

§ 563.43

(F) OTS or another banking agency initiated a formal enforcement proceeding against the savings association and the proceeding is pending.

(ii) OTS must notify the savings association in writing that it has imposed the notice requirement and must identify the circumstance listed in paragraph (c)(4)(i) of this section that supports the imposition of the notice requirement.

(iii) If OTS has imposed the notice requirement under this paragraph, a savings association must provide a written notice to OTS at least 30 days before the savings association may enter into a transaction with an affiliate or a subsidiary. The written notice must include a full description of the transaction. If OTS does not object during the 30-day period, the savings association may proceed with the proposed transaction.

[68 FR 57797, Oct. 7, 2003, as amended at 68 FR 75110, Dec. 30, 2003]

§ 563.43 Loans by savings associations to their executive officers, directors and principal shareholders.

Pursuant to 12 U.S.C. 1463(a) and 1468, a savings association, its subsidiaries and its insiders (as defined) shall be subject to the restrictions contained in the Federal Reserve Board's Regulation O (12 CFR part 215), in the same manner and to the same extent as if the association were a bank and a member bank of the Federal Reserve System, except that:

(a) Such provisions shall be administered and enforced by the OTS;

(b) References to the term "bank holding company" shall be deemed to refer to "savings and loan holding company";

(c) References to "report of condition filed under 12 U.S.C. 1817(a)(3)" shall be deemed to refer to "Thrift Financial Report";

(d) The term *subsidiary* includes a savings association that is controlled by a company (including for this purpose an insured depository institution) that is a savings and loan holding company. A company has control over a savings association if it: directly or indirectly, or acting through one or more other persons owns, controls, or has the power to vote 25 percent or more of

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any class of voting securities; or would be deemed to control the company under § 574.4(a) of this chapter or presumed to control the company under § 574.4(b) of this chapter, and in the latter case, control has not been rebutted. Notwithstanding any other provision of this section, no company shall be deemed to own or control another by virtue of its ownership or control of shares in a fiduciary capacity. When used to refer to a subsidiary of a savings association, the term *subsidiary* means a "subsidiary" that is controlled by the savings association within the meaning of 12 CFR part 574 of this chapter.

(e) References to the Reserve Bank or the Comptroller shall be deemed to include the Director of OTS; and

(f) References to the term "unimpaired capital and unimpaired surplus" shall be deemed to refer to "unimpaired capital and unimpaired surplus" as defined at § 560.93(b)(11) of this part.

[57 FR 45980, Oct. 6, 1992, as amended at 59 FR 53571, Oct. 25, 1994; 60 FR 66869, Dec. 27, 1995; 67 FR 77918, Dec. 20, 2002; 68 FR 57798, Oct. 7, 2003; 69 FR 76602, Dec. 22, 2004; 73 FR 18, Jan. 2, 2008]

§ 563.47 Pension plans.

(a) *General.* No savings association or service corporation thereof shall sponsor an employee pension plan which, because of unreasonable costs or any other reason, could lead to material financial loss or damage to the sponsor. For purposes of this section, an employee pension plan is defined in section 3(2) of the Employee Retirement Income Security Act of 1974, as amended. The prospective obligation or liability of a plan sponsor to each plan participant shall be stated in or determinable from the plan, and, for a defined benefit plan, shall also be based upon an actuarial estimate of future experience under the plan.

(b) *Funding.* Actuarial cost methods permitted under the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954, as amended, shall be used to determine plan funding.

(c) *Plan amendment.* A plan may be amended to provide reasonable annual