

(b) *Notice required.*

If you are not required to file an application under paragraph (a) of this section, but:	Then you:
(1) You would not be well capitalized, as set forth under § 565.4(b)(1), following the distribution.	Must file a notice with the OTS.
(2) Your proposed capital distribution would reduce the amount of or retire any part of your common or preferred stock or retire any part of debt instruments such as notes or debentures included in capital under part 567 of this chapter (other than regular payments required under a debt instrument approved under § 563.81).	Must file a notice with the OTS.
(3) You are a subsidiary of a savings and loan holding company.	Must file a notice with the OTS.

(c) *No prior notice required.*

If neither you nor your proposed capital distribution meet any of the criteria listed in paragraphs (a) and (b) of this section.	Then you do not need to file a notice or an application with the OTS before making a capital distribution.
--	--

[64 FR 2809, Jan. 19, 1999, as amended at 66 FR 13008, Mar. 2, 2001]

**§ 563.144 How do I file with the OTS?**

(a) *Contents.* Your notice or application must:

- (1) Be in narrative form.
- (2) Include all relevant information concerning the proposed capital distribution, including the amount, timing, and type of distribution.
- (3) Demonstrate compliance with § 563.146.

(b) *Schedules.* Your notice or application may include a schedule proposing capital distributions over a specified period, not to exceed 12 months.

(c) *Timing.* You must file your notice or application at least 30 days before the proposed declaration of dividend or approval of the proposed capital distribution by your board of directors.

**§ 563.145 May I combine my notice or application with other notices or applications?**

You may combine the notice or application required under § 563.143 with any other notice or application, if the capital distribution is a part of, or is proposed in connection with, another transaction requiring a notice or application under this chapter. If you submit a combined filing, you must:

(a) State that the related notice or application is intended to serve as a

notice or application under this subpart; and

(b) Submit the notice or application in a timely manner.

**§ 563.146 Will the OTS permit my capital distribution?**

The OTS will review your notice or application under the review procedures in 12 CFR part 516, subpart E. The OTS may disapprove your notice or deny your application filed under § 563.143, in whole or in part, if the OTS makes any of the following determinations.

(a) You will be undercapitalized, significantly undercapitalized, or critically undercapitalized as set forth in § 565.4(b) of this chapter, following the capital distribution. If so, the OTS will determine if your capital distribution is permitted under 12 U.S.C. 1831o(d)(1)(B).

(b) Your proposed capital distribution raises safety or soundness concerns.

(c) Your proposed capital distribution violates a prohibition contained in any statute, regulation, agreement between you and the OTS (or the Corporation), or a condition imposed on you in an