

Comptroller of the Currency, Treasury

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(i) The number of the Federal savings association's members and the estimated reasonable cost to the Federal savings association of mailing to them the proposed communication; or

(ii) Notification that the Federal savings association has determined not to mail the communication because it is "improper", as defined in paragraph (c) of this section;

(6) After receiving the amount of the estimated costs of mailing and sufficient copies of the communication, the Federal savings association shall mail the communication to all members, by a class of mail specified by the requesting member, either—

(i) Within fourteen days;

(ii) Within seven days, if the communication is in connection with the annual meeting;

(iii) As soon as practicable before the meeting, if the communication is in connection with a special meeting; or

(iv) On a later date specified by the member;

(7) If the Federal savings association refuses to mail the proposed communication, it shall return the requesting member's materials together with a written statement of the specific reasons for refusal, and shall simultaneously send to the appropriate OCC licensing office two copies each of the requesting member's materials, the Federal savings association's written statement, and any other relevant material. The materials shall be sent within:

(i) Fourteen days,

(ii) Ten days if the communication is in connection with the annual meeting, or

(iii) Three days, if the communication is in connection with a special meeting, after the Federal savings association receives the request for communication.

(c) *Improper communication.* A communication is an "improper communication" if it contains material which:

(1) At the time and in the light of the circumstances under which it is made:

(i) Is false or misleading with respect to any material fact; or

(ii) Omits a material fact necessary to make the statements therein not false or misleading, or necessary to correct a statement in an earlier communication on the same subject which has become false or misleading;

(2) Relates to a personal claim or a personal grievance, or is solicitous of personal gain or business advantage by or on behalf of any party;

(3) Relates to any matter, including a general economic, political, racial, religious, social, or similar cause, that is not significantly related to the business of the Federal savings association or is not within the control of the Federal savings association; or

(4) Directly or indirectly and without expressed factual foundation:

(i) Impugns character, integrity, or personal reputation,

(ii) Makes charges concerning improper, illegal, or immoral conduct, or

(iii) Makes statements impugning the stability and soundness of the Federal savings association.

PART 145—FEDERAL SAVINGS ASSOCIATIONS—OPERATIONS

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AUTHORITY: 12 U.S.C. 1462a, 1463, 1464, 1828, 5412(b)(2)(B).

SOURCE: 76 FR 48999, Aug. 9, 2011, unless otherwise noted.

§ 145.1 General authority.

A Federal savings association may exercise all authority granted it by the Home Owners' Loan Act of 1933 ("Act"), 12 U.S.C. 1464, as amended, and its charter and bylaws, whether or not implemented specifically by OCC regulations, subject to the limitations and interpretations contained in this part.

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§ 145.2 [Reserved]

§ 145.16 Public deposits, depositaries, and fiscal agents.

(a) *Definitions.* As used in this section—

(1) *Moneys* includes *monies* and has the same meaning it has in applicable state law;

(2) *State law* includes actions by a governmental body which has a charter adopted under the constitution of the state with provisions respecting deposits of public money of that body;

(3) *Surety* means surety under real and/or personal suretyship, and includes guarantor; and

(4) Terms in paragraph (b) of this section have the meanings they have under applicable state law.

(b) *Authority to act as surety for public deposits.* (1) A Federal savings association that is a deposit association may give bond or security for deposit in it of public moneys or investment in it by a governmental unit if required to do so by state law, either as an alternative condition or otherwise, regardless of the amount required. Any bond or security may be given and any substitution or increase thereof may be made under this section at any time.

(2) If state law requires as a condition of such deposit or investment that the Federal savings association or its bond or security, or any combination thereof, be surety for or with respect to other deposits or instruments, whether of that depositor or investor or of any other(s), and whether in the Federal savings association or in any other institution(s) having, when the investments or deposits were made, insurance by the Federal Deposit Insurance Corporation, the same shall become, or if the state law is self-executing shall be, such surety.

(c) *Depositaries and fiscal agents.* Subject to regulation of the United States Treasury Department, a Federal savings association may serve as a depository for Federal taxes, as a Treasury tax and loan depository, or as a depository of public money and fiscal agent of the Government or any other instrumentality thereof when designated for that purpose by such instrumentality and approved by the OCC, and may satisfy any requirement in connection

therewith, including maintaining accounts described in §§161.33, 161.52, 161.53, and 161.54 of this chapter; pledging collateral; and performing the services outlined in 31 CFR 202.3(b) or any section that supersedes or amends §202.3(b).

§ 145.17 Funds transfer services.

A Federal savings association is authorized to transfer, with or without fee, its customers' funds from any account (including a line of credit) of the customer at the Federal savings association or at another financial intermediary to third parties or other accounts of the customer on the customer's order or authorization by any mechanism or device, including cashier's checks, conforming with applicable laws and established commercial practices.

§ 145.91 Home office.

(a) All operations of a Federal savings association ("you") are subject to direction from the home office.

(b) You must notify the appropriate OCC licensing office if the permanent address of your home office changes, unless you have submitted an application or notice regarding the change under §§145.93 and 145.95 of this chapter.

§ 145.92 Branch offices.

(a) *Definition.* A branch office of a Federal savings association ("you") is any office other than your home office, agency office, administrative office, data processing office, or an electronic means or facility under part 155 of this chapter.

(b) *Branching.* Subject to the application and notice requirements at §§145.93 and 145.95 of this chapter, you may branch in any state or states of the United States and its territories unless the location would violate:

(1) Section 5(r) of the HOLA (12 U.S.C. 1464(r));

(2) Section 10(e)(3) of the HOLA (12 U.S.C. 1467a(e)(3)); or

(3) Section 13(k)(4) of the FDIA (12 U.S.C. 1823(k)(4)).

(c) *Preemption.* This exercise of the OCC's authority is preemptive of any state law purporting to address the

subject of branching by a Federal savings association.

§ 145.93 Application and notice requirements for branch and home offices.

(a) *Application and notice requirements.*

A Federal savings association (“you”) must file an application or notice with the appropriate OCC licensing office and receive approval or non-objection under §145.95 before you change the permanent location of, or establish a new, home or branch office, except as provided in this section.

(b) *Exceptions.* You are not required to submit an application or notice and receive OCC approval or non-objection under §145.95 under the following circumstances:

(1) *Drive-in or pedestrian offices.* You may establish a drive-in or pedestrian office that is located within 500 feet of a public entrance to your existing home or branch office, provided the functions performed at the office are limited to functions that are ordinarily performed at a teller window.

(2) *Short-distance relocation.* You may change the permanent location of an existing home or branch office to a site that is within the market area and short-distance location area of the existing home or branch office. The short-distance relocation area of an existing office is the area that is within:

(i) A 1000-foot radius of an existing office that is within a Principal City in a Metropolitan Statistical Area (MSA) designated by the U.S. Department of Commerce;

(ii) A one-mile radius of an existing office that is within an MSA, but is not within a Principal City; or

(iii) A two-mile radius of an existing office that is not in an MSA.

(3) *Highly-rated Federal savings associations.* You may change the permanent location of, or establish a new, branch or home office if you meet all of the following requirements:

(i) You are eligible for expedited treatment under §116.5 of this chapter. For the purposes of that section, you must meet the capital requirements under part 167 of this chapter before and immediately after you change the location of your home or branch office or establish a new branch office.

(ii) You published a notice of your intent to change the location of your home or branch office or establish a new branch office. To satisfy this publication requirement, you must follow the procedures in subpart B of part 116 of this chapter except that:

(A) Under §116.55(d) and (e) of this chapter, your public notice must state that the public may submit comments to you and to the appropriate OCC licensing office, and must provide addresses for you and for the appropriate OCC licensing office where the public may submit comments;

(B) Section 4.14(c) of this chapter, which addresses public inspections of filings with the OCC, does not apply; and

(C) Under §116.60 of this chapter, you must publish the public notice at least 35 days before you take the proposed action. If you publish a public notice more than 12 months before you take the proposed action, the publication is invalid.

(iii) If you intend to change the location of an existing office, you must post a notice of your intent in a prominent location in the existing office to be relocated. You must post the notice for 30 days from the date of publication of the initial public notice described in paragraph (b)(3)(ii) of this section.

(iv)(A) No person files a comment opposing the proposed action within 30 days after the date of the publication of the proposed notice; or

(B) A person files a comment opposing the proposed action and the OCC determines that the comment raises issues that are not relevant to the approval standards in §145.95(b) of this chapter or that OCC action in response to the comment is not required.

(4) *Re-designations of home and branch offices.* You may re-designate an existing branch office as a home office at the same time that you re-designate your existing home office as a branch office.

(c) *Section 5(m) of the HOLA.* If you are incorporated under the laws of, organized in, or do business in the District of Columbia and you satisfy the requirements of paragraph (b) of this section, the Comptroller has approved your home or branch office changes under section 5(m) of the HOLA.

(d) *Maintenance of branch and home office following conversion, consolidation, purchase of bulk assets, merger, or purchase from receiver.* An existing savings association that converts to a Federal savings association may maintain an existing office and a Federal savings association may maintain any office acquired through consolidation, purchase of bulk assets, merger or purchase from the receiver of an association, except to the extent that the approval of the conversion, consolidation, merger, or purchase specifies otherwise.

(e) *Prohibition.* You may not file an application or notice (or utilize any exception described in paragraph (b) of this section) to establish a branch office, if you filed an application to merge or otherwise surrender your charter and the application has been pending for less than six months.

§ 145.95 What processing procedures apply to my home or branch office application or notice?

(a) *Processing procedures.* Applications and notices under § 145.93 are subject to expedited or standard treatment under the application processing procedures at part 116 of this chapter.

(1) *Publication and posting requirements.* (i) You must publish a public notice of your application or notice in accordance with the procedures in subpart B of part 116 of this chapter. Promptly after publication, you must transmit copies of the public notice and the publisher’s affidavit to the appropriate OCC licensing office.

(ii) If you propose to change the location of an existing office, you must also post a notice of the application in a prominent location in the office to be relocated. You must post the notice for 30 days from the date of publication of the initial public notice.

(2) *Comment procedures.* Commenters may submit comments on your application or notice in accordance with the procedures in subpart C of part 116 of this chapter.

(3) *Meeting procedures.* The OCC may arrange a meeting in accordance with the procedures in subpart D of part 116 of this chapter.

(4) *OCC Review.* The OCC will process your application or notice in accord-

ance with the procedures in subpart E of part 116 of this chapter. The applicable review period for applications filed under standard treatment is 30 days rather than the time period specified at § 116.270(a) of this chapter.

(b) *Approval standards.* (1) The OCC will approve an application (or not object to a notice), if your overall policies, condition, and operations afford no basis for supervisory objection.

(i) You should meet or exceed minimum capital requirements under part 167 of this chapter and should be at least adequately capitalized as described in § 165.4(b)(2) of this chapter, before and immediately after the proposed action. If you are undercapitalized as described in § 165.4(b)(3) of this chapter, the OCC will deny your application (or disapprove your notice), unless the proposed action is otherwise permitted under section 38(e)(4) of the FDIA.

(ii) The OCC will evaluate your record of helping to meet the credit needs of your entire community, including low- and moderate-income neighborhoods, under part 195 of this chapter. The OCC may:

(A) Deny your application or disapprove your notice based upon this evaluation; or

(B) Impose a condition to the approval of your application (or non-objection to your notice) requiring you to improve specific practices and/or aspects of your performance under part 195 of this chapter. In most cases, a commitment to improve will not be sufficient to overcome a seriously deficient record.

(iii) The OCC will review the application or notice under the National Environmental Policy Act (42 U.S.C. 3421 *et seq.*) and the National Historic Preservation Act (16 U.S.C. 470).

(2) In reviewing your application and notice, the OCC may consider information available from any source, including any comments submitted by interested parties or views expressed by interested parties at meetings with the OCC.

(3) The OCC may approve an amendment to your charter in connection with a home office relocation under this section.

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(c) *Expiration of OCC approval.* (1) You must open or relocate your office within twelve months of OCC approval of your application (or the date of OCC non-objection to your notice), unless the OCC prescribes another time period. The OCC may extend the time period if it determines that you are making a good-faith effort to promptly open or relocate the proposed office.

(2) If you do not open or relocate the proposed office within this time period, you must comply with the application and notice requirements of this section before you may open or relocate the proposed office.

§ 145.96 Agency office.

(a) *General.* A Federal savings association may establish or maintain an agency office to engage in one or more of the following activities:

(1) Servicing, originating, or approving loans and contracts;

(2) Managing or selling real estate owned by the Federal savings association; and

(3) Conducting fiduciary activities or activities ancillary to the association's fiduciary business in compliance with subpart A of part 150 of this chapter.

(b) *Additional services.* A Federal savings association may request, and the OCC may approve, any service not listed in paragraph (a) of this section, except for payment on savings accounts.

(c) *Records.* A Federal savings association must maintain records of all business it transacts at an agency office. It must maintain these records at the agency office, and must transmit copies to a home or branch office.

§ 145.101 Fiscal agency.

A Federal savings association designated fiscal agent by the Secretary of the Treasury or with OCC approval by another instrumentality of the United States, shall, as such, perform such reasonable duties and exercise only such powers and privileges as the Secretary of the Treasury or such instrumentality may prescribe.

§ 145.121 Indemnification of directors, officers and employees.

A Federal savings association shall indemnify its directors, officers, and

employees in accordance with the following requirements:

(a) *Definitions and rules of construction.* (1) Definitions for purposes of this section.

(i) *Action.* The term "action" means any judicial or administrative proceeding, or threatened proceeding, whether civil, criminal, or otherwise, including any appeal or other proceeding for review;

(ii) *Court.* The term "court" includes, without limitation, any court to which or in which any appeal or any proceeding for review is brought.

(iii) *Final judgment.* The term "final judgment" means a judgment, decree, or order which is not appealable or as to which the period for appeal has expired with no appeal taken.

(iv) *Settlement.* The term "settlement" includes entry of a judgment by consent or confession or a plea of guilty or *nolo contendere*.

(2) References in this section to any individual or other person, including any association, shall include legal representatives, successors, and assigns thereof.

(b) *General.* Subject to paragraphs (c) and (g) of this section, a Federal savings association shall indemnify any person against whom an action is brought or threatened because that person is or was a director, officer, or employee of the association, for:

(1) Any amount for which that person becomes liable under a judgment if such action; and

(2) Reasonable costs and expenses, including reasonable attorney's fees, actually paid or incurred by that person in defending or settling such action, or in enforcing his or her rights under this section if he or she attains a favorable judgment in such enforcement action.

(c) *Requirements.* (1) Indemnification shall be made to such person under paragraph (b) of this section only if:

(i) Final judgment on the merits is in his or her favor; or

(ii) In case of:

(A) Settlement,

(B) Final judgment against him or her, or

(C) Final judgment in his or her favor, other than on the merits, if a majority of the disinterested directors

of the Federal savings association determine that he or she was acting in good faith within the scope of his or her employment or authority as he or she could reasonably have perceived it under the circumstances and for a purpose he or she could reasonably have believed under the circumstances was in the best interests of the savings association or its members.

(2) However, no indemnification shall be made unless the association gives the OCC at least 60 days' notice of its intention to make such indemnification. Such notice shall state the facts on which the action arose, the terms of any settlement, and any disposition of the action by a court. Such notice, a copy thereof, and a certified copy of the resolution containing the required determination by the board of directors shall be sent to the association's supervisory office, which shall promptly acknowledge receipt thereof. The notice period shall run from the date of such receipt. No such indemnification shall be made if the OCC advises the association in writing, within such notice period, the OCC's objection thereto.

(d) *Insurance.* A Federal savings association may obtain insurance to protect it and its directors, officers, and employees from potential losses arising from claims against any of them for alleged wrongful acts, or wrongful acts, committed in their capacity as directors, officers, or employees. However, no Federal savings association may obtain insurance which provides for payment of losses of any person incurred as a consequence of his or her willful or criminal misconduct.

(e) *Payment of expenses.* If a majority of the directors of a Federal savings association concludes that, in connection with an action, any person ultimately may become entitled to indemnification under this section, the directors may authorize payment of reasonable costs and expenses, including reasonable attorneys' fees, arising from the defense or settlement of such action. Nothing in this paragraph (e) shall prevent the directors of the savings association from imposing such conditions on a payment of expenses as they deem warranted and in the interests of the savings association. Before making advance payment of expenses under this

paragraph (e), the savings association shall obtain an agreement that the savings association will be repaid if the person on whose behalf payment is made is later determined not to be entitled to such indemnification.

(f) *Exclusiveness of provisions.* No Federal savings association shall indemnify any person referred to in paragraph (b) of this section or obtain insurance referred to in paragraph (d) of the section other than in accordance with this section. However, an association which has a bylaw in effect relating to indemnification of its personnel shall be governed solely by that bylaw, except that its authority to obtain insurance shall be governed by paragraph (d) of this section.

(g) The indemnification provided for in paragraph (b) of this section is subject to and qualified by 12 U.S.C. 1821(k).

PART 146—FEDERAL MUTUAL SAVINGS ASSOCIATIONS—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

Sec.

146.1 Definitions.

146.2 Procedure; effective date.

146.3 Transfer of assets upon merger or consolidation.

146.4 Voluntary dissolution.

AUTHORITY: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.* 5412(b)(2)(B).

SOURCE: 76 FR 49002, Aug. 9, 2011, unless otherwise noted.

§ 146.1 Definitions.

The terms used in §§ 146.2 and 146.3 shall have the same meaning as set forth in §§ 152.13(b) and 163.22(g) of this chapter.

§ 146.2 Procedure; effective date.

(a) A Federal mutual savings association may combine with any depository institution, provided that:

(1) The combination is in compliance with, and receives all approvals required under, any applicable statutes and regulations;

(2) Any resulting Federal savings association meets the requirements for Federal Home Loan Bank membership and insurance of accounts;