

INTRODUCTION

To be a Qualified Thrift Lender (QTL), an institution must either meet the Home Owners' Loan Act (HOLA) QTL test or the Internal Revenue Service (IRS) tax code Domestic Building and Loan Association (DBLA) test.

Savings associations may use either test to qualify and may switch from one test to the other. OTS has placed no limitations on the election except to require that the association must meet the time requirements of the respective test, that is, nine out of the last twelve months or the taxable year. According to the IRS, a taxable year may be either a calendar or fiscal year.

QUALIFIED THRIFT LENDER TEST

Under the QTL test, an institution must hold Qualified Thrift Investments (QTI) equal to at least 65 percent of its portfolio assets. The ratio of an institution's QTI divided by its portfolio assets is the institution's actual thrift investment percentage (ATIP). QTI must fall into one of the two following categories:

- Assets that are includable in QTI without limit.
- Assets limited to 20 percent of portfolio assets.

Portfolio assets are total assets minus goodwill and other intangible assets, office property, and liquid assets not exceeding 20 percent of total assets. An institution ceases to be a QTL when its ratio of QTI (numerator) divided by its portfolio assets (denominator) falls, at month end, below 65 percent for four months within any 12-month period.

Assets that are includable as QTI without limit:

- Loans (including qualifying real estate owned as a result of such loans) to purchase, refinance, construct, improve, or repair domestic residential or manufactured housing.
- Home equity loans.
- Educational loans.

- Small business loans.
- Loans made through credit cards or credit card accounts.
- Securities backed by or representing an interest in mortgages on domestic residential or manufactured housing.
- FHLB stock.
- Obligations of the FDIC, FSLIC, RTC, and the FSLIC Resolution Fund (depending on the date of the issue of such obligations).

Assets that are includable as QTI up to 20 percent of portfolio assets:

- Fifty percent of the amount of domestic residential housing mortgage loans originated and sold within 90 days. An institution may, on a consistent basis, include as QTI either the sales amounts from a previous quarter or the previous rolling 90 days or three-month period.
- Investments in a service corporation that derives at least 80 percent of its gross revenues from activities related to domestic or manufactured residential housing.
- Two hundred percent of the amount of loans and investments in "starter homes."
- Two hundred percent of the amount of certain loans in "credit-needy areas."
- Loans for the purchase, construction, development, or improvements of "community service facilities" not in credit-needy areas.
- Loans for personal, family, or household purposes (other than those reported in the assets includable without limit category).
- FNMA and FHLMC stock.

Domestic Building and Loan Association Test

To be a QTL under the DBLA test (IRS regulation 26 CFR § 301.7701-13A), an institution must meet a “business operations test” and a “60 percent of assets test.”

The business operations test requires the business of a DBLA to consist primarily of acquiring the savings of the public and investing in loans. An institution meets the public savings requirement when it meets one of two conditions:

- The institution acquires its savings in conformity with OTS rules and regulations.
- The general public holds more than 75 percent of its deposits, withdrawable shares, and other obligations. The general public may not include family or related business groups or persons who are officers or directors of the institution.

An institution meets the investing in loans requirement when more than 75 percent of its gross income consists of interest on loans and government obligations, and various other specified types of operating income that financial institutions ordinarily earn.

The 60 percent of assets test requires that at least 60 percent of a DBLA’s assets must consist of assets that thrifts normally hold, except for consumer loans that are not educational loans. The DBLA test does not include, as the QTL test does to a limited or optional extent, mortgage loans originated and sold into the secondary market and subsidiary investments.

See Appendix A for the Internal Revenue Code statutory definition of domestic building and loan association (26 USCA § 7701(a)(19)). See Appendix B for the IRS’s implementing regulation defining domestic building and loan association (26 CFR § 301.7701-13A).

BACKGROUND

Congress first established the QTL test as part of the Competitive Equality Banking Act of 1987 (CEBA). Effective January 1, 1988, the Federal Home Loan Bank Board implemented the CEBA

provisions. This required all thrift institutions to invest at least 60 percent of their tangible assets in certain housing and related investments to maintain QTL status.

Congress amended the QTL test as part of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) and raised the required ATIP to 70 percent. The statute phased in the changes over a two-year period. On August 9, 1990, new penalty provisions for failing the QTL test became effective and on July 1, 1991, the remainder of the FIRREA changes became effective.

The Federal Deposit Insurance Corporation Improvement Act of 1991 lowered the required ATIP to 65 percent and changed the computation period from a required weekly average to a required maintenance period of 9 out of 12 immediately preceding months.

The Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) amended the QTL requirements to give thrifts a choice of tests. A thrift must qualify either by meeting the HOLA QTL test, as amended by the EGRPRA, or by meeting the IRS’s DBLA tax code test. The EGRPRA amended the QTL test to allow:

- Educational loans, small business loans, and credit card loans to count as QTIs without limit.
- Loans for personal, family, or household purposes (other than those included in the without limit category) to count as QTI in the category limited to 20 percent of portfolio assets.

Exceptions

Section (m)(2) of the HOLA authorizes the OTS to grant temporary and limited exceptions from compliance with the QTL test. OTS may grant exceptions when extraordinary circumstances exist, or to significantly facilitate an acquisition under §13(c) or §13(k) of the Federal Deposit Insurance Act (FDIA).

Section (m)(2)(A) of the HOLA presents an example of an extraordinary circumstance: when the effects of high interest rates reduce mortgage demand to such a degree that an insufficient

opportunity exists for a savings association to meet the QTL requirement. Also, Thrift Bulletin 71, *Serving Communities Affected by Natural Disasters*, explains that within the constraints of safety and soundness and statutory requirements, the OTS will facilitate savings association efforts to assist communities affected by a natural disaster. In doing so, the OTS may temporarily waive the QTL requirement to allow capital compliant institutions to help rebuild non-QTL businesses.

Section 13(c) of the FDIA authorizes the FDIC to provide financial assistance to facilitate a merger or consolidation of a troubled insured depository institution. Section 13(k) of the FDIA sets forth criteria for such emergency acquisitions of troubled institutions. When granting an exception to significantly facilitate a § 13(c) or §13(k) acquisition, the OTS must determine the following:

- The acquired association will comply with a 51-month incremental phase-in transaction period (see §§(m)(2)(B)(ii) and (m)(7)(B) of the HOLA).
- The exception will not have an undue adverse effect on competing savings associations in the relevant market and will further the purposes of the QTL test.

DEFINITIONS OF QTL TERMS

An institution must be able to demonstrate that items being counted as QTI meet the specific definitions set forth below:

Acquisition, Development, and Construction (ADC) Loans

Associations may include ADC loans in QTI without limit provided the association is reasonably certain the property will become domestic residential housing. Moreover, to count as QTI, an ADC loan must meet at least one of the following criteria:

- The loan is for property zoned exclusively for residential use.
- The loan is for property zoned to permit residential use and there are restrictions in the

deed to the property that limit its use to primarily residential dwellings.

- The borrower will construct dwellings immediately on nearly all the residentially zoned property.

Community Service Facilities

Community service facility means churches or other places of worship, schools, nursing homes, hospitals, and facilities serving similar functions within a community.

Domestic Housing

This term refers to housing located within the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Pacific Islands.

Loans To Credit-Needy Areas

A credit-needy area is a geographic area or neighborhood in which the credit needs of the low- and moderate income residents are not being adequately met. This includes any census tract or block numbering area delineated by the United States Bureau of the Census where median income is less than 80 percent of the area median income. Area median income means the median family income for a Metropolitan Statistical Area (MSA), or the statewide non-metropolitan area if located outside an MSA.

A credit-needy area may also be an area that meets either of the following criteria:

- An area targeted for redevelopment by a federal, state, tribal or local government that also receives some form of financial assistance from the federal, state, tribal or local government.
- Identified as credit-needy through consultations with local government and community representatives. These determinations will be subject to review for reasonableness during examinations.

In addition, if the loan is for a small business or a “community service facility” the association may

classify it as a loan to a credit-needy area if it meets one of the following criteria:

- The loan is to a community service facility or a small business within the credit-needy area.
- The loan is to a small business owned by an individual whose home address is within the credit-needy area.
- The loan is to a community service facility that primarily serves individuals whose homes are within the credit-needy area.

For example, under the first criteria, a loan to a community center, school, or small business in a credit-needy area would qualify. Under the second, a small business loan to a person living in a credit-needy area but whose business is not within such an area would qualify. Finally, under the third criteria, loans to hospitals, churches or school dormitories that have clientele, the majority of who live in credit-needy areas, would qualify.

Manufactured Housing

Manufactured housing has the same meaning as defined by the National Manufactured Home Construction and Safety Standards Act in 42 USC Section 5402(6):

A structure, transportable in one or more sections, that in traveling mode measures at least eight feet by forty feet, or when erected is at least 320 square feet, and that is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

Mutual Funds

An institution may count mutual fund investments as QTI on a pro rata basis to the same extent that the underlying investments are eligible as QTI if the institution invested directly in the underlying investments. The mutual funds must also meet the other standards set forth in HOLA § 5(c)(1)(Q).

Residential Housing

For QTL purposes, residential housing includes OTS's regulatory 12 CFR Part 541 definitions of "residential real estate" and "dwelling unit." Section 541.23 also defines residential real estate (or residential real property):

- Homes (including condominiums and cooperatives).
- Combinations of homes and business property.
- Other real estate used for primarily residential purposes other than a home (but which may include homes).
- Combinations of such real estate and business property involving only minor business use.
- Farm residences and combinations of farm residences and commercial farm real estate.
- Property to be improved by the construction of such structures.
- Leasehold interests in the above real estate.

Section 541.10 defines dwelling unit to mean, "The unified combination of rooms designed for residential use by one family, other than a single-family dwelling."

Small Business Loans

OTS Definition

OTS's definition of a small business loan is in 12 CFR § 560.3: Small business loans and loans to small businesses include any loan to a small business as defined in this section; or a loan that does not exceed \$2 million (including a group of loans to one borrower) and is for commercial, corporate, business, or agricultural purposes. The following guidelines also apply:

- Generally, the original amount of a loan is the total amount of the loan at origination or the amount of the loan balance outstanding, whichever is larger.
- For loan participations and syndications, the original amount of the loan participation or

syndication is the entire amount of the credit the lead lender originated.

- For loans drawn down under lines of credit or loan commitments, the original amount of the loan is the amount when the lender most recently approved, extended, or renewed the line of credit or loan commitment before the report date. However, if the amount currently outstanding as of the report date exceeds this size, the original amount is the amount currently outstanding.
- Institutions should combine multiple loans to one borrower and report them on an aggregated basis.

Small Business Administration (SBA)

Definition

OTS regulation 12 CFR § 560.3 also cites the SBA definition of small business loans. Savings associations familiar with the SBA standards may prefer to use the eligibility criteria established by the SBA. See section 3(a) of the Small Business Act (Act), 15 USC 632(a), as implemented by SBA's regulations at 13 CFR Part 121.

Section 3(a) of the Act states that a small business concern must be independently owned and operated and not dominant in its field of operation. The Act provides that the definition shall vary from industry to industry in determining what a small business is to the extent necessary to properly reflect industry differences. In addition, the SBA is to make a detailed definition of the term based on, among other criteria, a business's number of employees and dollar amount of business.

The SBA size standards at 13 CFR Part 121 define the maximum sizes to be eligible as a small business concern. Two principal maximum size standards are 500 employees for most manufacturing and mining industries, and \$5 million in average annual receipts for most manufacturing industries. However, many exceptions exist and the SBA periodically changes size standards for different industries. Reference to the regulations is necessary to determine size eligibility requirements for a specific business concern.

Starter Home Loans

To be defined as a starter home loan for QTL purposes, a loan must meet certain criteria:

- Be secured by a one- to four-family home or multifamily residential dwelling; or by a development where 75 percent or more of the value of the development consists of such homes. In developments, up to 25 percent of the loan amount may be for facilities serving the community such as community centers or shopping malls.
- Be appraised at the time of loan origination at 60 percent less than the median value of newly constructed one- to four-family houses in the community where the starter home is located.

If no median figures are available for the local community, there are three permissible methods for estimating the median housing price in the community.

- Federal Housing Finance Board (FHFB) Method. An institution may rely on the most recent annual statewide housing value data generated by the FHFB. OTS regional offices will make the FHFB data available.
- National Association of Home Builders (NAHB) Method. NAHB publishes median housing prices monthly for 190 metropolitan areas as part of its Housing Opportunity Index. Associations may use the most recent NAHB data if it includes the local community in which the starter home is located.
- Private Method. An institution may rely on figures generated by a private company that has substantial experience conducting market surveys. The association may use the data on newly constructed housing values for one year after the date of the survey. The survey methodology will be subject to review during examinations.

CONSOLIDATION OF SUBSIDIARIES

In determining an institution's portfolio assets in the calculation of its ATIP, the institution must consolidate its assets with a subsidiary's assets in the following situations:

- The institution consolidates the subsidiary's assets with the institution's assets in determining its QTL.
- The association includes the subsidiary's residential mortgage loans originated and sold within 90 days of origination to determine the institution's QTL.

Except for these circumstances, an institution has the option to consolidate or not, and may make such a decision as frequently as monthly.

PENALTIES

Statutory penalty provisions require an institution that fails to remain a QTL to either become a national bank or be prohibited from the following:

- Making any new investments or engaging in any new activity not allowed for both a national bank and a savings association.
- Establishing any new branch office unless allowable for a national bank.
- Paying dividends unless allowable for a national bank.

Any company that controls a savings association that fails to regain its QTL status within one year must register as and be deemed to be a bank holding company.

Three years from the date a savings association should have become or ceases to be a QTL, by failing either to meet the QTL test or the DBLA test, the institution must comply with the following restriction:

- Dispose of any investment or not engage in any activity unless the investment or activity is allowed for both a national bank and a savings association.

REQUALIFICATION

A savings association may requalify as a QTL only once. Failure to maintain QTL status after requalification permanently subjects a savings association to the penalties described above.

MONITORING QTL COMPLIANCE

You are responsible for reviewing an institution's policies and procedures for maintaining QTL or DBLA status. You must also review documentation with the primary focus on the following:

- Evaluate the eligibility of qualifying investments and to reconcile the amounts recorded.
- Ensure that calculations reported on Schedule SI of an institution's Thrift Financial Report are correct.
- Confirm that the institution's QTL or DBLA status is correct.

REFERENCES

United States Code (12 USC)

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|------------|----------------------------------|
| § 1430(e) | Reduced Eligibility for Advances |
| § 1467a(m) | Qualified Thrift Lender Test |

United States Code (15 USC)

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| § 632(a) | Small Business Act |
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United States Code (26 USC)

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| § 7701(a)(19) | Domestic Building and Loan Association Test |
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United States Code (42 USC)

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| § 5402(6) | National Manufactured Home Construction and Safety Standards Act |
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Code of Federal Regulations (13 CFR)

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| Part 121 | Small Business Regulations |
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Code of Federal Regulations (26 CFR)

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| § 301.7701-13A | Post-1969 Domestic Building and Loan Association |
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Office of Thrift Supervision Bulletins

TB 71 Serving Communities Affected
 by Natural Disasters