163.74 Mutual capital certificates.

(a) *General.* No savings association that is in the mutual form shall issue mutual capital certificates pursuant to this section or amend the terms of such certificates unless it has obtained written approval of the appropriate Federal banking agency. No approval shall be granted unless the proposed issuance of the mutual capital certificates and the form and manner of filing of the application are in accordance with the provisions of this section.

(b) *Eligibility Requirements.* The appropriate Federal banking agency will consider and process an application for approval of the issuance of mutual capital certificates pursuant to this section only if the issuance is authorized by applicable law and regulation and is not inconsistent with any provision of the applicant's charter, constitution or bylaws.

(c) *Application form; supporting information.* An application for approval of the issuance of mutual capital certificates pursuant to this section shall be in the form prescribed by the appropriate Federal banking agency. Such application and instructions may be obtained from the appropriate Federal banking agency. Information and exhibits shall be furnished in support of the application in accordance with such instructions, setting forth all of the terms and provisions relating to the proposed issue and showing that all of the requirements of this section have been or will be met.

(d) *Charter amendment.* No application for approval of the issuance of mutual capital certificates pursuant to this section may be filed unless the amendment to the mutual association's charter, constitution or bylaws or other actions conferring such authority shall have been approved pursuant to the procedures and requirements set forth in the mutual association's charter, constitution or bylaws, or as may otherwise be required by applicable law.

(e) *Filing requirements.* The application for issuance of mutual capital certificates shall be publicly filed with the appropriate Federal banking agency.

(f) *Supervisory objection.* No application or approval of the issuance of mutual capital certificates pursuant to this section shall be approved if, in the opinion of the appropriate Federal banking agency, the policies, condition, or operation of the applicant afford a basis for supervisory objection to the application.

(g) *Limitation on offering period.* Following the date of the approval of the application by the appropriate Federal banking agency, the association shall have an offering period of not more than one year in which to complete the sale of the mutual capital certificates issued pursuant to this section. The appropriate Federal banking agency may in its discretion extend such offering period if a written request showing good cause for such extension is filed with it not later than 30 days before the expiration of such offering period or any extension thereof.

(h) *Reports.* Within 30 days after completion of the sale of mutual capital certificates issued pursuant to this section, the association shall transmit to the appropriate Federal banking agency a written report stating the total dollar amount of securities sold, and the amount of net proceeds received by the association, and within 90 days it shall transmit a written report stating the number of purchasers.

(i) *Requirements as to mutual capital certificates—(1) Form of certificate.* Each mutual capital certificate and any governing agreement evidencing a mutual capital certificate issued by an association pursuant to this section:

(i) Shall bear on its face, in bold-face type, the following legend: "This security is not a savings account or a deposit and it is not insured by the United States or any agency or fund of the United States"; and

(ii) Shall clearly state that the certificate is subject to the requirements of § 163.74(i)(2).

(2) *Legal requirements.* Mutual capital certificates issued pursuant to this section shall:

(i) Be subordinate to all claims against the association having the