



DBF GUIDANCE FOR GEORGIA STATE-CHARTERED BANKS, BANK HOLDING COMPANIES, CREDIT UNIONS, AND TRUST COMPANIES

TO: Supervision Staff

CC: Georgia State-Chartered Banks

FROM: Melissa Sneed
Deputy Commissioner for Supervision

SUBJECT: STATUTORY CAPITAL BASE, DEBT COMBINATIONS, AND CREDIT PARTICIPATION PROGRAMS

DATE: September 1, 2022

Statutory Capital Base

Statutory Capital Base (SCB) is the foundation for, among other items, the determination of a state-chartered bank’s legal lending limits, securities investment limits, and fixed asset limits. The Board of Directors (Board) routinely establish dollar thresholds or “house limits” in their Board-approved loan policies to control growth and limit credit exposure as a part of risk management oversight. Other risk measures used to control growth include establishing overall limits for asset growth, limits for the loan mix (loan types as a percentage of total loans), limits for loan types as a percentage of capital, and minimum capital ratios. These Board-approved policy limits communicate risk appetites to management teams and promote a safe and sound business environment.

Statutory Capital Base Definition

The definition of SCB is set forth in O.C.G.A. § 7-1-4(35). SCB is the sum of the common equity tier 1 capital and the allowances for credit losses, as reported in the bank’s most recent Call Report. If significant capital changes occur after filing the Call Report which causes the common equity tier 1 capital to increase or decrease by 5% or more, then the SCB will be immediately recalculated at the time of such capital change and remain effective until the next Call Report filing.

Obligations of One Person or Corporation

O.C.G.A. § 7-1-285(b) limits obligations to any one person or corporation to 15% of SCB at the time of issuance of a binding commitment unless the loan is secured by good collateral and other ample security and does not exceed 25% of the SCB. Exceptions to these lending limits are also defined in the statute including items such as obligations guaranteed by the United States or State of Georgia. Obligations that exceed 15% of the SCB are also required to have advanced approval of the Board. In determining whether or not a loan in excess of the fifteen 15% limitation is secured by "good collateral and other ample security, Rule 80-1-5-.01(5) states that the lack of a perfected lien, inadequate insurance, and insufficient margins between collateral value and the amount of the loan shall be prima facie evidence of inadequate security to the debt

Combination of Debt for Legal Lending Limit Purposes

O.C.G.A. § 7-1-285(e) provides for the combination of loans for legal lending limit purposes when borrowers within a group are "related through common control or the group meets other criteria established by the department". The Department's specific definitions for combining debt is detailed in Rule 80-1-5-.11 and includes the following:

- Common Control – common control specifically includes the following:
 - Owns, controls, or holds the power to vote 25% or more of any class of voting securities of the other person;
 - Controls in any manner the election of a majority of the directors, trustees, or persons performing similar functions of the other person; **OR**
 - Exercises a controlling influence over the management or policies over the other person as determined by the Department.
- Common Use of Funds – when proceeds, or assets purchased with the proceeds, are comingled or used to acquire property, goods, or services for the purpose of a shared common commercial objective between the borrowers.
- Direct Benefit – when proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services.
- Obligation – a commitment that creates a liability or contingent liability for payment on a loan or extension of credit irrespective of whether the person is a borrower (i.e. a guarantee).
- Person – an individual or a corporation, limited liability company, partnership, trust, association, joint venture, sole proprietorship, unincorporated organization, or any other form of entity.

Department Coordination and Communication

At any time, the Department is willing to review any questions related to SCB calculations or combinations of debt and will provide an opinion of the proper treatment based on the information provided.

Debt Combinations

While the Rule details multiple debt combination requirements, the two most common instances for combining loans occur when a) control or ownership is 25% or more and b) when guarantees are present, to the extent of the guaranteed amount. In addition, it is important to note that pursuant to O.C.G.A. § 7-1-285(a.1) and (b), obligations are calculated at the time the bank issues the binding commitment. The following examples clarify the Department’s interpretation:

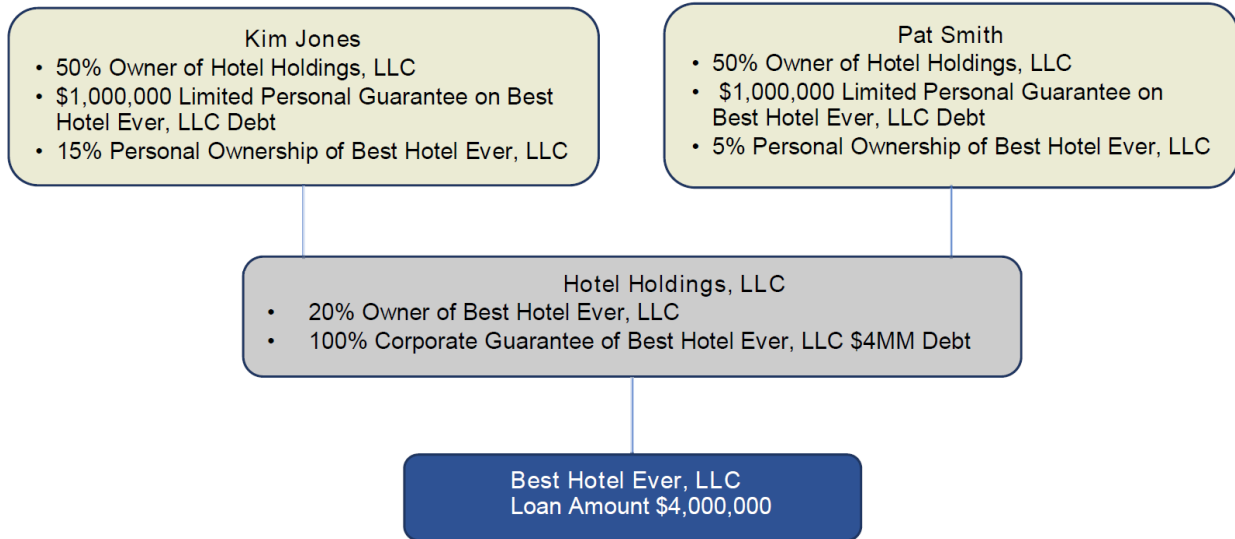
Ownership Combinations

The following example details debt combinations based on control and ownership for multiple debts of individuals. The debts of any entity where there is 25% or more control or ownership will be aggregated as debt for the individual legal lending limit.

| | Jack Smith | Frank Hall | Susan Williams |
|--|--|------------------------|--|
| Company Alpha | 50% | 50% | 0% |
| Beta Products, LLC | 25% | 25% | 25% |
| C Company, Inc. | 20% | 30% | 50% |
| Doing Good, LLC, a not-for-profit (Smith, Hall, and Williams serve as the only three directors, so they “control” 33% of the non-profit) | 33% | 33% | 33% |
| Debts included in the Secured LLL | Company Alpha, Beta Products, and Doing Good | All companies included | Beta Products, C Company, and Doing Good |

Ownership and Guarantee Combinations

As set forth in the following example, ownership and guarantee combinations for multi-layer limited LLCs can be a much more complex calculation. For combination purposes, ownership interests will flow through corporate entities to the individual proportional ownership of corporate obligations. Guarantee commitments extend only to the specific individuals or entities to the extent of the guaranteed amount. In the example, ownership of 25% or more and the amount of the guarantee will be included to determine the legal lending limit for the natural person or legal entity. The full amount of the loan will be considered on day one, corresponding to credit exposure at the time of binding commitment.



| | Kim Jones | Pat Smith | Hotel Holdings, LLC |
|--|--|--|---|
| Guarantee Amount | \$1,000,000 | \$1,000,000 | \$4,000,000 |
| Personal Ownership | 15% | 5% | N/A |
| Corporate Ownership | 10% (personal ownership 50% of Hotel Holdings, LLC who holds 20% ownership of Best Hotel Ever, LLC / 50% x 20% = 10%) | 10% (personal ownership 50% of Hotel Holdings, LLC who holds 20% ownership of Best Hotel Ever, LLC / 50% x 20% = 10%) | 20% |
| Debt required to be aggregated with any other existing bank obligations and legal reason | \$4,000,000 Ownership of 25% (personal ownership of 15% plus corporate ownership of 10%) | \$1,000,000 Personal guarantee amount applies. Total ownership of 15% is less than 25% LLL threshold. | \$4,000,000 Full Corporate Guarantee |

Credit Participation Programs

Certain elements of credit participation programs result in loan combinations. Generally, when the credit originator provides credit enhancements or creates a contingent liability commitment that demonstrates an ongoing financial obligation, the credits should be aggregated as debt to the credit originator. Credit enhancements and ongoing financial commitments include, but are not limited to, interest rates discounted from the original note; access to an established reserve account from the third-party for past due payments; collateral substitution options; pooling of payments; the third-party having sole authority to negotiate changes to a repayment schedule, refinance, or collection proceedings; and the third-party performing all origination, servicing, and ongoing credit administration. Further, many of these credit participation programs consist of loans that are underwritten based on a cash flow analysis since the bank may not be assured of a first lien position, loan proceeds are used for leasehold improvements, or the collateral may not qualify as good collateral or other ample security per O.C.G.A. § 7-1-285(b). Such underwriting would result in these loans being limited to the unsecured legal lending limit of the acquiring bank.