

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



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*NATHAN DEAL  
GOVERNOR*

*ROB BRASWELL  
COMMISSIONER*

*SPECIAL EDITION  
IMPORTANT NOTICE  
PROPOSED RULEMAKING*

February 1, 2011

**NOTICE OF PROPOSED RULEMAKING  
AND  
OPPORTUNITY TO COMMENT**

**PROPOSED AMENDMENT TO RULES AND REGULATIONS  
OF  
DEPARTMENT OF BANKING AND FINANCE  
STATE OF GEORGIA**

To all interested persons:

Pursuant to the provisions of 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 Georgia Department of Banking and Finance hereby gives notice of its intent to adopt new and amended rules.

The enclosed proposed changes are in part responsive to law changes in the 2010 Legislation.

A synopsis and purpose precedes each proposed rule, with background information and explanation where applicable.

Comments to the Department of Banking and Finance must be received by Wednesday, March 2, 2011, at the close of business. Please send all comments to:

Rob Braswell, Commissioner  
Georgia Department of Banking and Finance  
2990 Brandywine Road, Suite 200  
Atlanta, GA 30341-5565

Fax: (770) 986-1654 or 1655

The Department shall review all comments, may contact commenters to discuss their suggestions, and after the comment period has closed will prepare the final rules. The Department will consider the proposed new rules for adoption at a meeting at 9:30 a.m. on Thursday, March 3, 2011, at the offices of the Department of Banking and Finance at Suite 200, 2990 Brandywine Road, Atlanta, Georgia 30341. Notice and a copy of the final rules adopted will be e-mailed to persons who have made a special request, and will be made available on our website at <http://dbf.georgia.gov/>. Other interested parties may receive a copy of the final rule by contacting the Department at (770) 986-1633, after Thursday, March 3, 2011.

## **2011 Rules and Regulations**

### **Proposed Changes: Synopsis, Purpose and Background**

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

The Department proposes to delete wording in Rule 80-1-5-.01 which appears to conflict with the provision added at O.C.G.A. § 7-1-285(c)(9) during the 2010 legislative session that allows for renewing loans, consistent with safe and sound banking practices, that were within the bank's legal lending limit at origination but which may be outside the bank's legal lending limit at renewal or restructuring. Language in the rule, as it is now written, appears to require that original loan documents allow for extensions and renewals. O.C.G.A. § 7-1-285(c)(9) does not contain that requirement. Such limiting language will be deleted.

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

The Department proposes to delete the requirement in Rule 80-1-10-.09(4) which provides a cap at the actual investment amount of the bank when valuing foreclosed property. Generally Accepted Accounting Principles (GAAP) allow foreclosed assets held for sale, such as other real estate (ORE), to be recorded (transferred from loans to ORE) at the fair value of the asset less the estimated cost to sell as of the acquisition date, the date that the institution receives legal title to or obtains physical possession of the asset. The proposed changes to this rule would align Department requirements with GAAP. Bank management should be cautioned that upon adoption of this rule change, even though there will be the possibility of the recognition of gain on a particular transaction, proper valuation with supporting documentation will be essential for recognizing any gain or recovery prior to an actual sale of ORE.

## ***PROPOSED 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. ~~; provided, however, in the absence of agreements to the contrary and originating at the time such debt originated regarding repayment programs for the debt in question, any extension, renewal, rollover or the like of the existing debt shall be considered to be a new loan and must conform to the new, lower lending limitations.~~

~~Demand notes in excess of resultant lower lending limitations or included in aggregate debts in excess of such limitations must be called for maturity within six (6) months after it has been determined that the new lending limits are applicable; provided, such notes may be wholly or partially renewed on a demand basis or otherwise where the aggregate debt of the borrower conforms to the new lending limits.~~

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

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### **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 current fair market value determined by independent appraisal, unless otherwise provided, less the estimated costs to sell ~~but in no event may such carrying value exceed the amount actually invested by the bank.~~ Subsequently, the carrying value shall be subject to write-down or write-up based upon the most recent appraisal, ~~and 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.