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

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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,

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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;

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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