

authorized to enter into an agreement to act as surety subject to the following provisions:

(a) A savings association may enter into a suretyship agreement only if performance under the agreement would create an obligation authorized for investment by a savings association. A savings association's obligation under the suretyship agreement will be treated as a loan to its principal for purposes of the requirements of §§ 563.93 and 563.43 of this chapter.

(b) A savings association must take and maintain a security interest in real estate or marketable securities of its principal having a market value of at least 110 percent of the savings association's suretyship obligation. If real estate, the value must be established by a signed appraisal consistent with the requirements of part 564 of this chapter. In determining compliance with the 110 percent requirement, the savings association must consider the value of prior mortgages, liens or other encumbrances on the property, except those held by the party for whose protection the suretyship agreement is made. If marketable securities, such securities must be of a type in which the savings association is authorized to invest, and the savings association must provide for maintenance of the security at the required level during the term of the suretyship agreement.

(c) To the extent a savings association is required to meet its obligation under a suretyship agreement, the amount expended shall be treated as an extension of credit subject to percentage-of-assets limits in accordance with the obligation thereby created to the savings association.

[54 FR 49492, Nov. 30, 1989, as amended at 59 FR 29502, June 7, 1994]

§§ 545.104—545.120 [Reserved]

§ 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