



Office of Thrift Supervision

Department of the Treasury

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Deputy Director

Any attachments to this document are rescinded only as they relate to national banks and federal savings associations.

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MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS OF THRIFTS THAT ARE PUBLIC ISSUERS OF SECURITIES

FROM: Richard M. Riccobono *Richard M. Riccobono*

SUBJECT: Filing of Section 906 Sarbanes-Oxley Act Certifications with OTS

Any thrift that is a public issuer of securities must comply with the Sarbanes-Oxley Act (SOX), including provisions related to auditor independence, corporate responsibility, and enhanced financial disclosures. These public reporting thrifts file certain reports with OTS instead of the Securities and Exchange Commission (SEC) under section 12(i) of the Securities Exchange Act of 1934. The implementing OTS regulation is 12 CFR Part 563d.¹ SOX expanded section 12(i) to give OTS and the other federal banking agencies the authority to administer and enforce certain of the new requirements established by SOX for the depository institutions they regulate.

Section 906 of SOX² is a criminal provision that requires periodic reports filed with the SEC to be accompanied by CEO/CFO certifications related to fair presentation, in all material respects, of the financial statements. However, thrifts that are public issuers file these periodic reports with OTS, not the SEC. A question has arisen whether thrift public issuers should file their section 906 certifications with OTS.

Pending any different guidance from the Department of Justice interpreting this criminal provision, the section 906 certifications should accompany the periodic reports you file with OTS. The certification should be worded in essentially the same manner as the statutory requirement, and each certifying officer should sign a separate certificate.

¹ OTS will be updating part 563d to reflect the SOX amendments.

² 18 U.S.C. § 1350.