

(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.
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[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

OTS-approved application or notice. If so, the OTS will determine whether it may permit your capital distribution notwithstanding the prohibition or condition.

[64 FR 2809, Jan. 19, 1999, as amended at 67 FR 78152, Dec. 23, 2002]

Subpart F—Financial Management Policies

§563.161 Management and financial policies.

(a)(1) For the protection of depositors and other savings associations, each savings association and each service corporation must be well managed and operate safely and soundly. Each also must pursue financial policies that are safe and consistent with economical home financing and the purposes of savings associations. In implementing this section, OTS will consider that service corporations may be authorized to engage in activities that involve a higher degree of risk than activities permitted to savings associations.

(2) As part of meeting its requirements under paragraph (a)(1) of this section, each savings association and service corporation must maintain sufficient liquidity to ensure its safe and sound operation.

(b) Compensation to officers, directors, and employees of each savings association and its service corporations shall not be in excess of that which is reasonable and commensurate with their duties and responsibilities. Former officers, directors, and employees of savings association or its service corporation who regularly perform services therefor under consulting contracts are employees thereof for purposes of this paragraph (b).

[54 FR 49552, Nov. 30, 1989, as amended at 66 FR 15017, Mar. 15, 2001]

§563.170 Examinations and audits; appraisals; establishment and maintenance of records.

(a) *Examinations and audits.* Each savings association and affiliate thereof shall be examined periodically, and may be examined at any time, by the Office, with appraisals when deemed advisable, in accordance with general policies from time to time established

by the Office. The costs, as computed by the Office, of any examinations made by it, including office analysis, overhead, per diem, travel expense, other supervision by the Office, and other indirect costs, shall be paid by the savings associations examined, except that in the case of service corporations of Federal savings associations the cost of examinations, as determined by the Office, shall be paid by the service corporations. Payments shall be made in accordance with a schedule of annual assessments based upon each savings association's total assets and of rates for examiner time in amounts determined by the Office.

(b) *Appraisals.* (1) Unless otherwise ordered by the Office, appraisal of real estate by the Office in connection with any examination or audit of a savings association, affiliate, or service corporation shall be made by an appraiser, or by appraisers, selected by the Office's Regional Director of the Region in which such savings association is located. The cost of such appraisal shall promptly be paid by such savings association, affiliate, or service corporation direct to such appraiser or appraisers upon receipt by the savings association, affiliate, or service corporation of a statement of such cost as approved by such Regional Director. A copy of the report of each appraisal made by the Office pursuant to any of the foregoing provisions of this section shall be furnished to the savings association, affiliate, or service corporation, as appropriate within a reasonable time, not to exceed 90 days, following the completion of such appraisals and the filing of a report thereof by the appraiser, or appraisers, with such Regional Director.

(2) The Office may obtain at any time, at its expense, such appraisals of any of the assets, including the security therefor, of a savings association, affiliate, or service corporation as the Office deems appropriate.

(c) *Establishment and maintenance of records.* To enable the Office to examine savings associations and affiliates and audit savings associations, affiliates, and service corporations pursuant to the provisions of paragraph (a) of this section, each savings association, affiliate, and service corporation shall