

Department of the Treasury

Thrift Bulletin

TB 79



Handbooks: **Thrift Activities**
Subject: **Loan Portfolio Diversification**

Section: 211

RESCINDED

Summary: The Office of the Comptroller of the Currency (OCC) published a final rule amending part 32, the regulation governing the percentage of capital and surplus that a national bank may loan to any one borrower. The rule, effective on September 10, 2001, establishes a three-year pilot program that creates new special lending limits for two categories of loans, 1-4 family residential real estate loans and small businesses loans. Under section 5(u) of the Home Owners' Loan Act (HOLA), the rule will apply to savings associations in the same manner and to the same extent as it applies to national banks. Eligible savings associations with home offices located in states that have relevant lending limits higher than the current Federal limit may apply to take part in the pilot program.

For Further Information Contact: Your Regional Office or Supervision Policy (Credit Risk), Office of Thrift Supervision, Washington, D.C. You may access this bulletin at our web site: www.ots.treas.gov.

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Background

The Financial Institutions Reform Recovery and Enforcement Act revised the lending limits to one borrower for savings associations to parallel those applicable to national banks. Savings associations are now generally allowed to lend no more than 15 percent of their unimpaired capital and surplus to one borrower. The OCC, recognizing that many states have higher limits for the banks they charter, has implemented a three-year pilot program for 1-4 family residential real estate and small business loans, to allow approved national banks to compete more effectively with state-chartered banks. OTS believes that this expanded authority is in the best interest of the thrift industry and is implementing the pilot program simultaneously with the OCC.

The Rule

The OCC's lending limits pilot program regulations are attached¹. Please read them carefully. This bulletin only clarifies some implementation issues for savings associations.

The pilot program covers only perfected first lien 1-4 family residential (either owner-occupied or not) real estate mortgages in the amounts that do not exceed 80 percent of the appraised values of the collateral

¹ See the Federal Register: June 11, 2001, Volume 66, Number 112, Pages 31114-31121, for text of the entire rulemaking.

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at the time the loan is made and small business loans. For 1-4 family residential mortgages, the lending limit under the pilot program for approved OTS institutions is based on the state's lending limit for state-chartered banks for residential real estate loans or unsecured loans. For small business loans, the lending limit is based on the state's lending limit for state-chartered banks for small business loans or unsecured loans. The limits may vary by different for residential real estate mortgages and small business loans. Because of the separate percentage dollar limits established under the pilot program, the OCC waived the \$1 million safe harbor designation for small business loans. The expanded limits are available for business loans, specifically, loans secured by "nonfarm, nonresidential property" and "commercial and industrial loans" as these terms are defined in Call Report Schedule RC-C, Part 1, 1e and 4 (rev. 3-01). Note that the pilot program deliberately excludes agricultural and farm loans. This exclusion also holds for approved OTS-regulated institutions. In general, the expanded limits are available for commercial loans, with the exception of farm loans, as described in the instructions for Thrift Financial Report.

The lending limits pilot program does not expand an association's asset investment authority. State-chartered associations should comply with applicable state law. Federal associations must comply with the investment limitations set forth in Section 5(c)(2)(A) of HOLA, which allows thrifts to make commercial loans up to 20 percent of their total assets, provided that the amount in excess of 10 percent of assets is used solely for small business loans.

For HOLA investment limit purposes, business loans larger than \$1 million made under this pilot program would require the same documentation as that currently required for a business loan larger than \$1 million to be characterized as a loan to a small business.

The lending limits of the state where the approved savings association's home office is located establish the limits for the institution, regardless of the state in which the borrower or branch is located.

Consequently, an approved savings association may make qualifying residential and small business loans to a single borrower, in addition to amounts that it can already loan, that are the lesser of:

- 10 percent of its unimpaired capital and surplus,
- \$10 million, or
- The percentage of its capital and surplus, in excess of 15 percent, that a state bank is permitted to lend.

Additionally,

- The total outstanding amount of all loans and extensions of credit to any one borrower cannot exceed 25 percent of the savings association's unimpaired capital and surplus, and
- The **additional** outstanding amount of loans and extensions of credit to all borrowers made under this pilot program cannot exceed 100 percent of the savings association's unimpaired capital and surplus.

Applications will not be accepted after June 11, 2004, but saving associations that have been approved may continue to use the special exception until September 10, 2004.

Eligibility

An eligible savings association is “well capitalized”, has a composite rating of 1 or 2 in connection with its most recent examination or subsequent review, and has a rating of at least 2 for both asset quality and for management, and typically will have experience and expertise in making loans of the types for which it is applying for the additional lending authority.

Application Process

The pilot program is intended for well-capitalized savings associations who compete with state chartered institutions that have higher single-borrower limits. An eligible institution must submit an application to its regional office and receive approval before using the pilot program’s special lending limits. The regional office may approve a completed application if it finds that approval is consistent with safety and soundness.

The pilot program is directed toward savings associations with a proven management team and board of directors, stable operations, and a demonstrated history of prudent lending over an extended period of time. Regional offices have the discretion to deny an application from a savings association whose past performance or current credit culture raise questions or concerns regarding its ability to operate in a safe and sound manner with the enhanced lending limit authority, even if the savings association meets the eligibility requirements detailed above.

In general, the application must include a certification that the institution is eligible, a citation to the relevant state law or regulation, a copy of the written resolution by the majority of the board of directors approving of the use of the pilot program’s special lending limits, and a description of how the board will oversee the use of the special lending limits. Specific guidance on the details of the application procedures and the approval process is located in Section 850 of the Applications Processing Handbook and will be available on the internet at www.ots.treas.gov on the “Applications” page.

A savings association that has received OTS approval may make loans and extensions of credit under the special lending limits until September 10, 2004. An approved institution must cease making new loans or extensions of credit in reliance on the special limits if it becomes ineligible, OTS rescinds its authority, or OTS terminates the pilot program.

Any loans made by the savings association to a borrower in compliance with the requirements of the pilot program will not be deemed a lending limit violation and will not be treated as nonconforming if the savings association becomes ineligible, its authority to participate in the pilot program is rescinded, or the pilot program is terminated or discontinued. However, no additional funds could be advanced to the borrower as long as the outstanding amount of the bank’s loans and extensions of credit to the borrower exceeded the regular lending limit.

Ongoing Monitoring

OTS expects to use the results of the pilot program to evaluate the additional lending authority. Approved institutions should maintain current data on the number and amount of small business and 1-4 family residential loans made under the pilot program and the percentage of the institution’s capital and surplus that the additional lending represents. The regional offices will contact approved institutions for these data about thirty days after the end of each quarter.

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During the pilot program, approved institutions that extend credit or make loans under the additional lending authority should also monitor such activities to ensure that they are conducted in a safe and sound manner, that there is no adverse effect on the savings association's operations or capital, and that the loans and extensions of credit comply with all other relevant laws, regulations, and policies.

Richard M. Riccobono

3/4 Richard Riccobono
Deputy Director

Attachment

RESCINDED

Lending Limits Pilot Program Regulations

For the reasons set forth in the preamble, part 32 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 32--LENDING LIMITS

1. The authority citation for part 32 continues to read as follows: Authority: 12 U.S.C. 1 et seq., 84, and 93a.
2. In Sec. 32.2:
 - A. Paragraph (p) is redesignated as paragraph (s);
 - B. Paragraph (o) is redesignated as paragraph (q);
 - C. Paragraphs (i) through (n) are redesignated as paragraphs (j) through (o); and
 - D. New paragraphs (i), (p), and (r) are added to read as follows:

Sec. 32.2 Definitions.

* * * * *

- (i) Eligible bank means a national bank that:
 - (1) Is well capitalized as defined in 12 CFR 6.4(b)(1); and
 - (2) Has 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.

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- (p) Residential real estate loan means a loan or extension of credit that is secured by 1-4 family residential real estate.

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- (r) Small business loan means a loan or extension of credit "secured by nonfarm nonresidential properties" or "a commercial or industrial loan" as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

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3. In Sec. 32.3, paragraph (c)(5) is revised to read as follows: Sec. 32.3 Lending limits.

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- (c) * * *
 - (5) Loans to or guaranteed by general obligations of a State or political subdivision.
 - (i) A loan or extension of credit to a State or political subdivision that constitutes a general obligation of the State or political subdivision, as defined in part 1 of this chapter, and for which the lending bank has an opinion of counsel or the opinion of that State Attorney General, or other State legal official with authority to opine on the obligation in question, that the loan or extension of credit is a valid and enforceable general obligation of the borrower; and

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- (ii) A loan or extension of credit, including portions thereof, to the extent guaranteed or secured by a general obligation of a State or political subdivision and for which the lending bank has an opinion of counsel or the opinion of that State Attorney General, or other State legal official with authority to opine on the guarantee or collateral in question, that the guarantee or collateral is a valid and enforceable general obligation of that public body.

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- 4. A new Sec. 32.7 is added to read as follows: Sec. 32.7 Pilot program for residential real estate and small business loans.
 - (a) Residential real estate and small business loans.
 - (1) In addition to the amount that a national bank may lend to one borrower under Sec. 32.3, an eligible national bank may make residential real estate loans or extensions of credit to one borrower in the lesser of the following two amounts: 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 or unsecured loans in the State where the main office of the national bank is located. Any such loan or extension of credit must be secured by a perfected first-lien security interest in 1-4 family 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.
 - (2) In addition to the amount that a national bank may lend to one borrower under Sec. 32.3, an eligible national bank may make small business loans or extensions of credit to one borrower in the lesser of the following two amounts: 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 small business loans or unsecured loans in the State where the main office of the national bank is located. In no event may a bank lend more than \$10 million to one borrower under this authority.
 - (3) The total outstanding amount of a national bank's loans and extensions of credit to one borrower made under Secs. 32.3(a) and (b), together with loans and extensions of credit to the borrower made pursuant to paragraphs (a)(1) and (2) of this section, shall not exceed 25 percent of the bank's capital and surplus.
 - (4) The total outstanding amount of a national bank's loans and extensions of credit to all of its borrowers made pursuant to the special lending limits provided in paragraphs (a)(1) and (2) of this section may not exceed 100 percent of the bank's capital and surplus.
 - (b) Application process. An eligible bank must submit an application to, and receive approval from, its supervisory office before using the special lending limits in paragraphs (a)(1) and (2) of this section. The supervisory office may approve a completed application if it finds that approval is consistent with safety and soundness. To be deemed complete, the application must include:

- (1) Certification that the bank is an “eligible bank” as defined in Sec. 32.2(i);
 - (2) Citations to relevant State laws or regulations;
 - (3) A copy of a written resolution by a majority of the bank’s board of directors approving the use of the limits provided in paragraphs (a)(1) and (2) of this section, and confirming the terms and conditions for use of this lending authority; and
 - (4) A description of how the board will exercise its continuing responsibility to oversee the use of this lending authority.
- (c) Duration of approval. Except as provided in Sec. 32.7(d), a bank that has received OCC approval may continue to make loans and extensions of credit under the special lending limits in paragraphs (a)(1) and (2) of this section until the date three years after September 10, 2001, provided the bank remains an “eligible bank.”
- (d) Discretionary termination of authority. The OCC may rescind a bank’s authority to use the special lending limits in paragraphs (a)(1) and (2) of this section based upon concerns about credit quality, undue concentrations in the bank’s portfolio of residential or small business loans, or concerns about the bank’s overall credit risk management systems and controls. The bank must cease making new loans or extensions of credit in reliance on the special limits upon receipt of written notice from the OCC that its authority has been rescinded.
- (e) Duration of pilot program. The pilot program will terminate on June 11, 2004, unless it is terminated sooner by the OCC.
- (f) Existing loans. Any loans or extensions of credit made by a bank under the special lending limits in paragraphs (a)(1) and (2) of this section, that were in compliance with this section when made, will not be deemed a lending limit violation and will not be treated as nonconforming under Sec. 32.6.

Dated: May 31, 2001
John D. Hawke, Jr.,
Comptroller of the Currency