

## Federal Deposit Insurance Corporation

## § 390.361

or have the power to direct its management or policies, or otherwise owe a fiduciary duty to a State savings association:

(a) You must not advance your own personal or business interests, or those of others with whom you have a personal or business relationship, at the expense of the State savings association; and

(b) You must, if you have an interest in a matter or transaction before the board of directors:

(1) Disclose to the board all material nonprivileged information relevant to the board's decision on the matter or transaction, including:

(i) The existence, nature and extent of your interests; and

(ii) The facts known to you as to the matter or transaction under consideration;

(2) Refrain from participating in the board's discussion of the matter or transaction; and

(3) Recuse yourself from voting on the matter or transaction (if you are a director).

### § 390.359 Corporate opportunity.

(a) If you are a director or officer of a State savings association, or have the power to direct its management or policies, or otherwise owe a fiduciary duty to a State savings association, you must not take advantage of corporate opportunities belonging to the State savings association.

(b) A corporate opportunity belongs to a State savings association if:

(1) The opportunity is within the corporate powers of the State savings association or a subsidiary of the State savings association; and

(2) The opportunity is of present or potential practical advantage to the State savings association, either directly or through its subsidiary.

(c) The FDIC will not deem you to have taken advantage of a corporate opportunity belonging to the State savings association if a disinterested and independent majority of the State savings association's board of directors, after receiving a full and fair presentation of the matter, rejected the opportunity as a matter of sound business judgment.

### § 390.360 Change of director or senior executive officer.

Sections 390.360 through 390.368 implement 12 U.S.C. 1831i, which requires certain State savings associations to notify the FDIC before appointing or employing directors and senior executive officers.

### § 390.361 Applicable definitions.

The following definitions apply to §§ 390.360 through 390.368:

*Director* means an individual who serves on the board of directors of a State savings association. This term does not include an advisory director who:

(1) Is not elected by the shareholders;

(2) Is not authorized to vote on any matters before the board of directors or any committee of the board of directors;

(3) Provides only general policy advice to the board of directors or any committee of the board of directors; and

(4) Has not been identified by the FDIC in writing as an individual who performs the functions of a director, or who exercises significant influence over, or participates in, major policy-making decisions of the board of directors.

*Senior executive officer* means an individual who holds the title or performs the function of one or more of the following positions (without regard to title, salary, or compensation): president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer. *Senior executive officer* also includes any other person identified by the FDIC in writing as an individual who exercises significant influence over, or participates in, major policymaking decisions, whether or not hired as an employee.

*Troubled condition* means:

(1) A State savings association that has a composite rating of 4 or 5, as composite rating is defined in § 390.101(c).

(2) [Reserved]

(3) A State savings association that is subject to a capital directive, a cease-and-desist order, a consent order, a formal written agreement, or a