

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

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.

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.

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.

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	