

(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 pay-

ment 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.

Comptroller of the Currency, Treasury

§ 146.2

§ 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 pursuant to 163.22 (a) or (c), the OCC shall apply the criteria set out in §163.22 of this chapter and shall impose any conditions it deems necessary or appropriate to ensure compliance with those criteria and the requirements of this chapter.

(d) Where the resulting institution is a Federal mutual savings association, the OCC may approve a temporary increase in the number of directors of the resulting institution provided that the association submits a plan for bringing the board of directors into compliance with the requirements of §144.1 of this chapter within a reasonable period of time.

(e) Notwithstanding any other provision of this part, the OCC may require that a plan of combination be submitted to the voting members of any of the mutual savings associations that are constituent institutions at a duly called meeting(s), and that the plan, to be effective, be approved by such voting members.

(f) A conservator or receiver for a Federal mutual savings association may combine the association with another insured depository institution without submitting the plan to the association's board of directors or members for their approval.

§ 146.3

(g) If a plan of combination provides for a resulting Federal mutual savings association's name or location to be changed, its charter shall be amended accordingly. If the resulting institution is a Federal mutual savings association, the effective date of the combination shall be the date specified in the approval; if the resulting institution is not a Federal savings association, the effective date shall be that prescribed under applicable law. Approval of a merger automatically cancels the Federal charter of a Federal association that is a disappearing institution as of the effective date of merger, and the association shall, on that date, surrender its charter to the OCC.

§ 146.3 Transfer of assets upon merger or consolidation.

On the effective date of a merger or consolidation in which the resulting institution is a Federal association, all assets and property of the disappearing institutions shall immediately, without any further act, become the property of the resulting institution to the same extent as they were the property of the disappearing institutions, and the resulting institution shall be a continuation of the entity which absorbed the disappearing institutions. All rights and obligations of the disappearing institutions shall remain unimpaired, and the resulting institution shall, on the effective date of the merger or consolidation, succeed to all those rights and obligations, subject to the Home Owners' Loan Act and other applicable statutes.

§ 146.4 Voluntary dissolution.

(a) A Federal savings association's board of directors may propose a plan for dissolution of the association. The plan may provide for either:

(1) Appointment of the Federal Deposit Insurance Corporation (under section 5 of the Act and section 11 of the Federal Deposit Insurance Act, as amended or section 21A of the Federal Home Loan Bank Act, as amended) as receiver for the purpose of liquidation;

(2) Transfer of all the association's assets to another association or home-financing institution under Federal or state charter either for cash sufficient to pay all obligations of the associa-

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tion and retire all outstanding accounts or in exchange for that association's payment of all the association's outstanding obligations and issuance of share accounts or other evidence of interest to the association's members on a *pro rata* basis; or

(3) Dissolution in a manner proposed by the directors which they consider best for all concerned.

(b) The plan, and a statement of reasons for proposing dissolution and for proposing the plan, shall be submitted to the appropriate OCC licensing office for approval. The OCC will approve the plan if the OCC believes dissolution is advisable and the plan best for all concerned, but if the OCC considers the plan inadvisable, the OCC may either make recommendations to the association concerning the plan or disapprove it. When the plan is approved by the association's board of directors and by the OCC, it shall be submitted to the association's members at a duly called meeting and, when approved by a majority of votes cast at that meeting, shall become effective. After dissolution in accordance with the plan, a certificate evidencing dissolution, supported by such evidence as the may require, shall immediately be filed with the OCC. When the OCC receives such evidence satisfactory to the OCC, it will terminate the corporate existence of the dissolved association and the association's charter shall thereby be canceled. A Federal savings association is not required to obtain approval under this section where the Federal savings association transfers all of its assets and liabilities to a bank in a transaction that is subject to § 163.22(b) of this chapter.

PARTS 147-149 [RESERVED]

PART 150—FIDUCIARY POWERS OF FEDERAL SAVINGS ASSOCIATIONS

Sec.

150.10 What regulations govern the fiduciary operations of Federal savings associations?

150.20 What are fiduciary powers?

150.30 What fiduciary capacities does this part cover?

150.40 When do I have investment discretion?

150.50 What is a fiduciary account?