

Subpart D [Reserved]

Subpart E—Capital Distributions

§ 163.140 What does this subpart cover?

This subpart applies to all capital distributions by a Federal savings association (“you”).

§ 163.141 What is a capital distribution?

A capital distribution is:

(a) A distribution of cash or other property to your owners made on account of their ownership, but excludes:

(1) Any dividend consisting only of your shares or rights to purchase your shares; or

(2) If you are a Federal mutual savings association, any payment that you are required to make under the terms of a deposit instrument and any other amount paid on deposits that the OCC determines is not a distribution for the purposes of this section;

(b) Your payment to repurchase, redeem, retire or otherwise acquire any of your shares or other ownership interests, any payment to repurchase, redeem, retire, or otherwise acquire debt instruments included in your total capital under part 167 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 §165.4(b)(1) of this chapter, following the distribution; and

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

§ 163.142 What other definitions apply to this subpart?

The following definitions apply to this subpart:

Affiliate means an affiliate, as defined under §563.41(b) until superseded by regulations of the Board of Governors of the Federal Reserve System regarding transactions with affiliates.

Capital means total capital, as computed under part 167 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.

§ 163.143 Must I file with the OCC?

Whether and what you must file with the OCC 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 § 116.5 of this chapter.	Must file an application with the OCC.
(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 OCC.
(3) You would not be at least adequately capitalized, as set forth in § 165.4(b)(2) of this chapter, following the distribution.	Must file an application with the OCC.

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If:	Then you:
(4) Your proposed capital distribution would violate a prohibition contained in any applicable statute, regulation, or agreement between you and the OCC or the OTS, or violate a condition imposed on you in an application or notice approved by the OCC or the OTS.	Must file an application with the OCC.

(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 § 165.4(b)(1), following the distribution.	Must file a notice with the OCC.
(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 167 of this chapter (other than regular payments required under a debt instrument approved under § 163.81).	Must file a notice with the OCC.
(3) You are a subsidiary of a savings and loan holding company.	Except as provided in (d), you must file a notice with the OCC.

(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 OCC before making a capital distribution.
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(d) Informational copy of notice required.

If you are a subsidiary of a stock savings and loan holding company that is filing a notice with the Board of Governors of the Federal Reserve System (Board) for a cash dividend pursuant to 12 U.S.C. 1467a(f) and neither an application under (a), nor a notice under (b)(1) or (b)(2) is required,	Then you do not file a notice under (b)(3) but you must provide an informational copy to the OCC of the notice filed with the Board, at the same time it is filed with the Board.
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§ 163.144 How do I file with the OCC?

(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 § 163.146.

(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.

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

You may combine the notice or application required under § 163.143 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.

§ 163.146 Will the OCC permit my capital distribution?

The OCC will review your notice or application under the review procedures in 12 CFR part 116, subpart E, except that the OCC will not act on informational copies of the notice submitted to the OCC pursuant to § 163.143(d). The OCC may disapprove your notice or deny your application filed under § 163.143, in whole or in part, if it makes any of the following determinations.

(a) You will be undercapitalized, significantly undercapitalized, or critically undercapitalized as set forth in § 165.4(b) of this chapter, following the capital distribution. If so, the OCC 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 OCC or the OTS, or a condition imposed on you in an application or notice approved by the OCC or the OTS. If so, the OCC will determine whether it may permit your capital distribution notwithstanding the prohibition or condition.

Subpart F—Financial Management Policies

§ 163.161 Management and financial policies.

(a)(1) For the protection of depositors and other savings associations, each Federal 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, the OCC 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 Federal 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 Federal 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 therefore under consulting contracts are employees thereof for purposes of this paragraph (b).

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

(a) *Examinations and audits.* Each Federal savings association and affiliate thereof shall be examined periodically, and may be examined at any time, by the OCC, with appraisals when deemed advisable, in accordance with general policies from time to time established by the OCC. The costs, as computed by the OCC, of any examinations made by it, including office analysis, overhead, per diem, travel expense, other supervision by the OCC, 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 OCC, 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 OCC.

(b) *Appraisals.* (1) Unless otherwise ordered by the OCC, appraisal of real estate by the OCC 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 OCC. 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 the OCC. A copy of the report of each appraisal made by the OCC