
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 expose 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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