

**§ 563.142**

**12 CFR Ch. V (1–1–08 Edition)**

of your shares or other ownership interests, any payment to repurchase, redeem, retire, or otherwise acquire debt instruments included in your total capital under § 567.5 of this chapter, and any extension of credit to finance an affiliate’s acquisition of your shares or interests;

(c) Any direct or indirect payment of cash or other property to owners or affiliates made in connection with a corporate restructuring. This includes your payment of cash or property to shareholders of another association or to shareholders of its holding company to acquire ownership in that association, other than by a distribution of shares;

(d) Any other distribution charged against your capital accounts if you would not be well capitalized, as set forth in § 565.4(b)(1) of this chapter, following the distribution; and

(e) Any transaction that the OTS or the Corporation determines, by order or regulation, to be in substance a distribution of capital.

EFFECTIVE DATE NOTE: At 72 FR 69438, Dec. 7, 2007, § 563.141(b) was amended by removing the phrase “in your total capital under § 567.5 of this chapter” and adding the phrase “in your total capital under part 567 of this chapter” in its place, effective Apr. 1, 2008.

**§ 563.142 What other definitions apply to this subpart?**

The following definitions apply to this subpart:

*Affiliate* means an affiliate, as defined under § 563.41(b) of this part.

*Capital* means total capital, as defined under § 567.5(c) of this chapter.

*Net income* means your net income computed in accordance with generally accepted accounting principles.

*Retained net income* means your net income for a specified period less total capital distributions declared in that period.

*Shares* means common and preferred stock, and any options, warrants, or other rights for the acquisition of such stock. The term “share” also includes convertible securities upon their conversion into common or preferred stock. The term does not include convertible debt securities prior to their conversion into common or preferred stock or other securities that are not equity securities at the time of a capital distribution.

EFFECTIVE DATE NOTE: At 72 FR 69438, Dec. 7, 2007, § 563.142 was amended in the definition of “capital” by removing the phrase “total capital, as described under § 567.5(c) of this chapter” and adding the phrase “total capital, as computed under part 567 of this chapter” in its place, effective Apr. 1, 2008.

**§ 563.143 Must I file with OTS?**

Whether and what you must file with the OTS depends on whether you and your proposed capital distribution fall within certain criteria.

(a) *Application required.*

If:	Then you:
(1) You are not eligible for expedited treatment under § 516.5 of this chapter.	Must file an application with the OTS.
(2) The total amount of all of your capital distributions (including the proposed capital distribution) for the applicable calendar year exceeds your net income for that year to date plus your retained net income for the preceding two years.	Must file an application with the OTS.
(3) You would not be at least adequately capitalized, as set forth in § 565.4(b)(2) of this chapter, following the distribution.	Must file an application with the OTS.
(4) Your proposed capital distribution would violate a prohibition contained in any applicable statute, regulation, or agreement between you and the OTS (or the Corporation), or violate a condition imposed on you in an OTS-approved application or notice.	Must file an application with the OTS.