

officers, or employees. However, no 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 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 a 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 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).

[54 FR 49492, Nov. 30, 1989, as amended at 56 FR 59866, Nov. 26, 1991; 60 FR 66717, Dec. 26, 1995]

PART 546—FEDERAL MUTUAL SAVINGS ASSOCIATIONS—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

Sec.

546.1 Definitions.

546.2 Procedure; effective date.

546.3 Transfer of assets upon merger or consolidation.

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AUTHORITY: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

SOURCE: 54 FR 49517, Nov. 30, 1989, unless otherwise noted.

§ 546.1 Definitions.

The terms used in §§ 546.2 and 546.3 shall have the same meaning as set forth in §§ 552.13(b) and 563.22(g) of this chapter.

[59 FR 44622, Aug. 30, 1994]

§ 546.2 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) In the case of a combination with a bank that is a member of the Bank Insurance Fund, any resulting Federal savings association conforms to the requirements of sections 5(c) and 10(m) of the Home Owners' Loan Act under the standards set forth in section 5(c)(5) of the Home Owners' Loan Act, and in the case of a combination with any other depository institution, any resulting Federal savings association conforms within the time prescribed by the OTS, to the requirements of section 5(c) 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 563b 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: