

Thrift Bulletin
TB 79a



Handbooks: **Thrift Activities**
Subject: **Asset Quality**

Section: 200

Lending Limits Pilot Program

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 August 19, 2004, extends the pilot program adopted in 2001 for an additional three years, until September 10, 2007. The original pilot program created new special lending limits for one- to four-family residential real estate loans and small businesses loans. The extension adds small farm loans to the loans eligible for the special lending limit. Under section 5(u) of the Home Owners' Loan Act (HOLA), the rule applies 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. TB 79, which dealt with the original pilot program, is hereby rescinded.

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.

Thrift Bulletin 79a

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. In 2001, the OCC, recognizing that many states have higher limits for the banks they charter, implemented a three-year pilot program for one- to four-family residential real estate and small business loans, to allow national banks to compete more effectively with state-chartered banks. The pilot program, due to expire on September 10, 2004, was extended for an additional three years. The extended pilot program was also amended to add small farm loans to the loans eligible for the special lending limit. OTS believes that this expanded authority is in the best interest of the thrift industry and is implementing the extended pilot program simultaneously with the OCC.

Thrift Bulletin 79a

The Rule

The OCC's lending limits pilot program is codified in 12 CFR 32.7. Please read it carefully. This bulletin only clarifies some eligibility and application procedures for savings associations to use this program.

The pilot program covers perfected first lien one- to four-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 at the time the loans are made, small business loans, and small farm loans. For one- to four-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 and small farm loans, the lending limit is based on the state's lending limit for state-chartered banks for small business, small farm, or unsecured loans.

Note that the expanded pilot program added small farm loans to loans eligible for the higher lending limits. This also holds for approved OTS-regulated institutions. In general, the expanded limits are available for commercial loans as described in the instructions for the Thrift Financial Report, and small farm loans as defined below.¹

The lending limits of 12 CFR 560.93 and 12 CFR 32 are limits on loans that a savings association may make to one borrower. The limits do not affect the percentage of assets or capital lending and investment limits specified in the Home Owners' Loan Act. 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, small business, and small farm loans to a single borrower, in addition to amounts that it can already loan under the general lending limits, 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.

¹ OCC defines farm loans as: "loans or extensions of credit secured by farmland (including farm residential and other improvements) or loans or extensions of credit "to finance agricultural production and other loans to farmers."

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 OTS 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. Savings associations that were approved under the initial pilot program continue to be approved under the expanded program unless advised otherwise by their Regional Office.

The pilot program is directed towards 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 is 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, 2007. 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 the pilot program expires.

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, small farm, and one- to four-family residential loans made under the pilot program and the percentage of the institution’s capital and surplus that the additional lending represents. Periodically, the regional offices may contact approved institutions for these data.

Thrift Bulletin 79a

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.



—Scott M. Albinson
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Examinations, Supervision, and Consumer Protection