

BILLING CODE: 6720-01

**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**12 CFR Parts 563, 563f and 574**

**[No. 98-96]**

**RIN 1550-AB10**

**Agency Disapproval of Directors and Senior Executive Officers of  
Savings Associations and Savings and Loan Holding Companies**

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Final Rule.

**SUMMARY:** The Office of Thrift Supervision (OTS) is issuing a final rule to amend its regulations implementing section 32 of the Federal Deposit Insurance Act (FDIA). This statute requires certain savings associations and savings and loan holding companies to provide prior notice of the appointment or employment of directors and senior executive officers. The final rule will eliminate unnecessary regulatory burden, implement changes enacted in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), and more closely conform OTS regulations to those of the other banking agencies as required under section 303 of the Community Development and Regulatory Improvement Act of 1994 (CDRIA).

**EFFECTIVE DATE:** [insert date of publication in Federal Register].

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 32 of FDIA<sup>1</sup> requires certain savings associations and savings and loan holding companies to notify the OTS at least 30 days before adding any individual to the board of directors or employing an individual as a senior executive officer. Section 2209 of the EGRPRA<sup>2</sup> amended section 32 of the FDIA by changing the circumstances under which a notice must be filed. Section 2209 also provided that the OTS may have as long as 90 days to issue a notice of disapproval of the proposed addition of a director or employment of a senior executive officer.

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<sup>1</sup> 12 U.S.C. 1831i.

<sup>2</sup> Pub.L. 104-208, 110 Stat. 3009 (Sept. 30, 1996).

On March 27, 1998, the OTS published a notice of proposed rulemaking to:

- 1) amend its regulations implementing section 32 of FDIA to reflect the EGRPRA amendments,
- 2) eliminate unnecessary burden, and
- 3) in accordance with section 303 of the CDRIA,<sup>3</sup> conform the proposed OTS rule generally to regulations that have been promulgated by the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), and the Federal Deposit Insurance Corporation (FDIC).<sup>4</sup>

In addition, the OTS rewrote the proposed rule using plain language drafting techniques promoted by the Vice President's National Performance Review Initiative and new guidance in the Federal Register Document Drafting Handbook (January 1997 edition).

## II. Summary of Comments and Description of the Final Rule

The public comment period on the proposed rule closed on May 26, 1998. The OTS received two comments on its proposal. Commenters included one savings association and one trade association. One commenter expressed general support for the proposed rule, including the use of plain language, which it noted reduces regulatory burden and makes compliance easier. The other commenter

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<sup>3</sup> Pub. L. 103-325, 108 Stat. 2215 (Sept. 23, 1994).

<sup>4</sup> (OCC) 61 FR 60341 (November 27, 1996); (FRB) 62 FR 9290 (February 28, 1997); (FDIC) 63 FR 44686 (August 20, 1998).

also supported the rule, and suggested that the rule be clarified to specifically state that an individual seeking election to the board of directors of a savings association or savings and loan holding company, not nominated by management, is not required to provide prior notice or obtain a waiver, unless the savings association or savings and loan holding company is itself subject to the rule, e.g., it is in troubled condition. The OTS has clarified the rule as suggested by the commenter, in new § 563.560(b).<sup>5</sup>

The OTS has a regulatory project underway that would reorganize, revise and streamline OTS regulations addressing directors, officers and employees. These regulations will eventually be consolidated into new subparts of part 563. Today's final rule implementing § 32 of the FDIA will be included in new subpart H of part 563. Accordingly, OTS has re-numbered the proposed provision sections 574.10 through 574.18 to new subpart H provision sections 563.550 through 563.590. The final rule also includes technical changes to citations to part 574 contained in part 563f of OTS regulations. Other than the re-numbering, today's final rule is substantially identical to the March proposal.

### **III. Disposition of Existing Regulations**

The following chart gives an overview of the changes made to former § 574.9.

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<sup>5</sup> See proposed § 574.12(b).

<u>Revised Provision</u>	<u>Former Provision</u>	<u>Comments</u>
§ 563.550		Added.
§ 563.555	§ 574.9(a)	Modified.
§ 563.560	§ 574.9(b), (c)(3) and (d)(1)(ii)	Significantly modified.
-	§ 574.9(c)(1) and (2)	Deleted.
§ 563.565	§ 574.9(d)(1)	Modified.
§ 563.570	§ 574.9(d)(1) and (2)	Modified and added.
§ 563.575	§ 574.9(d)(3) and (4)	Significantly modified.
-	§ 574.9(d)(5)	Deleted.
§ 563.580	§ 574.9(d)(6)	Modified.
§ 563.585	§ 574.9(b)(2), (d)(7) and (d)(9)	Significantly modified.
§ 563.590	§ 574.9(d)(8)	Modified.

#### **IV. Executive Order 12866**

The Director of the OTS has determined that this final rule does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

#### **V. Regulatory Flexibility Act**

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that the final rule does not have a significant economic impact on a substantial number of small entities. The final rule does not impose any additional burdens or requirements upon small entities and reduces several paperwork and other burdens on all savings associations and savings and loan holding companies.

#### **VI. Paperwork Reduction Act**

There are no new information collection requirements contained in this final rule. The information collection requirements contained in this final rule are the same as those required in the form Interagency Notice of Change in Director and Senior Executive Officer,<sup>6</sup> which has been previously submitted to and approved by the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB Control No. 1550-0047.

#### **VII. Unfunded Mandates Act of 1995**

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may

result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OTS has determined that the final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of \$100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

#### **VIII. Effective Date**

Section 302 of the CDRIA requires that regulations that impose additional reporting, disclosure, or other new requirements take effect on the first day of the calendar quarter following publication of the rule unless, among other things, the agency determines, for good cause, that the regulations should become effective before that date. The OTS believes that an immediate effective date is appropriate since the final rule relieves existing regulatory burdens on savings associations and savings and loan holding companies. Further, the OTS believes that CDRIA does not apply because this final rule imposes no new burdens immediately on existing savings associations or savings and loan holding companies. For these reasons, the OTS believes that an immediate effective date is appropriate for this final rule.

Section 553(d) of the Administrative Procedure Act (APA) requires an agency to publish a substantive rule at least 30 days before its effective date.

Section 553(d) of the APA permits waiver of the 30-day delayed effective date requirement for, *inter alia*, good cause or where a rule relieves a regulatory restriction. The OTS further finds that the 30-day delayed effective date requirement may be waived because this final rule relieves regulatory restrictions on savings associations and savings and loan holding companies.

#### **List of Subjects**

##### **12 CFR Part 563**

Accounting, Advertising, Conflict of interest, Corporate Opportunity, Crime, Currency, Holding companies, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

##### **12 CFR Part 563f**

Antitrust, Holding companies, Reporting and recordkeeping requirements, Savings associations.

##### **12 CFR Part 574**

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends chapter V, title 12, Code of Federal Regulations, as set forth below:

## **PART 563 - OPERATIONS**

1. The authority citation for part 563 is revised to read as follows:

**Authority:** 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831i, 3806, 42 U.S.C. 4106.

2. Subpart H, consisting of §§ 563.550 through 563.590, is added to read as follows:

### **Subpart H - Notice of Change of Director or Senior Executive Officer**

#### **Sec.**

- 563.550**      **What does this subpart do?**
- 563.555**      **What definitions apply to this subpart?**
- 563.560**      **Who must give prior notice?**
- 563.565**      **What procedures govern the filing of my notice?**
- 563.570**      **What information must I include in my notice?**
- 563.575**      **What procedures govern OTS review of my notice for completeness?**
- 563.580**      **What standards and procedures will govern OTS review of the substance of my notice?**
- 563.585**      **When may a proposed director or senior executive officer begin service?**

**563.590** When will the OTS waive the prior notice requirement?

**Subpart H - Notice of Change of Director or Senior Executive Officer**

**§ 563.550** What does this subpart do?

This subpart implements 12 U.S.C. 1831i, which requires certain savings associations and savings and loan holding companies to notify the OTS before appointing or employing directors and senior executive officers.

**§ 563.555** What definitions apply to this subpart?

The following definitions apply to this subpart:

Director means an individual who serves on the board of directors of a savings association or savings and loan holding company. This term does not include an advisory director who:

- (1) Is not elected by the shareholders;
- (2) Is not authorized to vote on any matters before the board of directors or any committee of the board of directors;
- (3) Provides only general policy advice to the board of directors or any committee of the board of directors; and

(4) Has not been identified by the OTS in writing as an individual who performs the functions of a director, or who exercises significant influence over, or participates in, major policymaking decisions of the board of directors.

Senior executive officer means an individual who holds the title or performs the function of one or more of the following positions (without regard to title, salary, or compensation): president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer.

Senior executive officer also includes any other person identified by the OTS in writing as an individual who exercises significant influence over, or participates in, major policymaking decisions, whether or not hired as an employee.

Troubled condition means:

(1) A savings association that has a composite rating of 4 or 5, as defined in § 516.3(c) of this chapter;

(2) A savings and loan holding company that has an unsatisfactory rating under the OTS's holding company rating system, or that is informed in writing by the OTS that it has an adverse effect on its subsidiary savings association;

(3) A savings association or savings and loan holding company that is subject to a capital directive, a cease-and-desist order, a consent order, a formal written agreement, or a prompt corrective action directive relating to the safety

and soundness or financial viability of the savings association, unless otherwise informed in writing by the OTS; or

(4) A savings association or savings and loan holding company that is informed in writing by the OTS that it is in troubled condition based on information available to the OTS.

**§ 563.560 Who must give prior notice?**

(a) Savings association or savings and loan holding company. Except as provided under § 563.590, you must notify the OTS at least 30 days before adding or replacing any member of your board of directors, employing any person as a senior executive officer, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive position if:

(1) You are a savings association and at least one of the following circumstances apply:

(i) You do not comply with all minimum capital requirements under part 567 of this chapter;

(ii) You are in troubled condition; or

(iii) The OTS has notified you, in connection with its review of a capital restoration plan required under section 38 of the Federal Deposit Insurance

Act or part 565 of this chapter or otherwise, that a notice is required under this subpart; or

(2) You are a savings and loan holding company and you are in troubled condition.

(b) Notice by individual. If you are an individual seeking election to the board of directors of a savings association or savings and loan holding company described in paragraph (a) of this section, and have not been nominated by management, you must either provide the prior notice required under paragraph (a) of this section or follow the process under § 563.590(b).

**§ 563.565 What procedures govern the filing of my notice?**

The procedures found in § 516.1 of this chapter govern the filing of your notice under § 563.560.

**§ 563.570 What information must I include in my notice?**

(a) Content requirements. Your notice must include:

(1) The information required under 12 U.S.C. 1817(j)(6)(A), and the information prescribed in the Interagency Notice of Change in Director or Senior Executive Officer and the Interagency Biographical and Financial Report;

(2) Legible fingerprints of the proposed director or senior executive officer. You are not required to file fingerprints if, within three years prior to the date of submission of the notice, the proposed director or senior executive

officer provided legible fingerprints as part of a notice filed with the OTS under 12 U.S.C. 1831i; and

(3) Such other information required by the OTS.

(b) Modification of content requirements. The OTS may require or accept other information in place of the content requirements in paragraph (a) of this section.

**§ 563.575 What procedures govern OTS review of my notice for completeness?**

The OTS will first review your notice to determine whether it is complete.

(a) If your notice is complete, the OTS will notify you in writing of the date that the OTS received the complete notice.

(b) If your notice is not complete, the OTS will notify you in writing what additional information you need to submit, why we need the information, and when you must submit it. You must, within the specified time period, provide additional information or request that the OTS suspend processing of the notice. If you fail to act within the specified time period, the OTS may treat the notice as withdrawn or may review the application based on the information provided.

**§ 563.580 What standards and procedures will govern OTS review of the substance of my notice?**

The OTS will disapprove a notice if, pursuant to the standard set forth in 12 U.S.C. 1831i(e), the OTS finds that the competence, experience, character, or integrity of the proposed director or senior executive officer indicates that it would not be in the best interests of the depositors of the savings association or of the public to permit the individual to be employed by, or associated with, the savings association or savings and loan holding company. If the OTS disapproves a notice, it will issue a written notice that explains why the OTS disapproved the notice. The OTS will send the notice to the savings association or savings and loan holding company and the individual.

**§ 563.585 When may a proposed director or senior executive officer begin service?**

(a) A proposed director or senior executive officer may begin service 30 days after the date the OTS receives all required information, unless:

- (1) The OTS notifies you that it has disapproved the notice; or
- (2) The OTS extends the 30-day period for an additional period not to exceed 60 days. If the OTS extends the 30-day period, it will notify you in writing that the period has been extended, and will state the reason for the extension. The proposed director or senior executive officer may begin service upon expiration of the extended period, unless the OTS notifies you that it has disapproved the notice during the extended period.

(b) Notwithstanding paragraph (a) of this section, a proposed director or senior executive officer may begin service after the OTS notifies you, in writing, of its intention not to disapprove the notice.

**§ 563.590 When will the OTS waive the prior notice requirement?**

(a) Waiver request. (1) An individual may serve as a director or senior executive officer before filing a notice under this subpart if the OTS issues a written finding that:

- (i) Delay would threaten the safety or soundness of the savings association;
- (ii) Delay would not be in the public interest; or
- (iii) Other extraordinary circumstances exist that justify waiver of prior notice.

(2) If the OTS grants a waiver, you must file a notice under this subpart within the time period specified by the OTS.

(b) Automatic waiver. An individual may serve as a director before filing a notice under this subpart, if the individual was not nominated by management and the individual submits a notice under this subpart within seven days after election as a director.

(c) Subsequent OTS action. The OTS may disapprove a notice within 30 days after the OTS issues a waiver under paragraph (a) of this section or within

30 days after the election of an individual who has filed a notice and is serving pursuant to an automatic waiver under paragraph (b) of this section.

**PART 563f - MANAGEMENT OFFICIAL INTERLOCKS**

3. The authority citation for part 563f continues to read as follows:

**Authority:** 12 U.S.C. 3201 - 3208.

4. Section 563f.2 is amended by revising paragraph (l)(1)(iii) to read as follows:

**§ 563f.2 Definitions.**

\* \* \* \* \*

(l) Management official. (1) \* \* \*

(iii) A senior executive officer as that term is defined in § 563.555 of this chapter;

\* \* \* \* \*

5. Section 563f.5 is amended by revising paragraphs (b)(2)(i) and (b)(2)(ii) to read as follows:

**§ 563f.5 Regulatory Standards exemption.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) That official is permitted by OTS to serve as a director or senior executive officer of that institution pursuant to § 563.585 of this chapter; and

(ii) The institution had operated for less than two years, was not in compliance with minimum capital requirements, or otherwise was in “troubled condition” as defined in § 563.555 of this chapter at the time the service under § 563.585 of this chapter was permitted.

\* \* \* \* \*

6. Section 563f.6 is amended by revising paragraph (b) to read as follows:

**§ 563f.6 Management Consignment exemption.**

\* \* \* \* \*

(b) \* \* \*

(1) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(3) of this section if that official is permitted by the OTS to serve as a director or senior executive officer of that institution pursuant to § 563.585 of this chapter and the institution had operated for less than two years at the time the service under § 563.585 of this chapter was permitted; and

(2) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(4) of this section if that official is permitted by the OTS to serve as a director or senior executive officer of that

institution pursuant to § 563.585 of this chapter and the institution was not in compliance with minimum capital requirements or otherwise was in "troubled condition" as defined under § 563.555 of this chapter at the time service under § 563.585 of this chapter was permitted.

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**PART 574 - ACQUISITION OF CONTROL OF SAVINGS ASSOCIATIONS**

7. The authority citation for part 574 is revised to read as follows:

**Authority:** 12 U.S.C. 1467a, 1817.

**§ 574.9 [Removed]**

8. Section 574.9 is removed.

**DATED:** September 18, 1998

By the Office of Thrift Supervision



Ellen Seidman  
Director