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 516 of this chapter.

(3) *Meeting procedures.* OTS may arrange a meeting in accordance with the procedures in subpart D of part 516 of this chapter.

(4) *OTS Review.* OTS will process your application or notice in accordance with the procedures in subpart E of part 516 of this chapter. The applicable review period for applications filed under standard treatment is 30 days rather than the time period specified at § 516.270(a) of this chapter.

(b) *Approval standards.* (1) OTS 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 567 of this chapter and should be at least adequately capitalized as described in § 565.4(b)(2) of this chapter, before and immediately after the proposed action. If you are undercapitalized as described in § 565.4(b)(3), OTS will deny your application (or disapprove your notice), unless the proposed action is otherwise permitted under section 38(e)(4) of the FDIA.

(ii) OTS will evaluate your record of helping to meet the credit needs of your entire community, including low- and moderate-income neighborhoods, under part 563e of this chapter. OTS 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 563e of this chapter. In most cases, a commitment to improve will not be sufficient to overcome a seriously deficient record.

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

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

(c) *Expiration of OTS approval.* (1) You must open or relocate your office within twelve months of OTS approval of your application (or the date of OTS non-objection to your notice), unless OTS prescribes another time period. OTS 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.

[69 FR 68249, Nov. 24, 2004]

§ 545.96 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 550 of this chapter.

(b) *Additional services.* A Federal savings association may request, and OTS 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.

[69 FR 68249, Nov. 24, 2004]

§ 545.101 Fiscal agency.

A Federal savings association designated fiscal agent by the Secretary of the Treasury or with Office 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.

§ 545.121 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 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.* Indemnification shall be made to such period under paragraph (b) of this section only if:

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

(2) In case of:

(i) Settlement,

(ii) Final judgment against him or her, or

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

However, no indemnification shall be made unless the association gives the Office 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 Regional Director, who shall promptly acknowledge receipt thereof. The notice period shall run from the date of such receipt. No such indemnification shall be made if the OTS advises the association in writing, within such notice period, of his or her objection thereto.

(d) *Insurance.* A 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 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'