

**STATE OF GEORGIA
DEPARTMENT OF
BANKING AND FINANCE**



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GOVERNOR*

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*SPECIAL EDITION
IMPORTANT NOTICE
FINAL RULEMAKING*

March 3, 2011

DEPARTMENT OF BANKING AND FINANCE

FINAL REGULATIONS

Adopted March 3, 2011

To all interested persons:

Notice is hereby given that pursuant to the authority granted to it in the Georgia Administrative Procedures Act, Official Code of Georgia Annotated (O.C.G.A.) Chapter 50-13 and by authority of O.C.G.A. § 7-1-61, O.C.G.A. § 7-1-663; O.C.G.A. § 7-1-1012, and other cited statutes, the following attached Rules of the Department of Banking and Finance have been finally adopted on March 3, 2011. They were filed with the Secretary of State on March 3, 2011, and will be effective 20 days following or March 23, 2011.

Summary:

The attached rules were proposed and distributed on February 1, 2011. We received no written comment letters regarding Rules 80-1-5-.01 and 80-1-10-.09. There were no changes to the Proposed Rules. The Department believes these Final Rules encourage safety and soundness, safe and fair mortgage lending, and conform to the law. This set of rules is your copy of the Final Rules.

Adopted Rules

80-1-5-.01 Loans Generally, Interpretations and Rulings.

(1) “Indirect” loans as used in Code Section 7-1-285 shall mean loans made for the substantial benefit of a third party where repayment of the loan is dependent on activities of the third party rather than solely dependent on the resources of the borrower and subject to the provisions of Rule 80-1-5-.11.

(2) Loans extended to any Industrial Development Authority domiciled in Georgia which are dependent upon revenues obtained under an assigned lease contract naming the Authority as lessor shall be considered as loans to the lessee in calculating legal loan limitations.

(3) Loans by a bank to any wholly-owned subsidiary of the bank, which subsidiary is located within an approved office of the bank and which has agreed to abide by all laws, rules and regulations applicable to the bank shall be exempt from the twenty-five (25) percent maximum lending limit of the bank. In addition, to the extent allowed by other applicable law and with the prior written approval of the Department, this exemption from the twenty-five (25) percent maximum lending limit may be extended to loans from a bank to a wholly owned subsidiary of an affiliated bank.

(4) In determining amounts loaned, all amounts guaranteed or insured by any instrumentality of the United States government shall be deducted to the extent of the guaranty or insurance coverage. Immediate and deferred participations on loans by an instrumentality of the United States government shall also be excluded. Where the source of repayment of a loan, i.e. lease payments, is guaranteed by an instrumentality of the United States government and such guarantee is assignable and has been assigned to the bank, such loan may be excluded to the extent of the guarantee.

(5) In determining whether or not a loan in excess of the fifteen (15) percent limitation is secured by “good collateral and other ample security,” the lack of a perfected lien, inadequate insurance, required margins between collateral value and the amount of the loan shall be prima facie evidence of inadequate security to the debt. Loans secured by endorsement must be supported by a financial statement on the endorser, properly signed, which is not more than eighteen months old, if the loan is to be considered secured, and such statement must reflect adequate income to service the loan and unencumbered equity sufficient to protect the loan.

(6) A borrower's deposit accounts in the lending bank will be regarded as collateral to a loan when they are not subject to check or withdrawal, mature on or after the loan which is secured, are under the sole control of the bank, and are properly assigned. Where, according to the terms of the deposit contract, the deposit is eligible for withdrawal before the secured loan matures, the bank must establish internal procedures to prevent release of the security without the lending bank's prior consent. If proper procedures are in place, such deposits will be considered as collateral. Where deposit balances are properly taken as collateral to a loan, the loan may be reduced to the extent of the deposit in determining the amounts loaned for either secured or unsecured legal lending limitations, as applicable.

(7) Except as provided in this paragraph, extensions of credit in the form of insufficient funds checks held beyond the permissible return date and overdrafts shall be considered “extensions of credit” included in determining compliance with the legal limitation as it applies to the maker of the check or owner of the overdraft. Such extensions of credit shall also be subject to the requirements for prior written approval and ample collateral where the total indebtedness of the borrower exceeds fifteen (15) percent of the statutory capital base. Such extensions of credit will not be considered extensions of credit for purposes of compliance with the above legal loan limitations and requirements, provided that the extension is inadvertent, which requires that:

(a) The extension(s) do not exceed the aggregate amount of \$1,000 at any one time; and

(b) The account is not overdrawn or the insufficient funds check held for more than five (5) business days.

(8) Wherever approval of the Board of Directors or Loan Committee is required, such approval must be specific, prior, written approval of each extension of credit, except that advances made under a master note covering a specific purpose or project need not receive specific approval where such approval was accorded the master note. Annual approval of a line of credit may be used where interest rate, repayment terms, and anticipated collateral are clearly identified and current credit information is on file. Commodity, floor-plan and discount lines of credit which are anticipated to exceed fifteen (15) percent of the statutory capital base may be approved annually to be deemed appropriate by the Board of Directors without each transaction receiving specific prior approval. When in excess of twenty-five (25) percent of the statutory capital base, the line must be reviewed quarterly by the Board of Directors or Loan Committee.

(9) In determining the primary collateral basis upon which a loan is granted, that portion of the collateral having the greatest market value shall be assumed to be the primary collateral and the credit worthiness of the individual and of endorsers shall not be considered in determining conformity with the law unless proper, current, financial information is in file on the borrower or endorser.

(10) In determining amounts loaned to “any person, firm or corporation,” amounts acquired as a result of purchasing accounts receivable from a third party (factoring) shall not be considered; provided, the aggregate debt of the obligor including factored accounts shall not exceed thirty-five (35) percent of the bank's statutory capital base.

(11) Extensions of credit to political subdivisions of the State of Georgia authorized to levy taxes or backed by the taxing authority of another political subdivision shall qualify for exemption from the twenty-five (25) percent loan limitation under the provisions of Code Section 7-1-285, subparagraph (c)(4)(B), only where such extension of credit otherwise conforms with the provisions of Georgia Constitution, Article 9, Section 5.

(12) Where the “statutory capital base” as defined in Section 7-1-4(35) is reduced by operating losses, loan losses, or for other reasons, existing debt which was in conformity with the legal limitations at the time it originated shall not be construed to be non-conforming with new legal limitations resulting from the reduced statutory capital base.

Authority Ga. L. 1974, pp. 733, 790-797; Ga. L. 1983, Act No. 255, effective March 16, 1983.

80-1-10-.09 Assets Acquired D.P.C.

(1) All assets acquired through foreclosure or in lieu of foreclosure and all "Other Real Estate" acquired in such manner or otherwise shall be appraised annually commencing within one (1) year from acquisition by an independent appraiser knowledgeable in the fair market value of such assets, provided, in the case of real property, appraisals shall be at intervals of not more than five (5) years; and if the book value of the property does not exceed two (2) percent of the statutory capital base of the bank, the appraisals may be made by a qualified officer of the bank.

(2) All requests for permission to hold assets acquired through foreclosure or in lieu of foreclosure and to hold other types of "Other Real Estate" beyond limitations imposed by statute must include a statement as to efforts made to dispose of the asset, reasons for the failure of such efforts, plans for disposal of the asset during the extended ownership period, a copy of the most recent appraisal, and a statement as to the estimated annual cost of carrying the asset and estimated annual income produced by the asset.

(3) Extension of statutory ownership periods will not be granted for income purposes.

(4) Property subject to this section shall be initially carried on the books of the bank at the property basis, established on the date that the bank takes legal title to or physical possession of the property, by the price bid by the bank at foreclosure or at such higher value representing the fair market value determined by independent appraisal, unless otherwise provided, less the estimated costs to sell. Subsequently, the carrying value shall be subject to write-down or write-up based upon the most recent appraisal, but such adjustments shall not exceed the property basis which may only be increased by the amount of any capital improvements necessary to prepare the property for sale. Non-capital improvements and expenses necessary to carrying and maintaining the property (taxes, legal fees, insurance, yard maintenance, etc.) shall be expenses and not added to the carrying value. Income earned from the property, other than from conversion or sale, shall be credited to income and shall not reduce the carrying value of the property.

(5) Appraisals obtained pursuant to this section shall be for the purpose of determining the current fair market value of the property. Appraisals found to reflect other than current fair market value or found to have been performed by persons unfamiliar with such class of property or lacking independence (where required) from the owner of such property may be rejected by the Department and new appraisals required.

Authority Ga. L. 1974, p. 733.