



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

TO: Supervision Staff

CC: Georgia State-Chartered Banks, Trust Companies, and Credit Unions

FROM: Melissa Sneed
Deputy Commissioner for Supervision

SUBJECT: CAPITAL ADEQUACY AND CONSIDERATIONS

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The Department has the responsibility for the maintenance of a safe and sound banking system operated in the public interest. An integral part of this responsibility is ensuring that financial institutions operate with an appropriate capital level. The Department evaluates capital adequacy pursuant to laws and regulations of the Department and the relevant federal regulatory agencies.

Financial institutions must maintain capital commensurate with the level and nature of all risks to which the institution is exposed. Therefore, minimum capital levels may not be appropriate even for financial institutions that meet minimum required capital levels, and as a result, higher levels of capital may be required based upon subjective and objective variables, concepts, and guidelines. The Department may require higher levels of capitalization based upon qualitative analysis of critical variables that directly impact the institution's overall financial condition under which the institution is operating or is forecast to operate. In evaluating the appropriate capital levels, the Department will consider such factors as quality, type, and diversification of assets; current and historical earnings; liquidity positions; sensitivity to market risk; the quality of management; and the existence of other activities that may expose the institution to risk, including the degree of leverage and risk undertaken by the financial institution or affiliates. Capital analysis will also include considerations for any necessary capital adjustments needed to maintain financial reporting in compliance with Generally Accepted Accounting Principles such as asset losses, allowance for credit losses adjustments, intangible capital impairments, etc.

Financial institutions must have a process for periodically assessing overall capital adequacy and maintaining an appropriate level of capital in relation to the risk profile. Financial institutions with deficient capital levels must adopt a prompt policy of capital planning and formulation to address the institution's forecasted capital needs and respond in an appropriately prompt manner. The Department has the authority to take formal enforcement action that requires management to restore capital to minimum requirements within a specified period if the specific circumstances indicate such action is appropriate.

DIVIDENDS

Proposed dividends in excess of amounts which could be paid without Department approval will be considered where prudent. The evaluation of a dividend approval request will be based upon the purpose of the dividend and the subsequent financial impact. The Department evaluates whether the payment would be in the continued best interest of the financial institution, would promote stability, and would not meaningfully impair the ability to provide for other liquidity and creditor obligations. Dividends will normally be approved where the amounts to be paid are directed to debt service, reasonable rates of return, or other ongoing operational needs. Dividend distributions should align with sound banking practices including regulatory capital adequacy standards.

SUBSIDIARIES

Financial institutions should maintain aggregate capital levels sufficient for all activities including risks of subsidiaries. Some financial institutions engage in significant subsidiary activities that can require capital ratios higher than those financial institutions that operate without subsidiaries. Consequently, in evaluating the consolidated capital position of such financial institutions, emphasis is placed upon the levels of capital adequacy needed for subsidiary activities after considering the relevant risk factors. The assessment of an organization's consolidated capital adequacy must consider the nature and level of all affiliated activities, and an organization's consolidated capital position should at least equal the sum of the capital requirements of the organization's core and subsidiary activity. In addition, higher capital ratios would be required for financial institutions that operate subsidiaries with significant financial and/or operational weaknesses, higher risk profiles, or experiencing or anticipating rapid growth.

DEBT CONSIDERATIONS

Elevated levels of debt at the financial institution and/or subsidiaries can impair the ability of a bank or credit union to provide financial assistance to subsidiaries, and in some cases the servicing requirements of such debt may be a drain on bank or credit union resources. Financial institutions should continuously demonstrate the ability to service incurred debt without straining the capital position.

SUPERVISORY ACTIONS

Where capital does not meet the minimum regulatory requirements, the Department will normally initiate the following actions:

- Require a financial institution to submit a comprehensive capital plan, acceptable to the Department that includes a program for achieving compliance with a required minimum ratio within a reasonable period.
- Increase financial institution reporting requirements and intensify monitoring efforts.
- Institute appropriate supervisory and/or administrative enforcement actions, which may include the issuance of a capital directive or denial of applications, unless a capital plan and subsequent capital enhancements are considered acceptable to the Department.

HOLDING COMPANIES

Holding companies should serve as a source of strength for their subsidiary bank(s) or trust company(ies). Elevated levels of debt at the parent holding company can impair the ability of a holding company to provide financial assistance to subsidiary institution(s), and in some cases the servicing requirements of such debt may be a drain on bank or trust company resources. Holding companies should continuously demonstrate the ability to service incurred debt without straining the capital of the subsidiary institution(s). Additionally, unless waived by the Department, Rule 80-6-2-.03 prohibits a Georgia bank holding company or a holding company owning a Georgia bank from entering contractual debt obligations which in the aggregate are dependent upon revenues produced by subsidiaries for annual servicing during the term of the debt in excess of fifty (50) percent of the average annual consolidated net operating earnings of such subsidiaries for the three fiscal years immediately preceding the date of the extension of credit.

Some holding companies engage in significant nonbanking activities that typically require capital ratios higher than those holding companies that only operate banks or trust companies. As a matter of both safety and soundness and competitive equity, the degree of leverage common in banking should not automatically extend to nonbanking activities. Consequently, in evaluating the consolidated capital position of such organizations, emphasis is placed upon the levels of capital for subsidiaries which are not engaged in the business of banking consistent with the levels that have been established by industry standards for similar firms that are not affiliated with the organization, or that may be established by the Department after considering the risk factors of a particular industry. The assessment of an organization's consolidated capital adequacy must consider the nature and level of all nonbanking activities and an organization's consolidated capital position should at least equal the sum of the capital requirements of the organization's banking and nonbanking subsidiaries as well as those of the holding company. In addition, higher capital ratios would be required for bank holding companies with significant financial and/or operational weaknesses, higher risk profiles, or companies experiencing or anticipating rapid growth.

STOCK OFFERING

The Department requires that prospective investors be provided with all material facts to permit informed investment decisions in connection with all offerings. It shall be the responsibility of the holding company, bank, or trust company to disclose any material facts or circumstances bearing on the present condition or future prospects of the institution where such facts or circumstances might reasonably be expected to influence a prospective purchaser's decision. In addition, stock offerings should be issued at a fair price. The institution must be able to demonstrate adequate support for stock issuance valuations. Pursuant to O.C.G.A. § 7-1-416(c), a bank or trust company may not, directly or indirectly, extend credit for the purpose of financing the original purchase of capital stock or capital debt issued by it or a holding company to which it is affiliated.

A holding company, bank, or trust company must verify that an adequate number of authorized shares are available for contemplated stock issuances. If additional shares are needed, the Articles of Incorporation will need to be amended. This will require the votes of a majority of directors and shareholders to authorize an increase in the capital stock under O.C.G.A. § 7-1-511. Additionally, pursuant to O.C.G.A. § 7-1-414 (applicable to banks and trust companies), with the written approval of the Department and the votes of directors and shareholders required to authorize an increase in capital stock of the institution under O.C.G.A. § 7-1-511, preferred stock may be convertible to common stock and subordinated securities may be convertible to common stock. Banks and trust companies can also request Department approval to acquire issued shares of its own common stock, which will then be considered treasury shares. In evaluating such requests, the Department will consider whether the acquisition has a legitimate corporate purpose, whether any capital impairment would result, and whether the price of the shares reflects the market value.