

**UNITED STATES OF AMERICA**  
**Before The**  
**OFFICE OF THRIFT SUPERVISION**  
**DEPARTMENT OF THE TREASURY**

In the Matter of:	)	
	)	
	)	
GATEWAY BANK, F.S.B.	)	No.: AP-2011-01
	)	
	)	
San Francisco, California	)	Effective Date: December 30, 2010
OTS Docket No. 08857	)	
	)	

**NOTICE OF CHARGES AND HEARING FOR  
CEASE AND DESIST ORDER FOR AFFIRMATIVE RELIEF**

**I. PRELIMINARY STATEMENT.**

1. The Director of the Office of Thrift Supervision (OTS), pursuant to Section 8(b) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1818(b), issues this Notice of Charges and Hearing for Cease and Desist Order for Affirmative Relief (Notice). By issuing this Notice, the OTS commences administrative adjudicatory proceedings against Gateway Bank, F.S.B. (Gateway or Association), San Francisco, California, OTS Docket No. 08857.

2. The OTS charges that Gateway has engaged in unsafe or unsound practices,

including, but not limited to; operating:

- (a) Gateway with an insufficient level of capital protection for the volume, type, and quality of assets held by the Association;
- (b) Gateway without creating and maintaining an appropriate Allowance for Loan and Lease Loss (ALLL) methodology; and,
- (c) Gateway without adequate liquidity or a proper Contingency Funding Plan.

3. The OTS charges that Gateway has engaged in violations of law or regulation including, but not limited to:

- (a) 12 C.F.R. § 563.180 (pertaining to the preparation and filing of suspicious activity reports (SARs));
- (b) 12 C.F.R. § 563.177 (requiring procedures for monitoring Bank Secrecy Act compliance);
- (c) 12 U.S.C. §1831(f) and 12 C.F.R. § 337.6(b)(2) (prohibiting acceptance of brokered deposits);
- (d) 12 C.F.R. §§ 571.82 and 571.90 (regarding detection, prevention, and mitigation of identity theft pursuant to the Fair Credit Reporting Act and identify theft “red flags”); and
- (e) 12 C.F.R. § 572.9 (requiring timely notice of special flood hazards and availability of Federal disaster relief assistance).

4. The OTS charges that grounds exist to require Gateway to cease and desist from unsafe or unsound practices and/or violations of law and regulations, and to take other

affirmative correction action pursuant to 12 U.S.C. § 1818(b).

## II. JURISDICTION.

5. Gateway is, and at relevant times, has been, a stock form federal savings association with a charter issued under the Home Owners' Loan Act (HOLA), 12 U.S.C. §§ 1461 *et. seq.* Gateway maintains its home office in San Francisco, California. Among other banking services, Gateway accepts deposits, and such deposits are insured by the Federal Deposit Insurance Corporation (FDIC). *See* 12 U.S.C. §§ 1811 *et seq.* Gateway is, and at all relevant times, has been, a "savings association" (as defined by 12 U.S.C. §§ 1462(4) and 1813 (b)) and an "insured depository institution" (as defined by 12 U.S.C. §§ 1813(c)(1)).

6. Pursuant to Sections 4 and 5 of the HOLA, 12 U.S.C. §§ 1463 and 1464, Gateway is, and has been, subject to examination, supervision and regulation by the OTS.

7. The OTS is the "appropriate federal banking agency" to initiate cease and desist proceedings against Gateway pursuant to 12 U.S.C. §1818(b). *See* 12 U.S.C. §§ 1813(q)(4) and 1464(d)(1)(A).

## III. FACTUAL ALLEGATIONS AND CHARGES.

### A. Background.

8. The OTS commenced a comprehensive risk-focused safety and soundness, and compliance examination of Gateway on February 22, 2010, which was completed on May 28, 2010 (2010 Examination).<sup>1</sup> The 2010 Examination included a review and evaluation of capital

---

<sup>1</sup> The 2010 Examination covered the 18-month period ending December 31, 2009, although subsequent events were also evaluated.

adequacy, asset quality, management effectiveness, earnings performance, liquidity, asset/liability management, sensitivity to market risk and compliance with law and regulation.

9. The 2010 Examination concluded that Gateway's condition had materially deteriorated from the prior OTS examination. Specifically the 2010 Examination noted:

a) Gateway had net after tax losses of \$14.9 million that were recognized during the 18-month examination review period ending December 31, 2009, as well as an additional \$5.2 million in net losses for the quarter ending March 31, 2010;

b) Management and oversight of Gateway's operations was unsatisfactory;

c) Classified assets increased substantially from \$23.3 million reported during the last examination to \$53.5 million as December 31, 2009;

d) Gateway had an elevated level of liquidity risk and requires a higher level of on-balance sheet liquidity; and,

e) Gateway operated without effective compliance management monitoring, self-assessment, testing, or training.

**B. Gateway's Unsafe or Unsound Practices.**

**1. Unsafe or unsound liquidity management.**

10. During the 2010 Examination, the OTS found that Gateway had an elevated level of liquidity risk that requires the bank to maintain a higher level of liquidity. OTS also found that Gateway's Liquidity Policy and its Contingency Funding Plan – i.e., the bank's planned course of action if the bank is unable to fund its obligations – were inadequate to address the bank's liquidity needs in light of the limited sources of funds available to Gateway.

11. Gateway has engaged in an unsafe or unsound practice by failing to establish adequate liquidity management policies and practices to ensure its ability to fund all financial obligations and commitments in a timely manner.

**2. Unsafe or unsound capital levels.**

12. During the 2010 Examination, the OTS found that Gateway's operating losses have eroded the bank's capital levels significantly. Further, the OTS concluded that Gateway should have regulatory capital ratios of at least 10 percent for Tier 1 (core) capital and at least 14 percent for total risk based capital in order to operate in a safe and sound manner.

13. Gateway has engaged in an unsafe or unsound practice by failing to maintain capital levels that are adequate relative to the risks inherent in its operations and business model.

**3. Unsafe or unsound levels of classified assets.**

14. During the 2010 Examination, the OTS found that the quality of assets held by Gateway deteriorated significantly, creating an excessive level of problem assets at the bank. At December 31, 2009, Gateway reported classified assets – i.e., assets held by the bank whose value may not be recoverable – totaling \$41.9 million. OTS examiner adjustments increased the level of classified assets to \$53.5 million. The total amount of classified assets represents an increase of \$24.2 million or 83 percent from the level reported by Gateway at June 30, 2008 (\$29.3 Million).

15. Gateway engaged in an unsafe or unsound practice by operating with a level of classified assets that is excessive relative to its capital and loan loss reserves.

**4. Ineffective and Inadequate Internal Asset Review.**

16. During the 2010 Examination, the OTS found that Gateway's Internal Asset Review (IAR) – i.e., the process in which the bank identifies all major asset portfolio problems,

provides an assessment of its overall asset quality, and assesses risk of loss -- was ineffective due to its limited scope. The OTS found that Gateway's adverse classifications were delinquency-driven and not determined by a comprehensive assessment of all sources of repayment of the loans. The OTS also found that the scope of the IAR needs to be expanded to include other assets that are exposed to credit risk such as the investment securities portfolio, loans that Gateway management has identified as moving to foreclosure but may not necessarily be more than 90 days past due, and previously modified loans that are at least 30 days past due.

17. Gateway engaged in an unsafe or unsound practice by failing to perform adequate and effective IAR process.

**5. Unsafe or unsound ALLL practices.**

18. During the 2010 Examination, the OTS found a number of deficiencies in the methodology Gateway uses to determine its Allowance for Loan and Lease Losses (ALLL) – i.e., the valuation allowances established to absorb unidentified losses inherent in the bank's overall loan and lease portfolio. In addition, because of these deficiencies, the amount of Gateway's ALLL was inadequate.

19. Gateway engaged in an unsafe or unsound practice by utilizing a deficient methodology to determine the bank's ALLL and failing to establish and maintain an adequate ALLL level.

**6. Unsafe or unsound loan modification practices.**

20. During the 2010 Examination, the OTS found the following:

a) loans were modified without adequately analyzing the borrowers' capacity to make payments under the modified terms;

b) loans reviewed had debt-to-income ratios that were not calculated; and

c) loans had debt-to-income ratios that were not accurately calculated.

21. Gateway engaged in an unsafe or unsound practice by failing to establish adequate loan modification policies, procedures and practices for residential loans.

**7. Lack of internal controls to identify fraudulent loans.**

22. During the 2010 Examination, the OTS found that Gateway purchased nine fraudulent loans totaling \$1.25 million and subsequently sold those nine fraudulent loans to Fannie Mae. These nine loans were all refinance transactions secured by the borrowers' primary residence. In all nine loans the seller did not pay off the first lien holder yet sold the loans to Gateway as if Gateway had first liens.

23. Gateway engaged in an unsafe or unsound practice by failing to establish and implement preventative and detective internal controls to identify and guard against the bank's purchase of fraudulent loans.

**C. Violations of Law.**

24. The 2010 Examination found Gateway failed to comply with regulations pertaining to the preparation and filing of suspicious activity reports (SARs), in violation of 12 C.F.R. § 563.180. Specific findings were:

a) Gateway violated the timeframes for filing SARs no later than 30 calendar days from the date of initial detection of the facts that may constitute a basis for the filing of a SAR if the suspect can be identified and within 60 days of discovery if no suspect can be identified; and,

b) Gateway failed to file SARs on any of the nine fraudulent loans totaling \$1.25 million described in paragraph 23 above.

25. The 2010 Examination found Gateway failed to comply with procedures for

monitoring Bank Secrecy Act (BSA) compliance in violation of 12 C.F.R. §563.177 as follows:

a) Gateway's BSA program does not incorporate a written comprehensive anti-money laundering/suspicious activity monitoring component in violation of 12 C.F.R. §177(c)(1) and 12 C.F.R. § 563.177(b)(1);

b) Gateway failed to conduct independent testing of its BSA program, as required by 12 C.F.R. § 563.177(c)(2);

c) Gateway did not have a BSA Compliance Officer who meets the requirements of 12 C.F.R. § 563.177(c)(3); and

d) Gateway's BSA/AML training program is not in compliance with 12 C.F.R. § 563.177(c)(4).

26. The 2010 Examination found Gateway failed to comply with applicable regulations regarding detection, prevention, and mitigation of identity theft "red flags" in violations of 12 C.F.R. §571.82 and 12 C.F.R. § 571.90.

27. The 2010 Examination found Gateway accepted brokered deposits in violation of 12 C.F.R. § 1831(f) and 12 C.F.R. § 337.6(b)(2).

28. The 2010 Examination determined that Gateway accepted approximately two hundred separate certificates of deposit (CDs) that are brokered deposits as that term is defined at 12 C.F.R. § 6(a)(2), while Gateway was not "well capitalized," and without the prior written approval of the FDIC.

29. As of February 28, 2010, the brokered deposits referred to in paragraph 22 totaled approximately \$38 million.



**IV. STATUTORY CHARGES UNDER 12 U.S.C. § 1818(b).**

30. As alleged above, Gateway has engaged in unsafe or unsound practices, and violated laws and regulations.

31. The OTS charges that grounds exist for the issuance to Gateway of a cease and desist order with affirmative corrective action provisions and provisions imposing limitations on activities, pursuant to 12 U.S.C. § 1818(b) (including paragraphs (b)(6) and (b)(7)).

**V. REQUESTED RELIEF AND NOTICE OF HEARING.**

32. Notice is hereby given that a hearing will be held in or near San Francisco, California, for the purpose of taking evidence on the charges specified above in order to determine whether an appropriate order to cease and desist should be issued under Section 8(b) of the FDIA, 12 U.S.C. § 1818(b), to require Gateway to cease and desist from the violations of law and regulation and unsafe or unsafe practices charged above in this Notice and whether such an order should include:

- (a) affirmative corrective action provisions under 12 U.S.C. § 1818(b)(6); and
- (b) the imposition of limitations on the activities or functions of Gateway, pursuant to 12 U.S.C. § 1818(b)(7).

**VI. PROCEDURES GENERALLY.**

33. The OTS hereby appoints Administrative Law Judge C. Richard Miserendino (the ALJ) of the Office of Financial Institution Adjudication (OFIA) to preside over the hearing for the cease and desist order referred to above (in Part V) of this Notice. Unless otherwise set by the ALJ, or by agreement of the parties, the hearing should commence on or before the sixtieth day following service of this Notice. The exact time of day and any change in location will be

announced at a later time by the ALJ. The hearing will be conducted before the ALJ in accordance with the provisions of the Administrative Procedure Act, 5 U.S. C. §§ 554-557, as made applicable by 12 U.S.C. § 1818(h) and 12 C.F.R. Part 509.

34. Gateway is directed to file an Answer to this Notice within twenty (20) days of service. The requirements of the Answer and the consequences of failing to file an Answer are set forth at 12 C.F.R. § 509.19.

35. Section 509.10 of the OTS Rules, 12 C.F.R. § 509.10, governs the filing of papers in this proceeding. Except as otherwise provided by that rule, any papers required to be filed shall be filed with OFIA, Attn: Honorable C. Richard Miserendino, ALJ, 3501 North Fairfax Drive, Suite D8116, Arlington, Virginia 22226.


36. Gateway also shall serve a copy of each and every of its filings on: Susan L. Chomicz, Deputy Chief Counsel, Enforcement, Office of Thrift Supervision, 1700 G. Street, N.W., Washington, DC 20552, [susan.chomicz@ots.treas.gov](mailto:susan.chomicz@ots.treas.gov); Gary C. Anderberg, Regional Enforcement Counsel, Western Region, Office of Thrift Supervision, 225 East John Carpenter Freeway, Suite 500, Irving, Texas 75062, [gary.anderberg@ots.treas.gov](mailto:gary.anderberg@ots.treas.gov); and Jeffery G. Kinstler, Senior Attorney, Enforcement, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552, [jeffery.kinstler@ots.treas.gov](mailto:jeffery.kinstler@ots.treas.gov).

37. Within twenty (20) days after service of this Notice, Gateway may file a written request for a private hearing. Section 509.23 of the OTS rules, 12 C.F.R. § 509.23, sets out the requirements for any such request and any replies thereto. The evidentiary hearing of this matter before the presiding Administrative Law Judge will be open to the public, unless the Acting Director of OTS, in his sole discretion, determines that an open hearing will be contrary to the public interest. *See* 12 U.S.C. § 1818(u)(2). The Acting Director (or a duly authorized

representative) will rule on any request filed under Section 509.23(a), and copies of any such request should be sent to the Acting Director of the OTS, c/o Ms. Sandra Evans, Secretary for Adjudicatory Proceedings, Office of Thrift Supervision, 1700 G. Street, N.W., Fifth Floor, M2, Washington, DC 20552.

The Office of Thrift Supervision, by its Acting Director (or his duly authorized designee), issues this Notice on this 30<sup>th</sup> day of December 2010.

OFFICE OF THRIFT SUPERVISION

By:   
Thomas A. Barnes  
Deputy Director, Supervision,  
Examinations and Consumer Protection

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Charges and Hearing for Cease and Desist Order for Affirmative Relief, has been sent this 4th day of January, 2011 by mailing an electronic "PDF" copy thereof to the following persons:

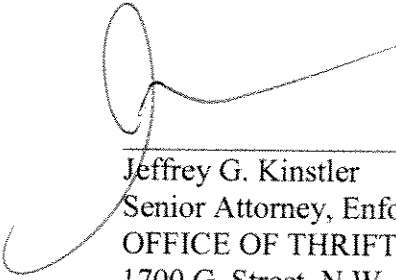
Office of Financial Institution Adjudication  
Attn: Honorable C. Richard Miserendino  
Administrative Law Judge  
3501 North Fairfax Drive, Suite D8116  
Arlington, VA 22226  
[ofia@fdic.gov](mailto:ofia@fdic.gov)

Susan L. Chomicz  
Deputy Chief Counsel for Enforcement  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552  
[Susan.Chomicz@ots.treas.gov](mailto:Susan.Chomicz@ots.treas.gov)

Sandra E. Evans  
Secretary for Adjudicatory Proceedings  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552  
[Sandra.Evans@ots.treas.gov](mailto:Sandra.Evans@ots.treas.gov)

A. George Iglar  
Iglar & Dougherty  
2457 Care Drive  
Tallahassee, Fl 32308  
[agi@idlaw.com](mailto:agi@idlaw.com)  
Counsel for Gateway Bank, F.S.B.

Date: January 4, 2011



---

Jeffrey G. Kinstler  
Senior Attorney, Enforcement Division  
OFFICE OF THRIFT SUPERVISION  
1700 G. Street, N.W.  
Washington, DC 20552  
Tel: 202-906-6361 | Fax: 202-906-6518  
[jeffrey.kinstler@ots.treas.gov](mailto:jeffrey.kinstler@ots.treas.gov)