

**Office of Thrift Supervision, Treasury**

**§ 563.143**

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.

**§ 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.

**§ 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.

(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.