

## § 145.96

(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 12 CFR part 3 or part 167, as applicable and should be at least adequately capitalized as described in 12 CFR 6.4 of this chapter, before and immediately after the proposed action. If you are undercapitalized as described in 12 CFR 6.4 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.

(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 pe-

## 12 CFR Ch. I (1–1–15 Edition)

riod 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.

[76 FR 48999, Aug. 9, 2011, as amended at 79 FR 11313, Feb. 28, 2014]

### § 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;

(3) Any resulting Federal savings association conforms within the time prescribed by the OCC to the requirements of sections 5(c) and 10(m) of the Home Owners' Loan Act; and

(4) The resulting institution shall be a mutually held savings association, unless:

(i) The transaction involves a supervisory merger;

(ii) The transaction is approved under part 192 of this chapter; or

(iii) The transaction involves a transfer in the context of a mutual holding company reorganization under section 10(o) of the Home Owners' Loan Act.

(b) Each Federal mutual savings association, by a two-thirds vote of its board of directors, shall approve a plan of combination evidenced by a combination agreement. The agreement shall state:

(1) That the combination shall not be effective unless and until the combination receives any necessary approval from the OCC pursuant to § 163.22 (a) or (c), or in the case of a transaction requiring a notice pursuant to § 163.22(c), the notice has been filed, and the appropriate period of time has passed or the OCC has advised the parties that it will not disapprove the transaction;

(2) Which constituent institution is to be the resulting institution;

(3) The name of the resulting institution;

(4) The location of the home office and any other offices of the resulting institution;

(5) The terms and conditions of the combination and the method of effectuation;

(6) Any charter amendments, or the new charter in the combination;

(7) The basis upon which the resulting institution's savings accounts will be issued;

(8) If the Federal mutual savings association is the resulting institution, the number, names, residence addresses, and terms of directors;

(9) The effect upon and assumption of any liquidation account of a disappearing institution by the resulting institution; and

(10) Such other provisions, agreements, or understandings as relate to the combination.

(c) Prior written notification or notice to the appropriate OCC licensing office or prior written approval of the OCC, pursuant to § 163.22 of this chapter, is required for every combination. In the case of applications and notices