

amendment to section 39, if an agency determines that an institution fails to meet any standard established by *guideline* under subsection (a) or (b) of section 39, the agency *may* require the institution to submit to the agency an acceptable plan to achieve compliance with the standard.

Where an agency requires submission of a plan to achieve compliance with the standards, if the institution fails to submit an acceptable plan within the time allowed by the agency or fails in any material respect to implement an accepted plan, the agency must, by order, require the institution to correct the deficiency. The agency may, and in some cases must, take other supervisory actions until the deficiency has been corrected.

#### *B. Agencies' Proposals*

On July 15, 1992, the agencies published a joint advance notice of proposed rulemaking (ANPR) in the **Federal Register**, 57 FR 31336, for a 60-day comment period. The agencies received over 400 comment letters in response to the ANPR, with some letters submitted to more than one agency. Commenters strongly recommended that the agencies propose general rather than specific standards in order to avoid regulatory micromanagement.

On November 18, 1993, the agencies published a joint notice of proposed rulemaking in the **Federal Register**, 59 FR 60802, for a 45-day comment period. Based on comments received in response to the ANPR, the agencies proposed general standards designed to identify emerging safety and soundness problems in depository institutions.

## **II. The Final Rule**

Although section 39 of the FDI Act, as amended by the CDRI Act, allows the agencies to establish safety and soundness standards by regulation or by guideline, section 39(e) of the FDI Act continues to require the agencies to establish deadlines for submission and review of compliance plans by regulation. For this reason, although the agencies have established safety and soundness standards by guideline, the agencies have established deadlines and procedures for submission and review of compliance plans by regulation.

The agencies' final rule adopts the procedures proposed for submission of compliance plans and issuance of orders, except that, under the final rule, the agencies are authorized, rather than required, to request a compliance plan for failure to satisfy the safety and soundness standards set out in the Guidelines. The procedures for issuing orders in the final rule are modelled

after those adopted by the agencies for issuance of prompt corrective action directives pursuant to section 38 of the FDI Act.

The agencies expect that noncompliance with the standards adopted pursuant to section 39 generally will be detected during examinations of institutions. Under the final rule, an institution must file a compliance plan within 30 days of a request to do so from the institution's primary Federal regulator. An agency may extend or shorten that time, if necessary. The agency then generally has 30 days to review the plan.

Several commenters requested an extension, from 30 days to 60 days or more, of the time period within which an institution must file a compliance plan after receiving a request from the agency to do so. The agencies' proposal allowed the agencies to require that a compliance plan be filed within 30 days or within a time period specified by the agencies. The agencies believe that this provision provides sufficient flexibility to extend the time period where appropriate or necessary. Accordingly, the agencies have decided not to extend the time period within which an institution must generally file a compliance plan. Although section 39 does not provide for any prior notice or administrative review of an agency order, the agencies' final rule provides for prior notice of, and an opportunity to respond to, a proposed order.

A few commenters requested that the agencies extend from 14 to 60 days or more the time period within which an institution must respond to the agency's notice of intent to issue an order requiring the institution to correct a safety and soundness deficiency or to take or refrain from taking other actions. Under the agencies' proposal, the agencies could determine that a different time period was appropriate in light of the safety and soundness of the institution or other relevant considerations. The agencies have decided to adopt the time period set forth in the proposal because the agencies believe that time period carries out the purpose of section 39 to facilitate early identification and correction of safety and soundness deficiencies.

A compliance plan may, with the permission of the agency, be part of a capital restoration plan submitted pursuant to section 38 of the FDI Act (prompt corrective action) (12 U.S.C. 1831p), a cease-and-desist order entered into pursuant to section 8 of the FDI Act (12 U.S.C. 1818), a formal or informal agreement, or a response to a report of examination.

In conjunction with this rulemaking, the FDIC has amended part 303 of its regulations regarding delegations of authority to act on compliance plans under section 39.

## **III. Interagency Guidelines Establishing Standards for Safety and Soundness**

The agencies have adopted Interagency Guidelines Establishing Standards for Safety and Soundness (Guidelines) pursuant to section 39 of the FDI Act. By adopting the standards as guidelines, the agencies retain the authority to require an institution to submit an acceptable compliance plan as well as the flexibility to pursue other more appropriate or effective courses of action given the specific circumstances and severity of an institution's noncompliance with one or more standards. Failure to submit or adhere to a compliance plan will subject an institution to the sanctions under section 39.

The agencies expect to request a compliance plan from an institution whose failure to meet one or more of the standards is of such severity that it could threaten the safe and sound operation of the institution. The agencies may elect to rely on an existing plan or enforcement action to ensure that an institution achieves compliance with the Guidelines, rather than requiring the submission of a separate safety and soundness compliance plan.

The Guidelines set out the safety and soundness standards that the agencies will use to identify and address problems at institutions before capital becomes impaired. The agencies believe that the standards adopted in the Guidelines serve this end without dictating how institutions must be managed and operated. Adoption of these Guidelines is consistent with the overwhelming majority of commenters' recommendations that the standards established under section 39 be general and flexible in nature. The agencies have decided to use the flexibility provided by the CDRI Act to propose new asset quality and earnings standards which the agencies believe are more appropriate. Therefore, the agencies have not included these standards in the final Guidelines, but are seeking comment on these standards elsewhere in this separate part of the **Federal Register**. The agencies intend to add revised asset quality and earnings standards to the Guidelines after comments are considered and final standards are adopted.

#### *A. Holding Company Coverage*

Section 318 of the CDRI Act eliminates the requirement that the