

This section provides information for determining when and how otherwise prohibited management interlocks are allowed.

The purpose of the Depository Institution Management Interlocks Act is to foster competition by generally prohibiting a management official from serving two unaffiliated depository organizations in situations where the management interlock would likely have an anticompetitive effect. This applies to service as a management official of an institution, savings and loan holding company, and affiliates of either.

12 C.F.R. Part 563f sets forth several interlocking relationships that are prohibited. Generally, a management official of a depository institution or depository holding company may not serve as a management official of an unaffiliated depository institution or depository holding company if the entities in question (or a depository institution affiliate thereof) have offices in the same community or metropolitan statistical area or are of a certain asset size. Notwithstanding these general prohibitions, 12 C.F.R. § 563f.4 provides an exemption for certain depository organizations.

## **FILING REQUIREMENTS**

### **Delegated Authority**

This application type is not eligible for delegated processing. See Delegation Section (Section 040) of the handbook for further information.

### **Expedited and Standard Processing Procedures**

This type of application is not subject to the expedited processing procedures in 12 C.F.R. Part 516. Accordingly, the application will be processed utilizing the procedures set forth in 12 C.F.R. §§ 516.210-516.290.

### **Prefiling Meeting Requirements**

Prefiling meetings are not required for this filing. However, applicants are encouraged to contact the Regional Office, particularly in the event the transaction involves unique or novel issues, to determine if a prefiling meeting will expedite the application review process.

### **Information and Form Requirements**

The application should be filed with the appropriate Regional Office and the Applications Filing Room (AFR) in OTS-Washington in accordance with 12 C.F.R. Part 516. The applicant should file the original and two copies of this application with the appropriate Regional Office and three copies of this application with the AFR. The original filing, all copies, and all exhibits and other pertinent documents must be clearly marked and captioned as to the type of filing. One copy must contain original signatures on all executed documents.

There are no standard forms to be submitted for interlock exemption requests.

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The applicant should submit the following information to OTS when requesting an exemption from the management interlocks prohibitions:

- Identity (name, position) of all management officials to whom the filing pertains and the depository organizations they serve or propose to serve. The full legal name and home office/headquarters address of the depository organizations should be provided;
- A description of the product lines, geographic locations, market areas, and principal competitors for each affected depository organization. Specifically identify any product lines or market areas where the depository organizations compete;
- Market share data, such as the Herfindahl-Hirschman indexes (HHI), sufficient to show that the interlock will not have an anti-competitive effect on the financial services industry;
- If a diversified savings and loan holding company is involved, provide information concerning any banking relationships or transactions between the diversified holding company and/or its subsidiaries and the subject depository organization;
- Any known expansion or growth plans by any of the affected depository institutions that would have anticompetitive effects or cause decreased competition or increased market overlap in any of the affected market areas or product lines;
- Information regarding any other existing interlocks between the affected depository organizations; and
- If applicable, copies of filings and information regarding the status of any notices filed with any other Federal banking agency.

**Confidentiality**

The applicant must submit in writing, concurrently with the submission of the application, any requests to keep specific portions of the application confidential. In accordance with the Freedom of Information Act, the request should discuss the justification for the requested treatment and should specifically demonstrate the harm (e.g., to competitive position, invasion of privacy) that would result from the public release of information.

Information for which confidential treatment is requested should be: (i) specifically identified in the public portion of the application by reference to the confidential section; (ii) separately bound; and (iii) labeled “confidential.” The applicant should follow these same procedures when filing supplemental information to the application. OTS will determine whether information designated as confidential must be made available to the public under the Freedom of Information Act. OTS will advise the applicant before it makes information designated as confidential available to the public.

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## REVIEW GUIDELINES

### Processing Procedures and Time Frames

As indicated, these applications are not subject to delegated authority and are processed concurrently with OTS-Washington staff. As a general matter, correspondence from OTS regarding applications that are nondelegated will be transmitted from OTS-Washington.

Within five business days of receipt of the application and the application fee, the Regional Office must notify the applicant of the application's receipt. The appropriate application fee must accompany each application in order for it to be considered filed. The application will not be considered filed until received by both the Washington Office and the Regional Office.

Within 30 calendar days of receipt of a properly submitted application, OTS shall take the following actions.

- Deem the application complete;
- Request, in writing, any additional information necessary to deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

Failure by OTS to act within 30 calendar days of receipt of the application for processing shall result in the filed application being deemed complete, commencing the period for review.

If additional information is requested, a response must be submitted within 30 calendar days of the letter requesting such information. The applicant may, in writing, request a brief extension of the 30-calendar day period for responding to a request for additional information, prior to the expiration of the 30-calendar day time period. OTS, at its option, may grant the applicant a limited extension of time in writing. Failure to respond to a written request for additional information within 30 calendar days of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial of the application.

After the timely filing of additional information in response to an initial or subsequent request by OTS for additional information, OTS has 15 calendar days to review the additional information for completeness or appropriateness and take one of the following actions.

- Request, in writing, any additional information necessary to deem the application complete;
- Deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

The 15-day review period commences when OTS receives a response that purports to respond to all questions in the information request. OTS may extend the 15-day review period for an additional 15

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calendar days, if OTS requires the additional time to review the response. OTS will notify the applicant that it has extended the period before the end of the initial 15-day period.

Failure by OTS to act within 15 calendar days of receipt of the additional information shall result in the filed application being deemed complete, commencing the period for review.

Once the application has been deemed complete, there is a 60-calendar day review period at which time OTS will take into consideration all factors present in the application and render a decision thereon. If, upon expiration of the 60-day review period (assuming no extension has been granted), OTS has failed to act, the application is deemed approved automatically, and the applicant may thereafter consummate the transaction.

During the review period, OTS may request additional information if the information is necessary to resolve or clarify the issues presented in the application. OTS may also notify the applicant that the application is incomplete and require that the applicant submit additional information to complete the application. The review period can be extended an additional 30 calendar days if OTS determines that additional time will be required to analyze the proposed transaction. In situations in which an application presents a significant issue of law or policy, OTS may extend the applicable period for review of such application beyond the time period for review. In these cases, written notice shall be provided to an applicant no later than the expiration of the time period.

For purposes of calculating processing time frames, OTS does not include the day of the act or event, in determining the date the time period commences. In determining the conclusion of a time period, when the last day of the time period is a Saturday, Sunday, or a Federal holiday, the last day will become the next day that is not a Saturday, Sunday, or Federal holiday.

Under 12 C.F.R. § 516.290, if OTS has not acted on a pending application within two calendar years after the filing date, you may deem the application withdrawn unless OTS determines that the applicant is actively pursuing a final determination on the application. Applications that are subject to this withdrawal provision are those that have failed to timely take action such as filing required additional information, or OTS has suspended processing of an application based on circumstances that are, in whole or in part, within the applicant's control and have failed to take reasonable steps to resolve these circumstances.

### **Regulatory Criteria**

12 C.F.R. § 563f.4 lists organizations to which the prohibitions in § 563f.3 do not apply. In only one case, involving § 563f.4(h), where a *director* of a diversified savings and loan holding company also serves as a *director* of an unaffiliated depository organization, does a notice need to be filed with OTS.

Note: OTS has taken the position that this exception is available to directors of a non-depository organization subsidiary of a diversified savings and loan holding company, provided that such subsidiary and its subsidiaries, in the aggregate, meet the diversification test otherwise applied to the holding company as a whole.

A notice filed for dual service by a director of a diversified holding company pursuant to 12 C.F.R. § 563f.4(h) may be disapproved if OTS finds that:

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- The service cannot be structured or limited so as to preclude an anticompetitive effect in financial services;
  - The dual service would lead to substantial conflicts of interest or unsafe or unsound practices; or
  - The filing party did not furnish all of the information required.

12 C.F.R. § 563f.5 provides for an exemption from §§ 563f.3(a) and (b) (but not 563f.3(c), which is based on total asset size). Depository organizations may take advantage of this exemption if they and their depository institution affiliates hold, in the aggregate, no more than 20 percent of the deposits in each relevant metropolitan statistical area (RMSA) or community in which the depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community. No filing is required to take advantage of this exemption; however, the depository organizations must maintain records sufficient to support the determination of eligibility for the exemption and must reconfirm the determination on an annual basis.

12 C.F.R. § 563f.6 provides for a general exemption to the management interlocks prohibitions. If a depository organization is seeking an exemption under this section of the regulation, it must file an application with OTS. The OTS may exempt an interlock from the prohibition if it determines that the interlock will not result in a monopoly or substantial lessening of competition and would not present safety and soundness concerns.

There will be a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add the management official:

- Primarily serves low- and moderate-income areas;
- Is controlled or managed by persons who are members of a minority group, or women;
- Is a depository institution that has been chartered for less than two years; or
- Is deemed to be in “troubled condition” as defined in 12 C.F.R. § 563.555.

It should be noted that this rebuttable presumption relates only to the competitive aspect of the review and, therefore, safety and soundness criteria should still be considered.

If the exemption is approved in reliance upon one of the rebuttable presumptions, then unless otherwise provided in writing by the agency, the interlock may continue for three years. If the exemption is approved other than due to reliance upon one of the rebuttable presumptions, then unless a shorter expiration period is provided for in the approval, the interlock may continue so long as it does not result in a monopoly or substantial lessening of competition, or is unsafe or unsound.

### **Decision Guidelines**

In determining whether to allow a management interlock to exist, the review should include an analysis of whether the dual service would result in a monopoly or a substantial lessening of competition. In addition, OTS should consider whether the dual service could lead to significant

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conflicts of interest for the individual or could lead to unsafe and unsound practices. To assist in this analysis, the following factors should be considered:

- Analyze the competitive aspects of the interlock, consider HHI, locations, products, competition in affected area. Will the proposed interlock have an adverse effect on the competition in the affected area?
- Review any relationships between the subject depository organizations and their affiliates. Does the interlock create a conflict of interest for the director or officer?
- Would known expansion or growth plans of the subject organizations create the potential for a violation of 12 C.F.R. Part 563f?.
- Does the rebuttable presumption of 12 C.F.R. § 563f.6(b) apply?
- Should OTS specify an amount of time for the interlock to continue which differs from the time allowed under the regulation?

### **Conditions**

There are no standard conditions imposed in these filings. OTS may impose certain nonstandard conditions in connection with a management interlocks filing. Any nonstandard conditions imposed will be based on the individual circumstances surrounding the application. In circumstances where nonstandard conditions will be imposed, they must be supported with justification in the recommendation memorandum related to approval of the application. Any nonstandard conditions incorporated into the approval order must be summarized in the National Applications Tracking System record for the application.

### **RECORDKEEPING REQUIREMENTS**

OTS is required to consolidate all correspondence related to the processing of the notice or application into a file copy to be sent to a central file. Both the Regional Office and OTS-Washington will maintain a separate file copy for nondelegated filings. The file copy must include a copy of the original filing including all exhibits, all amendments, all internal and external correspondence between interested parties, all documentation associated with the review and analysis of the filing, and all decision, recommendation memorandum, and compliance material. The file copy must be organized and separated into public and confidential material, and clearly identified as such. The public and confidential sections must be arranged in chronological order.

### **MONITORING AND CONTROL**

The Regional Office should notify the appropriate staff responsible for the supervision and examination of the institution regarding the action taken on an application. In addition, the Regional Office should provide the appropriate staff with copies of the approval order. If an application is approved, the first examination of the institution following the approval should include a review of compliance with any conditions of approval and any changes in operations as a result of the transaction.

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A review of the application file should be made after all compliance material is received to ensure that the file is complete. Any deficiencies should be corrected before the file is sent to storage.

OTS-Washington may conduct a post audit review of the application in the Regional Office, including a review of the documentation maintained in the application file.

**INFORMATION SOURCES****Statutes**

12 USC §§ 3201 – 3208	Depository Institutions Management Interlocks Act
12 USC § 1467a(1)(F)	Definition of diversified savings and loan holding company

**Regulations**

12 C.F.R. Part 563f	Management Official Interlocks
12 C.F.R. § 583.11	Definition of diversified savings and loan holding company

**Other**

FDIC Deposit Summary can be accessed from the FDIC's web page.  
Specific address: [www.fdic.gov/news/publications/public/index.html#statistical](http://www.fdic.gov/news/publications/public/index.html#statistical)

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## **Section: Lending Exceptions - Loans to One Borrower for the Development of Domestic Residential Housing Units**

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This handbook section provides information for a savings institution seeking an exception to the general lending limitations on loans to one borrower (LTOB) for loans to develop domestic residential housing units. As set forth in 12 C.F.R. § 560.93, the total loans and extensions of credit an institution may have outstanding at one time to one borrower shall not exceed 15 percent of its unimpaired capital and unimpaired surplus. Pursuant to 12 C.F.R. § 560.93(d)(3), however, OTS may permit an institution to make loans to one borrower in an amount not to exceed the lesser of 30 percent of unimpaired capital and surplus or \$30,000,000, provided such loans are to develop domestic residential housing units that meet specific criteria. The higher lending limit exception is available to encourage the development of domestic residential housing units by making lending for this purpose more convenient. In determining whether to permit an institution to avail itself of the higher limits, the Regional Office, must determine whether such action would compromise the safety and soundness of the institution. The loans to one borrower limitation is a critical safety and soundness standard that is intended to prevent an institution from placing itself at risk by concentrating too great a portion of its assets in any single borrower.

Approval of notices and applications under this section will generally provide blanket approval to the institution to exceed the lending limitations with all borrowers for the purpose of loans to develop residential housing units, subject to the aggregate limitation of 150 percent of unimpaired capital and surplus. However, OTS may determine that a filing is required for each borrower in circumstances when safety and soundness concerns exist.

### **FILING REQUIREMENTS**

#### **Delegated Authority**

Generally, applications and notices filed under this section may be processed by the Regional Office under delegated authority. However, certain situations may cause a filing to be nondelegated, including applications that raise a significant issue of law or policy. See Delegation Section 040 of the handbook for further information on the delegation process.

#### **Expedited and Standard Processing Procedures**

OTS processes applications using two procedures, expedited treatment and standard treatment. Applications filed under this section may qualify for either expedited or standard treatment, based on the criteria below. Please refer to the Processing Procedures and Time Frames discussion of this handbook section for more information on processing procedures and applicable time frames for notices and applications.

##### *Expedited Processing*

The institution is eligible for expedited treatment if it satisfies all of the following criteria:

1. Has a composite CAMELS rating of “1” or “2;”
2. Has a CRA rating of “Satisfactory” or better;



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3. Has a Compliance rating of “1” or “2;”
4. Meets or exceeds the minimum capital requirements set forth in 12 C.F.R. Part 567; and
5. Has not been notified that it is in troubled condition.

If the institution qualifies for expedited processing, a notice is filed with the appropriate Regional Office. OTS considers a filing to be appropriately filed when sufficient information to evaluate the proposal is received from the applicant in its notice.

Notices submitted by institutions eligible for expedited treatment are deemed applications for purposes of statutory and regulatory requirements referring to applications.

### *Standard Processing*

If the applicant does not qualify for expedited processing, it must file an application subject to standard application processing time frames. Specifically, the institution is subject to standard processing if any of the following conditions exist regarding the institution:

1. Has a composite CAMELS rating of “3,” “4” or “5;”
2. Has a less than “Satisfactory” CRA rating;
3. Has a Compliance rating of “3,” “4” or “5;”
4. Has inadequate capital or fails at least one of its capital requirements;
5. Has been notified that it is in troubled condition;
6. The applicant is not a savings institution; or
7. The applicant has not received a composite CAMELS rating, a CRA rating, or a compliance rating from any federal banking regulator.

### **Prefiling Meeting Requirements**

Prefiling meetings are not required for this filing. However, applicants are encouraged to contact the Regional Office, particularly in the event the transaction involves unique or novel issues, to determine if a prefiling meeting will expedite the application review process.

### **Information and Form Requirements**

If delegated, all applications and notices should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant should file the original and two copies of the application or notice, and the application fee, with the appropriate Regional Office. The original filing, all copies, and all exhibits and other pertinent documents must be clearly marked and captioned as to the type of filing. One copy must contain original signatures on all executed documents. For applications that are not delegated to the Regional Office, an additional three copies of the application should be filed with the Applications Filing Room in OTS-Washington.

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OTS Form No. 1560, "Notice for Higher Lending Limitations," is to be used by institutions that qualify for expedited treatment pursuant to 12 C.F.R. Part 516.

An OTS form does not exist for institutions required to file an application under standard treatment. The applicant should provide information to OTS that will address the decision factors outlined in the Decision Guidelines section of this handbook section.

### **Processing Procedures and Time Frames**

#### *Notices under Expedited Treatment*

Within five business days of receipt of the notice and fee, OTS must notify the applicant of the notice's receipt. The appropriate fee must accompany each notice in order for the filing to be considered filed.

The applicant may engage in the proposed activity upon the expiration of 30 calendar days after the filing date of its notice, unless OTS takes one of the following actions before expiration of that time period:

- Requests, in writing, any additional information necessary to supplement the notification;
- Notifies the applicant that the notice is subject to standard treatment as it raises a supervisory concern, raises a significant issue of law or policy, or requires significant additional information; or
- Disapproves the notice.

Failure by OTS to act within 30 calendar days of receipt of the notice for processing shall result in acceptance of the notice when originally filed. If supplemental information is requested, the applicant will have 30 days to provide such information. The 30-day time frame will restart upon receipt of such information.

#### **Applications under Standard Treatment**

As noted in the Delegated Authority section, certain applications are not subject to delegated authority and are processed concurrently with OTS-Washington staff. As a general matter, correspondence from OTS regarding applications that are nondelegated will be transmitted from OTS-Washington. Correspondence on delegated applications will generally come from the Regional Office.

Within five business days of receipt of the application and the application fee, the Regional Office must notify the applicant of the application's receipt. The appropriate application fee must accompany each application for it to be considered filed. If the application is nondelegated, the application will not be considered filed until received by both OTS-Washington and the Regional Office.

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Within 30 calendar days of receipt of a properly submitted application, OTS shall take one of the following actions.

- Deem the application complete;
- Request, in writing, any additional information necessary to deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

Failure by OTS to act within 30 calendar days of receipt of the application for processing shall result in the filed application being deemed complete, commencing the period for review.

If additional information is requested, a response must be submitted within 30 calendar days of the letter requesting such information. The applicant may, in writing, request a brief extension of the 30-calendar day period for responding to a request for additional information, prior to the expiration of the 30-calendar day time period. OTS, at its option, may grant the applicant a limited extension of time in writing. Failure to respond to a written request for additional information within 30 calendar days of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial or disapproval of the application.

After the timely filing of additional information in response to any initial or subsequent request by OTS for additional information, OTS has 15 calendar days to review the additional information for completeness or appropriateness and take one of the following actions:

- Request, in writing, any additional information necessary to deem the application complete;
- Deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

The 15-day review period commences when the OTS receives a response that purports to respond to all questions in the information request. OTS may extend the 15-day review period for an additional 15 calendar days, if OTS requires the additional time to review the response. OTS will notify the applicant that it has extended the period before the end of the initial 15-day period.

Failure by OTS to act within 15 calendar days of receipt of the additional information shall result in the filed application being deemed complete, commencing the period for review.

Once the application has been deemed complete, there is a 60-calendar day review period during which time OTS will take into consideration all factors present in the application and render a decision thereon. If, upon expiration of the 60-day review period, assuming no extension has been granted, OTS has failed to act, the application is deemed approved automatically, and the applicant may thereafter consummate the transaction. If multiple applications are submitted in connection with

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one transaction, the applicable review period for all applications is the review period for the application with the longest review period, subject to statutory review periods.

During the review period, OTS may request additional information if the information is necessary to resolve or clarify the issues presented in the application. OTS may also notify the applicant that the application is incomplete and require that the applicant submit additional information to complete the application. The review period can be extended an additional 30 calendar days if OTS determines that additional time will be required to analyze the proposed transaction. In such cases, OTS must notify an applicant prior to the expiration of the period for review. In situations in which an application presents a significant issue of law or policy, OTS may extend the applicable period for review of such application beyond the time period for review. In these cases, written notice must be provided to an applicant no later than the expiration of the time period.

Under 12 C.F.R. § 516.290, if OTS has not acted on a pending application within two calendar years after the filing date, OTS may deem the application withdrawn unless it determines that the applicant is actively pursuing a final determination on the application. Applications that are subject to this withdrawal provision are those that have failed to timely take action such as filing required additional information, or OTS has suspended processing of an application based on circumstances that are, in whole or in part, within the applicant's control and have failed to take reasonable steps to resolve these circumstances.

For purposes of calculating processing time frames, OTS does not include the day of the act or event, in determining the date the time period commences. In determining the conclusion of a time period, when the last day of the time period is a Saturday, Sunday, or a Federal holiday, the last day will become the next day that is not a Saturday, Sunday, or Federal holiday.

### **Confidentiality**

The applicant must submit in writing, concurrently with the submission of the application, any requests to keep specific portions of the application confidential. In accordance with the Freedom of Information Act, the request should discuss the justification for the requested treatment and should specifically demonstrate the harm (e.g., to competitive position, invasion of privacy) that would result from the public release of information. OTS will not treat as confidential the portion of an application describing the plan to meet the Community Reinvestment Act objectives.

Information for which confidential treatment is requested should be: (i) specifically identified in the public portion of the application by reference to the confidential section; (ii) separately bound; and (iii) labeled "confidential." The applicant should follow these same procedures when filing supplemental information to the application. OTS will determine whether information designated as confidential must be made available to the public under the Freedom of Information Act. OTS will advise the applicant before it makes information designated as confidential available to the public.

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### **Regulatory Criteria**

Pursuant to 12 C.F.R. § 560.93(d)(3), an institution may request permission to make loans to one borrower in an amount not to exceed the lesser of \$30,000,000 or 30 percent of unimpaired capital and surplus, provided:

1. The final purchase price of each single-family dwelling unit does not exceed \$500,000;
2. The institution is in compliance with its capital requirements as prescribed in the capital regulations (12 C.F.R. Part 567);
3. The total of all loans made under 12 C.F.R. § 560.93(d)(3) to all borrowers for development of domestic residential housing cannot, in the aggregate, exceed 150 percent of the institution's unimpaired capital and unimpaired surplus; and
4. The loans comply with applicable loan-to-value ratio requirements.

In addition, notwithstanding the above limitations, 12 C.F.R. § 560.93(d)(1) provides that an institution may have total loans and extensions of credit, for any purpose, to one borrower outstanding at one time not to exceed \$500,000.

### **Decision Guidelines**

Increased lending by a savings institution to individual borrowers increases the risk exposure of an institution through a greater concentration of credit risk in any one borrower. The analysis will focus on whether the institution has the financial and managerial capacity to prudently conduct the increased lending activity. Approval of the application is based upon a conclusion that the increased lending does not compromise the safety and soundness of the institution. OTS must consider the statutory and regulatory criteria, and the following factors in reaching a conclusion:

1. Was the institution cited for significant deficiencies in lending policies, documentation, or internal control deficiencies at the most recent examination?
2. What has been the institution's experience and success in funding the development of similar residential housing units in a similar market?
3. Is there a current business plan of the institution, and does it address this type of lending in loans of this size?
4. Have a majority of the board of directors authorized the loan contingent upon the approval of OTS and signed a statement certifying that the proposed loan will comply with all requirements of applicable laws, regulations, and institution policies, prior to and after funding?
5. Will the proposed loans be made pursuant to a prudent program of domestic residential lending to meet both the community's and the institution's present needs or reasonable future needs?
6. Is the institution in compliance with its minimum capital requirements?

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To the extent the information below is known by the applicant on each borrower, the following criteria should be considered in evaluating the application:

1. What is the borrower's experience and success in the development of similar residential housing units in a similar market?
2. What is the borrower's credit history of how credit problems, if any, were handled and resolved, as reported by the institution's management and any other sources?
3. Is the borrower the obligor of the loan, does he/she own the equity in the collateral, and does he/she have sufficient funds projected to be available to pay all interest and fees on the proposed loan until the loan is paid in full?
4. Is the loan, as proposed, to be collateralized by a first lien on the site and improvements of the proposed development?
5. Are the loan proceeds to be used for funding the developer's profit or planning (soft) expenses?
6. Would the maximum loan-to-value percentage be consistent with safe and sound operating practices?

### **Conditions**

The subject applications are not subject to standard approval conditions. OTS may condition its approval with nonstandard conditions. Any conditions imposed by OTS will be based on the individual circumstances surrounding the institution and the transaction itself. If such nonstandard conditions are utilized, the recommendation digest must include appropriate justification for imposing such condition. Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application.

### **RECORDKEEPING REQUIREMENTS**

All correspondence related to the processing of the notice or application should be consolidated into a file copy to be sent to a central file. Both the Regional Office and OTS-Washington will maintain a separate file copy for nondelegated filings. The file copy must include a copy of the original filing including any exhibits, all amendments, all internal and external correspondence between interested parties, all documentation associated with the review and analysis of the filing, and all decision, recommendation memorandum, and compliance material. The file copy must be organized and separated into public and confidential material, and clearly identified as such. The public and confidential sections must be arranged in chronological order, or in a similarly organized fashion.

### **MONITORING AND CONTROL**

The Regional Office will monitor compliance with all conditions imposed in connection with an application's approval. The applicant must submit evidence of satisfaction of the conditions included in the approval order or letter to the Regional Office within the stated time frames.

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The Regional Office should notify the appropriate staff responsible for the supervision and examination of the institution regarding the action taken on an application, and provide staff with copies of the approval order or letter. If an application is approved, the first examination of the institution following the approval should include a review of compliance with all conditions of approval and any changes in operations as a result of the transaction.

A review of the application file should be made after all compliance material is received to ensure that the file is complete. Any deficiencies should be corrected before the file is sent to storage.

OTS-Washington may conduct a post audit review of the application in the Regional Office, including a review of the documentation maintained in the application file.

### **Information Sources**

#### **Statutes**

12 U.S.C. § 1464(u)	Limits on loans to one borrower.
12 U.S.C. § 84	Lending Limits

#### **Regulations**

12 C.F.R. Part 516	Applications Processing Guidelines
12 C.F.R. § 560.31	Election regarding classification of loans
12 C.F.R. § 560.93	Lending limitations
12 C.F.R. § 567.5	Components of Capital

#### **Other**

12 C.F.R. 32	OCC, Lending Limits
TA 211	Thrift Activities Regulatory Handbook
Fees and Assessments Thrift Bulletin	

#### **Application Forms**

OTS Form 1560	Notice for Higher Lending Limitations
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This handbook section provides information for a federal savings institution seeking an exception to the general lending limitations for nonresidential real estate lending. The limitation exists to ensure that an institution that engages in nonresidential real estate lending has adequate capital in the event of default of the loans. This handbook section sets forth the parameters for the review of applications that request an exception to the limitation.

As set forth in Section 5(c)(2)(B) of Home Owners' Loan Act of 1933, as amended (HOLA), a federal savings institution's aggregate amount of loans on the security of liens upon nonresidential real property cannot exceed 400 percent of its total capital. Exceptions will be granted on a percentage or blanket basis to individual institutions, rather than on a loan-by-loan basis. For example, an institution might be granted the authority to expand its nonresidential real property portfolio to 500 percent of total capital.

To determine compliance with the 400 percent limit or any expanded limit, an institution should use total capital as reported on its most recently filed periodic report with OTS, adjusted by any significant events, such as charging off a major loan in whole or in part.

A State-chartered thrift institution seeking to exceed the 400 percent lending limitation is subject to the notice requirements set forth in 12 C.F.R. § 362.11(b)(2)(ii) and the nonobjection of the Federal Deposit Insurance Corporation. No filing to OTS is required for a State-chartered savings institution.

## **FILING REQUIREMENTS**

### **Delegated Authority**

The application is not eligible for delegated processing. See Delegation Section 040 of the handbook for information on the delegation process.

### **Expedited and Standard Processing Procedures**

An application seeking an exception to the general lending limitations for nonresidential real estate lending is not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. Accordingly, this application will be processed utilizing the procedures set forth in 12 C.F.R. §§ 516.210-516.290.

### **Prefiling Meeting Requirements**

Prefiling meetings are not required for this filing. However, applicants are encouraged to contact the Regional Office, particularly in the event the transaction involves unique or novel issues, to determine if a prefiling meeting will expedite the application review process.

### **Information and Form Requirements**

The applicant must file the application with the appropriate Regional Office and the Applications Filing Room (AFR) in OTS-Washington in accordance with 12 C.F.R. Part 516. The applicant is



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required to file the original and two copies of this application, and the application fee, with the appropriate Regional Office, and file three copies with the AFR. The original filing, all copies, and all exhibits and other pertinent documents must be clearly marked and captioned as to the type of filing. One copy must contain original signatures on all executed documents. See Application Filing Requirements in Section 010 of this handbook.

An OTS form does not exist for this filing. The applicant should provide information to OTS that addresses the factors outlined in the Decision Guidelines section of this document to allow staff to make an informed recommendation. The following information should be submitted:

- Submission of a nonresidential real property lending plan describing any future activity that is consistent with the institution's business plan;
- A statement setting forth:
  - \* The level (as a percentage of total capital and total assets) to which the institution intends to expand its nonresidential real property loan portfolio;
  - \* The size of the proposed loans;
  - \* How the increase in nonresidential lending will affect the institution's Qualified Thrift Lender (QTL) status;
  - \* The length of time for which the institution is seeking to expand its nonresidential real property portfolio;
  - \* The industries and geographic areas in which the loans will be made;
  - \* Whether the loans will be acquired from brokers;
  - \* Whether the loans will be made on raw land;
  - \* Whether the loans will be for construction or on existing properties; and
  - \* The institution's current aggregate amount of investment in nonresidential real property.
- Discussion of the funding source(s) to be utilized to fund the increase in the nonresidential real property portfolio;
- The experience of the officers/employees in the nonresidential real property lending area; and
- The institution's current collection policies and procedures.

### **Confidentiality**

The applicant must submit in writing, concurrently with the submission of the application, any requests to keep specific portions of the application confidential. In accordance with the Freedom of Information Act, the request should discuss the justification for the requested treatment and should specifically demonstrate the harm (e.g., to competitive position, invasion of privacy) that would result from the public release of information. OTS will not treat as confidential the portion of an application describing the plan to meet the Community Reinvestment Act objectives.

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Information for which confidential treatment is requested should be: (i) specifically identified in the public portion of the application by reference to the confidential section; (ii) separately bound; and (iii) labeled “confidential.” The applicant should follow these same procedures when filing supplemental information to the application. OTS will determine whether information designated as confidential must be made available to the public under the Freedom of Information Act. OTS will advise the applicant before it makes information designated as confidential available to the public.

## **REVIEW GUIDELINES**

### **Processing Procedures and Time Frames**

As indicated, this application is not subject to delegated authority and will be processed concurrently with OTS-Washington staff. As a general matter, correspondence from OTS regarding applications will be transmitted from OTS-Washington.

Within five business days of receipt of the application and the application fee, the Regional Office must notify the applicant of the application's receipt. The appropriate application fee must accompany each application for it to be considered filed. The application will not be considered filed until received by both OTS-Washington and the Regional Office.

Within 30 calendar days of receipt of a properly submitted application, OTS shall take one of the following actions.

- Deem the application complete;
- Request, in writing, any additional information necessary to deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

Failure by OTS to act within 30 calendar days of receipt of the application for processing shall result in the filed application being deemed complete, commencing the period for review.

If additional information is requested, a response must be submitted within 30 calendar days of the letter requesting such information. The applicant may, in writing, request a brief extension of the 30-calendar day period for responding to a request for additional information, prior to the expiration of the 30-calendar day time period. OTS, at its option, may grant the applicant a limited extension of time in writing. Failure to respond to a written request for additional information within 30 calendar days of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial or disapproval of the application.

After the timely filing of additional information in response to any initial or subsequent request by OTS for additional information, OTS has 15 calendar days to review the additional information for completeness or appropriateness and take one of the following actions:

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- Request, in writing, any additional information necessary to deem the application complete;
  - Deem the application complete; or
  - Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

The 15-day review period commences when the OTS receives a response that purports to respond to all questions in the information request. OTS may extend the 15-day review period for an additional 15 calendar days, if OTS requires the additional time to review the response. OTS will notify the applicant that it has extended the period before the end of the initial 15-day period.

Failure by OTS to act within 15 calendar days of receipt of the additional information shall result in the filed application being deemed complete, commencing the period for review.

Once the application has been deemed complete, there is a 60-calendar day review period during which time OTS will take into consideration all factors present in the application and render a decision thereon. If, upon expiration of the 60-day review period, assuming no extension has been granted, OTS has failed to act, the application is deemed approved automatically, and the applicant may thereafter consummate the transaction. If multiple applications are submitted in connection with one transaction, the applicable review period for all applications is the review period for the application with the longest review period, subject to statutory review periods.

During the review period, OTS may request additional information if the information is necessary to resolve or clarify the issues presented in the application. OTS may also notify the applicant that the application is incomplete and require that the applicant submit additional information to complete the application. The review period can be extended an additional 30 calendar days if OTS determines that additional time will be required to analyze the proposed transaction. In such cases, OTS must notify an applicant prior to the expiration of the period for review. In situations in which an application presents a significant issue of law or policy, OTS may extend the applicable period for review of such application beyond the time period for review. In these cases, written notice must be provided to an applicant no later than the expiration of the time period.

Under 12 C.F.R. § 516.290, if OTS has not acted on a pending application within two calendar years after the filing date, OTS may deem the application withdrawn unless it determines that the applicant is actively pursuing a final determination on the application. Applications that are subject to this withdrawal provision are those that have failed to timely take action such as filing required additional information, or OTS has suspended processing of an application based on circumstances that are, in whole or in part, within the applicant's control and have failed to take reasonable steps to resolve these circumstances.

For purposes of calculating processing time frames, OTS does not include the day of the act or event, in determining the date the time period commences. In determining the conclusion of a time period, when the last day of the time period is a Saturday, Sunday, or a Federal holiday, the last day will become the next day that is not a Saturday, Sunday, or Federal holiday.

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**Regulatory Criteria**

Pursuant to Section 5(c)(2)(B) of the HOLA, OTS may permit an institution to exceed the nonresidential real property lending limitation, provided:

- The increase in authority poses no significant risk to the safe and sound operation of the institution; and
- The increase in authority is consistent with prudent operating policies.

**Decision Guidelines**

Increased non-residential lending by a savings institution may increase the risk profile of the institution. The analysis will focus on whether the institution has the financial and managerial capacity to prudently conduct the increased lending activity. Approval of the application is based upon a conclusion that the increased lending does not compromise the safety and soundness of the institution. The following factors should be considered, as well as any other information deemed relevant, in reaching a conclusion:

- Why is the institution seeking an exception to the nonresidential real property lending limitation?
- Has the institution submitted a nonresidential real property lending plan describing any future intentions related to this type of activity? Is the plan consistent with the institution's business plan?
- To what level is the institution seeking to expand its nonresidential real property loan portfolio (as a percentage of total capital and total assets)?
- How will the increase in nonresidential lending affect the institution's QTL status? (An exception will not be granted if the institution will fail its QTL test as a result of the increase in nonresidential real property lending.)
- Was the institution's most recent Community Reinvestment Act rating acceptable?
- Is the institution in compliance with the capital standards contained in 12 C.F.R. § 567.5(c)?
- For what time frame is the institution seeking to expand its nonresidential real property loan portfolio?
- What is the institution's current aggregate amount of investment in nonresidential real property?
- What are the characteristics of the increased nonresidential real property loan portfolio, i.e. size of the loans, industries and geographic areas involved, types of loans (raw land, construction, or existing properties), and will brokers be utilized?
- What funding source(s) will be utilized to fund the increase in the nonresidential real property portfolio?

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- Will the return on the loans be sufficient to compensate for the higher risk generally associated with nonresidential real property loans?
  - Will the institution plan to periodically adjust the rates on its nonresidential real estate loans to reflect changes in interest rates?
  - Was the institution criticized in the previous report of examination for any significant deficiencies in loan policy, staffing, appraisal policy, loan documentation, or internal controls, especially in the area of nonresidential real property lending?
  - Is the experience of the officers/employees in the nonresidential real property lending area adequate to manage the proposed increases?
  - Is the present level of delinquent nonresidential real property loans considered significant, as indicated by the trend in delinquency and by comparison with other nonresidential real property lenders? (The presence of interest reserves will mask the degree of delinquencies.)
  - Are current collection policies and practices considered adequate?
  - What loan-to-value ratios does the institution permit for nonresidential real property loans? Will the additional loans conform to the current policy?
  - Does the institution have an effective internal asset classification system?
  - What level of allowances for loan and lease losses will be established in connection with the institution's increased nonresidential real estate?
  - Will the increase in nonresidential real property loans create a concern regarding concentration of risk or dilution of diversification in the balance sheet?

### **Conditions**

The subject applications are not subject to standard approval conditions. OTS may condition its approval with nonstandard conditions. Any conditions imposed by OTS will be based on the individual circumstances surrounding the institution and the transaction itself. If such nonstandard conditions are utilized, the recommendation digest must include appropriate justification for imposing such condition. Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application.

### **RECORDKEEPING REQUIREMENTS**

All correspondence related to the processing of the notice or application should be consolidated into a file copy to be sent to a central file. Both the Regional Office and OTS-Washington will maintain a separate file copy for nondelegated filings. The file copy must include a copy of the original filing including any exhibits, all amendments, all internal and external correspondence between interested parties, all documentation associated with the review and analysis of the filing, and all decision, recommendation memorandum, and compliance material. The file copy must be organized and separated into public and confidential material, and clearly identified as such. The public and confidential sections must be arranged in chronological order, or in a similarly organized fashion.

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**MONITORING AND CONTROL**

The Regional Office will monitor compliance with any conditions imposed in connection with an application's approval. The applicant must submit evidence of satisfaction of the conditions included in the approval order or letter to the Regional Office within the stated time frames.

The Regional Office should notify the appropriate staff responsible for the supervision and examination of the institution regarding the action taken on an application, and provide staff with copies of the approval order or letter. If an application is approved, the first examination of the institution following the approval should include a review of compliance with all conditions of approval and any changes in operations as a result of the transaction.

A review of the application file should be made after all compliance material is received to ensure that the file is complete. Any deficiencies should be corrected before the file is sent to storage.

OTS-Washington may conduct a post audit review of the application in the Regional Office, including a review of the documentation maintained in the application file.

**INFORMATION SOURCES**

**Statutes**

12 U.S.C. § 1464 (5)(c)(2)(B)	Nonresidential real property loans
12 U.S.C. § 1467a(m)	Qualified Thrift Lender Test

**Regulations**

12 C.F.R. Part 516	Applications Processing Guidelines
12 C.F.R. § 560.30	General Lending and Investment Powers
12 C.F.R. § 560.31	Election regarding classification of loans
12 C.F.R. § 560.93	Lending limitations
12 C.F.R. § 567.5	Components of Capital
12 C.F.R. 362.11(b)	FDIC Requirements for State-Chartered Thrift Institutions

**Other**

12 C.F.R. 32	OCC, Lending Limits
TA 211	Thrift Activities Regulatory Handbook
Fees and Assessments Thrift Bulletin	

OTS periodically receives requests from savings institutions for a waiver of regulatory requirements. OTS has reserved the authority set forth in 12 C.F.R. § 500.30 to waive any provision of its regulations, to the extent permitted by statute, for good cause. OTS may waive certain regulations, but may not waive statutory requirements.

The purpose of this section is to discuss the processing procedures for responding to a waiver request, and to provide guidance on factors to consider in reaching a decision on such a request. For purposes of this section, waiver requests are defined as applications.

## **FILING REQUIREMENTS**

### **Delegated Authority**

The application is not eligible for delegated processing. See Delegation Section 040 of the handbook for information on the delegation process.

### **Expedited and Standard Procedures**

This application is not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. Accordingly, the application will be processed utilizing the procedures set forth in 12 C.F.R. §§ 516.210 – 516.290.

### **Prefiling Meeting Requirements**

Prefiling meetings are not required for this filing. However, applicants are encouraged to contact the Regional Office, particularly in the event the transaction involves unique or novel issues, to determine if a prefiling meeting will expedite the application review process.

### **Information and Form Requirements**

The applicant must file the application with the appropriate Regional Office and the Applications Filing Room (AFR) in OTS-Washington in accordance with 12 C.F.R. Part 516. The applicant is required to file the original and two copies of this application and the applicable application filing fee with the appropriate Regional Office, and file three copies of the application with the AFR. The original filing, all copies, and all exhibits and other pertinent documents must be clearly marked and captioned as to the type of filing. One copy must contain original signatures on all executed documents. See Application Filing Requirements in Section 010 of this Handbook for information on the filing requirements.

There are no prescribed forms for submitting a regulatory waiver request. OTS anticipates that each request will have unique circumstances that must be addressed on a case-by-case basis. Therefore, the applicant's request should be in letter form that provides a detailed background of the existing circumstances at the savings institution, the need for a regulatory waiver, and the impact of a regulatory waiver on the institution. At a minimum, the applicant should address the following items:

- The need for a regulatory waiver and the reasons for why the applicant is unable to comply with existing regulatory requirements. [Note: applicants for a waiver may include parties other than a savings institution.];
- Specify the proposed length of time the waiver will be in effect;
- Certify that the regulatory waiver is permissible by statute;
- The impact of the waiver on related regulations or requirements, e.g. transactions with affiliates restrictions or conflicts of interest issues, and plans to resolve these issues;
- The impact of granting the regulatory waiver on the operations of the institution, e.g. capital, risk profile, earnings, etc., and how the impact will be prudently managed; and
- The identity of all subsidiaries and affiliates of the savings institution impacted by the regulatory waiver, including each entity's function and activity, and the anticipated impact to their operations.

### **Confidentiality**

The applicant must submit in writing, concurrently with the submission of the application, any requests to keep specific portions of the application confidential. In accordance with the Freedom of Information Act, the request should discuss the justification for the requested treatment and should specifically demonstrate the harm (e.g., to competitive position, invasion of privacy) that would result from the public release of information. OTS will not treat as confidential the portion of an application describing the plan to meet the Community Reinvestment Act objectives.

Information for which confidential treatment is requested should be: (i) specifically identified in the public portion of the application by reference to the confidential section; (ii) separately bound; and (iii) labeled "confidential." The applicant should follow these same procedures when filing supplemental information to the application. OTS will determine whether information designated as confidential must be made available to the public under the Freedom of Information Act. OTS will advise the applicant before it makes information designated as confidential available to the public.

## **REVIEW GUIDELINES**

### **Processing Procedures and Time Frames**

As indicated, this application is not subject to delegated authority and will be processed concurrently with OTS-Washington staff. As a general matter, correspondence from OTS regarding applications will be transmitted from OTS-Washington.

Within five business days of receipt of the application and the application fee, the Regional Office must notify the applicant of the application's receipt. The appropriate application fee must accompany each application for it to be considered filed. The application will not be considered filed until received by both OTS-Washington and the appropriate Regional Office.

If the application involves specialty areas, such as trust activities or CRA issues, OTS-Washington must provide a copy of the application to the corresponding OTS-Washington specialist.



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Within 30 calendar days of receipt of a properly submitted application, OTS shall take the following actions.

- Deem the application complete;
- Request, in writing, any additional information necessary to deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

Failure by OTS to act within 30 calendar days of receipt of the application for processing shall result in the filed application being deemed complete, commencing the period for review.

If additional information is requested, a response must be submitted within 30 calendar days of the letter requesting such information. The applicant may, in writing, request a brief extension of the 30-calendar day period for responding to a request for additional information, prior to the expiration of the 30-calendar day time period. OTS, at its option, may grant the applicant a limited extension of time in writing. Failure to respond to a written request for additional information within 30 calendar days of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial or disapproval of the application.

After the timely filing of additional information in response to any initial or subsequent request by OTS for additional information, OTS has 15 calendar days to review the additional information for completeness or appropriateness and take one of the following actions:

- Request, in writing, any additional information necessary to deem the application complete;
- Deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

The 15-day review period commences when the OTS receives a response that purports to respond to all questions in the information request. OTS may extend the 15-day review period for an additional 15 calendar days, if OTS requires the additional time to review the response. OTS will notify the applicant that it has extended the period before the end of the initial 15-day period.

Failure by OTS to act within 15 calendar days of receipt of the additional information shall result in the filed application being deemed complete, commencing the period for review.

Once the application has been deemed complete, there is a 60-calendar day review period during which time OTS will take into consideration all factors present in the application and render a decision thereon. If, upon expiration of the 60-day review period, assuming no extension has been granted, OTS has failed to act, the application is deemed approved automatically, and the applicant may thereafter consummate the transaction. If multiple applications are submitted in connection with one transaction, the applicable review period for all applications is the review period for the application with the longest review period, subject to statutory review periods.

During the review period, OTS may request additional information if the information is necessary to resolve or clarify the issues presented in the application. OTS may also notify the applicant that the application is incomplete and require that the applicant submit additional information to complete the application. The review period can be extended an additional 30 calendar days if OTS determines that additional time will be required to analyze the proposed transaction. In such cases, OTS must notify an applicant prior to the expiration of the period for review. In situations in which an application presents a significant issue of law or policy, OTS may extend the applicable period for review of such application beyond the time period for review. In these cases, written notice must be provided to an applicant no later than the expiration of the time period.

Under 12 C.F.R. § 516.290, if OTS has not acted on a pending application within two calendar years after the filing date, OTS may deem the application withdrawn unless it determines that the applicant is actively pursuing a final determination on the application. Applications that are subject to this withdrawal provision are those that have failed to timely take action such as filing required additional information, or OTS has suspended processing of an application based on circumstances that are, in whole or in part, within the applicant's control and have failed to take reasonable steps to resolve these circumstances.

For purposes of calculating processing time frames, OTS does not include the day of the act or event, in determining the date the time period commences. In determining the conclusion of a time period, when the last day of the time period is a Saturday, Sunday, or a Federal holiday, the last day will become the next day that is not a Saturday, Sunday, or Federal holiday.

### **Regulatory Criteria**

12 C.F.R. Section 500.30(a) authorizes OTS to waive its regulations for good cause under 12 C.F.R. Chapter V, to the extent provided by statute. The applicant must apply and receive approval from OTS when seeking a waiver of OTS regulations. Waiver requests do not require newspaper publication.

### **Decision Guidelines**

In general, an analysis of the application should document the authority of OTS to grant a waiver, substantiate a valid need and purpose for the waiver, and assess the impact of granting a waiver on the operations of the savings institution. Waiver requests permitted by statute that subject an institution to undue risks or that pose supervisory concern, may present grounds for denial. Although decision considerations will vary depending upon the unique nature and reasons for a waiver, OTS will generally consider the following factors in its analysis:

- Is the waiver legally permissible and what is OTS's policy or precedent for granting similar waivers?
- What is the institution's overall financial condition and recent examination ratings?
- Is the institution well-managed? If the waiver and ensuing transaction(s) will result in any increased risk, does the institution have the ability to manage that risk?
- Is there a valid need and business reason for the waiver?

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- Are there other options available to the applicant absent obtaining a waiver to achieve the desired results?
  - Is the requested time period for which the waiver is requested, or the scope of the specific transaction(s) prompting the request, reasonable?
  - Will granting the waiver promote the evasion of any other regulation or statute, or trigger other regulatory restrictions?
  - Is the waiver and ensuing transaction(s) permitted by the waiver consistent with the institution's current business plan?
  - What impact will the waiver and ensuing transaction(s) have on the institution's capital levels and is capital sufficient to support any resulting growth or increased risk?
  - Are there any other safety and soundness issues or supervisory concerns that would be exacerbated should the waiver be approved?

### Conditions

The subject application is not subject to standard approval conditions. OTS may condition its approval with nonstandard conditions. Any conditions imposed will be based on the individual circumstances surrounding the institution and the transaction itself. In circumstances where nonstandard conditions are involved, all nonstandard conditions must be supported with justification in the recommendation memorandum related to approval of the application. Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application.

### RECORDKEEPING REQUIREMENTS

OTS is required to consolidate all correspondence related to the processing of the notice or application into a file copy to be sent to a central file. Both the Regional Office and OTS-Washington will maintain a separate file copy for nondelegated filings. The file copy must include a copy of the original filing including any exhibits, all amendments, all internal and external correspondence between interested parties, all documentation associated with the review and analysis of the filing, and all decision, recommendation memorandum, and compliance material. The file copy must be organized and separated into public and confidential material, and clearly identified as such. The public and confidential sections must be arranged in chronological order, or in a similarly organized fashion.

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**MONITORING AND CONTROL**

The Regional Office will monitor compliance with any conditions imposed in connection with an application's approval. The applicant must submit evidence of satisfaction of the conditions included in the approval order or letter to the Regional Office within the stated time frames.

The Regional Office should advise the appropriate staff responsible for supervision and examination of the institution regarding the action taken on an application, and be provided copies of the approval order or letter. If an application is approved, the first examination of the institution following the approval should include a review of compliance with all conditions of approval and any changes in operations as a result of the transaction.

A review of the application file should be made after all compliance material is received to ensure that the file is complete. Any deficiencies should be corrected before the file is sent to storage.

OTS-Washington may conduct a post audit review of the application in the Regional Office, including a review of the documentation maintained in the application file.

**INFORMATION SOURCES****Statutes**

12 C.F.R. § 500.30

12 C.F.R. Part 516

General Statement Concerning Procedures and Forms.

Applications Processing Guidelines

**Other**

Fees and Assessments Thrift Bulletin

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## **Section: Increase in Lending Limitation to One Borrower for 1-4 Family Residential Real Estate and Small Business Loans**

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Section 850

This handbook section provides information for a savings institution seeking to increase its lending limitation to one borrower in connection with the origination of 1-4 family residential real estate and loans to small businesses. As set forth in 12 CFR § 560.93, the total loans and extensions of credit an institution may have outstanding at one time to one borrower may not exceed those limitations applicable to national banks. Such limitations are currently 15 percent of the institution's unimpaired capital and surplus, plus an additional amount of up to 10 percent of unimpaired capital and surplus, provided the amount of the loan that exceeds the 15 percent limit is secured by readily marketable security. On June 11, 2001, the Office of the Comptroller of the Currency (OCC) published a final regulation that establishes a three-year pilot program that expands the lending authority for "eligible" national banks. OCC intends the pilot program to address the competitive disparity that exists in states that have higher lending limits for state-chartered institutions than the federal limits available to federally-chartered institutions.

The regulation, which becomes effective on September 10, 2001, permits an "eligible" national bank to extend credit to one borrower for residential real estate loans and small business loans, in addition to its general lending limitations, in the lesser of the following amounts:

- \$10 million;
- 10 percent of its capital and surplus; or
- The percent of its capital and surplus, in excess of 15 percent, that a State bank is permitted to lend under the State lending limit that is available for residential real estate loans in the State where the main office of the national bank is located.

Any such loan or extension of credit for 1-4 family real estate must be secured by a perfected first lien security interest in such real estate in an amount that does not exceed 80 percent of the appraised value of the collateral at the time the loan or extension of credit is made. In no event may a bank lend more than \$10 million to one borrower under this authority. In addition, the total outstanding amount of all loans and extensions of credit to one borrower made under this authority and the general lending authority may not exceed 25 percent of capital and surplus. Furthermore, the total outstanding amount of loans and extensions of credit to all of its borrowers under this special lending limitation authority may not exceed 100 percent of capital and surplus.

An "eligible" national bank is defined as being well capitalized, with a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with the bank's most recent examination or subsequent review, with at least a rating of 2 for asset quality and for management. In order for a national bank to avail itself of this increased lending authority, it must file an application with, and receive the approval of, the OCC.

Since OTS regulated savings institutions are authorized to make loans to one borrower to the same extent as national banks, "eligible" savings institutions may apply to the OTS to make loans or extend credit under the same terms and conditions applicable to national banks. The savings institution's home office must be located in a state where the "state lending limit" for residential real estate loans,

## **Section: Increase in Lending Limitation to One Borrower for 1-4 Family Residential Real Estate and Small Business Loans**

Section 850

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small business loans, or unsecured loans is a higher percentage limit than the limit for federal thrifts. An eligible savings institution must meet all of the following criteria:

- Well capitalized as defined in 12 CFR Section 565.4(b)(1);
- A composite CAMELS rating of 1 or 2; and
- A component rating of 1 or 2 in asset quality and in management.

Approval of an application under this section will generally provide blanket approval to the institution to extend credit under this pilot program; however, OTS may determine that a filing is required for each borrower in circumstances when safety and soundness concerns exist.

### **FILING REQUIREMENTS**

#### **Delegated Authority**

Generally, the Regional Office may process applications filed under this section under delegated authority. However, certain situations may cause a filing to be nondelegated, including applications that raise a significant issue of law or policy. See Delegation Section 040 of the handbook for further information on the delegation process.

#### **Prefiling Meeting Requirements**

Prefiling meetings are not required for these types of filings. However, applicants are encouraged to contact the Regional Office, particularly if the transaction involves unique or novel issues, to determine if a prefiling meeting will expedite the application review process.

#### **Information and Form Requirements**

The application should be filed with the appropriate Regional Office in accordance with 12 CFR Part 516. The applicant should file the original and two copies of the application with the appropriate Regional Office. The original filing, all copies, and all exhibits and other pertinent documents must be clearly marked and captioned as to the type of filing. One copy must contain original signatures on all executed documents. For applications that are not delegated to the regional office, an additional three copies of the application should be filed with the Applications Filing Room at OTS-Washington. The application should be in letter form and include, at a minimum, the following information:

- A certification stating the savings institution is an “eligible” institution;
- Citations to relevant State lending laws or regulations;
- A copy of a written resolution executed by a majority of the savings institution’s board of directors approving the use of the higher limits, and confirming the terms and conditions for use of this lending authority;

## **Section: Increase in Lending Limitation to One Borrower for 1-4 Family Residential Real Estate and Small Business Loans**

Section 850

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- A detailed description of how the board of directors will exercise its continuing responsibility to oversee the use of this lending authority; and
  - Information that will assist the OTS in evaluating the application under the decision factors outlined in the Decision Guidelines section of this handbook section.

### **Processing Procedures and Time frames**

Within five business days of receipt of application, OTS must notify the applicant of the application's receipt. The application will be automatically approved upon the expiration of 30 calendar days after the filing date of the application, unless OTS takes one of the following actions before expiration of that time period:

- Requests, in writing, any additional information necessary to supplement the application;
- Notifies the applicant that the application raises a supervisory concern, raises a significant issue of law or policy, or requires significant additional information; or
- Denies the application.

If supplemental information is requested, the applicant has 30 calendar days to provide such information. The 30-day time frame review period will restart upon receipt of such information.

### **Confidentiality**

The applicant must submit in writing, concurrently with the submission of the application, any requests to keep specific portions of the application confidential. In accordance with the Freedom of Information Act, the request should discuss the justification for the requested treatment and should specifically demonstrate the harm (e.g., to competitive position, invasion of privacy) that would result from the public release of information.

Information for which confidential treatment is requested should be: (i) specifically identified in the public portion of the application by reference to the confidential section; (ii) separately bound; and (iii) labeled "confidential." The applicant should follow these same procedures when filing supplemental information to the application. OTS will determine whether information designated as confidential must be made available to the public under the Freedom of Information Act. OTS will advise the applicant before it makes information designated as confidential available to the public.

### **Regulatory Criteria**

The three-year pilot program will allow certain institutions with the highest supervisory ratings to lend up to the state limit - but no more than 25 percent of capital - to single borrowers for:

- Small business loans, defined as: (i) loans or extensions of credit "secured by nonfarm, nonresidential properties," or (ii) "commercial or industrial loans" as defined in the Thrift Bulletin; and

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- Residential real estate loans, defined as loans that do not exceed 80 percent of the collateral property's appraised value at the time the loan was made and which are secured by a perfected first-lien security interest in 1-4 family residential real estate.

To be able to avail itself of this authority, an institution must be:

- Well-capitalized;
- Have a CAMELS rating of "1" or "2" with at least "2" for the asset and management components; and
- Its home office must be located in a state where the "state lending limit" for residential real estate loans and small business loans a higher percentage limit than the limit for federal institution.

In exercising this authority, a savings institution is subject to the following:

- No institution may lend more than 25 percent of its capital to a single borrower, even in states with higher limits;
- Loans to a single borrower are limited to a maximum of \$10 million under the special lending limits; and
- An aggregate lending cap on all loans, to all borrowers, made under the special lending limits cannot equal more than 100 percent of the institution's capital and surplus.

### **Decision Guidelines**

Increased lending by a savings institution to individual borrowers increases the risk exposure of an institution through a greater concentration of credit risk in any one borrower. The analysis will focus on whether the institution has the financial and managerial capacity to prudently conduct the increased lending activity. Approval of the application is based upon a conclusion that the increased lending does not compromise the safety and soundness of the institution. OTS should consider the following factors in reaching a conclusion:

- Was the institution cited for significant deficiencies in lending policies, documentation, or internal control deficiencies at the most recent examination?
- Is there a current business plan of the institution, and does it address this type of lending in loans of this size?
- To what level is the institution seeking to expand its loan volume in small business loans (as a percentage of total capital and total assets)?
- Will the institution maintain compliance with the limitations set forth in Section 5(c)(2)(A) of HOLA with respect to small business loans?



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- How will the increase in this type of lending affect the institution's Qualified Thrift Lender (QTL) status? (An exception will not be granted if the institution will fail its QTL test as a result of the increase in nonresidential real property lending.)
  - Is the experience of the officers/employees adequate to properly manage the proposed increase in the lending limits?
  - Do officers/employees possess the necessary expertise in the types of loans that will be subject to the increased lending authority?
  - Is the present level of delinquent loans considered significant, as indicated by the trend in delinquency and by comparison with other lenders?
  - Are current collection policies and practices considered adequate?
  - Does the institution have an effective internal asset classification system?
  - Will the increase in lending authority create a concern regarding concentration of risk or dilution of diversification in the balance sheet?
  - Does the board of directors have a plan to oversee the increase lending authority in a safe and sound manner?

### Conditions

If the application is approved, the approval letter should include the following three standard conditions:

- The institution may continue to make loans and extensions of credit under this expanded authority through September 10, 2004;
- The OTS may rescind the institution's authority to exercise this expanded lending authority at any time; and
- In the event the institution ceases to qualify as an "eligible institution," the authority to exercise this expanded lending authority is rescinded on the date it no longer qualifies. No further loans or extensions of credit shall be made using this expanded authority without application to and approval of the OTS.

The OTS may condition its approval with nonstandard conditions if a particular situation warrants. Any conditions imposed by the Regional Office will be based on the individual circumstances surrounding the institution and the lending transaction itself. If such nonstandard conditions are utilized, the Regional Office's digest must include appropriate justification for imposing such condition. Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application.

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## RECORDKEEPING REQUIREMENTS

All correspondence related to the processing of the application should be consolidated into a file copy to be sent to a central file. Both the Regional Office and OTS-Washington will maintain a separate file copy for nondelegated filings. The file copy must include a copy of the original filing including any exhibits, all amendments, all internal and external correspondence between interested parties, all documentation associated with the review and analysis of the filing, and all decision, recommendation memorandum, and compliance material. The file copy must be organized and separated into public and confidential material, and clearly identified as such. The public and confidential sections must be arranged in chronological order, or in a similarly organized fashion.

## MONITORING AND CONTROL

The Regional Office will monitor compliance with all conditions imposed in connection with an application's approval. The applicant must submit evidence of satisfaction of the conditions included in the approval order or letter to the Regional Office within the stated time frames.

The Regional Office should notify the appropriate staff responsible for the supervision and examination of the institution regarding the action taken on an application, and provide staff with copies of the approval order or letter. If an application is approved, the first examination of the institution following the approval should include a review of compliance with all conditions of approval and any changes in operations as a result of the transaction.

A review of the application file should be made after all compliance material is received to ensure that the file is complete. Any deficiencies should be corrected before the file is sent to storage.

OTS-Washington may conduct a post audit review of the application in the Regional Office, including a review of the documentation maintained in the application file.

## INFORMATION SOURCES

### *Statutes*

12 U.S.C. § 1464(u) Limits on loans to one borrower.  
12 U.S.C. § 84 Lending Limits

### *Regulations*

12 CFR Part 516 Applications Processing Guidelines  
12 CFR § 560.93 Lending limitations

### *Other*

12 CFR 32 OCC, Lending Limits  
TA 211 Thrift Activities Regulatory Handbook  
TB 79 Lending Limits Pilot Program