

The purpose of 12 C.F.R. § 563.80 is to provide the requirements under which institutions, that do not meet their regulatory capital requirements (12 C.F.R. Part 567), are to notify the Regional Director, or their designee, of their intent to issue securities as evidence of outside borrowings with terms in excess of one year.

Special Considerations

Outside borrowings are borrowings other than from a Federal Home Loan Bank or state-chartered central reserve institution, and include debt that is not evidenced by the issuance of a security or subordinated debt. The notice requirement in 12 C.F.R. § 563.80(e) does not pertain to mandatorily redeemable preferred stock or subordinated debt. Mandatorily redeemable preferred stock and subordinated debt are issued pursuant to 12 C.F.R. § 563.81.

Collateralized borrowings should be closely scrutinized because if the financial stability of the institution deteriorates, the extent of the protection demanded by the lender will increase.

FILING REQUIREMENTS

Delegated Authority

The Regional Director, or their designee, is authorized to approve or disapprove any proposed outside borrowings with maturities in excess of one year, subject to the conditions provided in these Guidelines.

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

An institution that meets its regulatory capital requirements does not need to make a filing.

If the institution does not meet its regulatory capital requirements, it must file a notice of intent to issue debt securities with the appropriate Regional office at least 10 business days prior to the issuance of the securities. There is no form for this filing, but certain information must be provided. The notice should contain a summary of the terms of the securities and the following information as required under 12 C.F.R. § 563.80(e)(1):

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- The principal amount and minimum denomination of the securities;
 - The expected interest rate range and price range at which the securities are to be sold;
 - The stated and average effective maturity;
 - Any mandatory or optional prepayment provisions;
 - A description, the amount, and the maintenance of the collateral, if any;
 - Any trustee provisions;
 - The events of default and remedies of default; and
 - Any provisions that would restrict, conditionally or otherwise, the operations of the institution.

If all information required is not included in the notice, the applicant should be promptly advised that the notice is deficient and not accepted for filing. The filing must include an original and two copies to the appropriate Regional Office.

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

The Regional Director, or their designee, has 10 business days after receipt of the filing to approve or disapprove the issuance. If all information required by 12 C.F.R. § 563.80(e)(1) is not included in the notice, the applicant should be promptly advised that the notice is deficient and not accepted for filing. If the issuance is approved, the institution will have 120 calendar days to issue the debt securities.

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

The Regional Director, or their designee, will object to the proposed issue if the terms or conditions of the proposed issue:

- Place unreasonable burdens on the institution, or
- Convey undue control of the operations of the institution to the security purchasers.

Each security must bear on its face, in a prominent place, the following legend: “This security is not a savings account nor a deposit and it is not insured by the United States or any agency or fund of the United States.”

Decision Guidelines

The analysis should conclude that the issuance of the debt securities will not compromise the safe and sound operation of the institution. In conducting the review, consideration should be given to the following:

- Will the cost of the debt adversely affect the institution's earnings or capital?
- Do the purchasers have a prepayment option?
- Is the debt to be secured? (As a general rule, the aggregate book value of all collateral securing outside borrowings should be limited to twenty-five percent of assets.)
- Will collateralization increase the institution's interest rate risk exposure?
- Is the percentage of borrowings in relation to asset size excessive in light of the institution's future prospects? (As a general rule, debt should not exceed fifty percent of assets.)
- Will the borrowings reduce maturity imbalances in the institution's portfolio?
- Has the institution adequately planned its future cash flows?
- Is the debt convertible to voting stock? If so, what is the likelihood of a change of control?
- Does the projected use of funds appear reasonable in light of the institution's operations and business plan?
- Could the covenants of the debt instruments, collateral requirements, or restrictions in the indenture agreement have a detrimental effect on the institution's operations or management or compromise the SAIF's claims to the institution's assets in the event of a liquidation?
- What will the proceeds of the borrowings be invested in, and what are the expected risks and returns associated with these investments?
- Can the institution service the proposed debt and pay its other fixed cash obligations?

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- For state-chartered institutions, is the amount to be borrowed in accordance with applicable state laws and regulations?
 - Does the institution operate under any conditions relating to previous applications, or other agreements with OTS or SAIF, which might limit the institution's ability to issue outside debt?

Conditions

Outside Borrowings are not subject to standard approval conditions; however, the institution must issue the securities evidencing the indebtedness within 120 days after the expiration of the 10-day notice period.

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

OTS should ascertain that the institution issued the securities within the 120-day period after the approval.

Outside borrowings in excess of one year that are not denied should be continually monitored to determine their effect on the capital and earnings of the issuing institution, because institutions that must file notices present supervisory concerns due to their low regulatory capital. Therefore, the appropriate supervision and examination staff should be notified of the filing and provided with copies of the notice and the Regional Director's, or their designee's, decision.

A review of the application file should be made 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

Regulations

12 C.F.R. § 563.80

12 C.F.R. § 563.81

12 C.F.R. Part 567

Borrowing Limitations

Issuance of Subordinated Debt Securities and
Mandatorily Redeemable Preferred Stock

Regulatory Capital Requirement