



Steve Bridges
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Regulatory Update

September 2, 2009

Legal Lending Limit Changes Adopted by DBF

As you are likely aware the Department of Banking and Finance announced on August 17, 2009 that it adopted the proposed rules issued for comment on July 13, 2009, without changes. The primary proposed rules potentially affecting community banks were those changes to the two sections of Rule 80-1-5, dealing with the limits on loans to one borrower, and with how loans to separate legal entities may be combined for legal lending limit purposes going forward. As you will recall we asked community bankers to provide us with their comments and concerns on the proposed rules to serve as guidance for a possible CBA comment letter regarding the proposal. When we requested comments we indicated that there was a need for transitional guidance for bankers as we move from the old rules to the new rules. All of the comment letters received from community bankers, regarding the proposed rules, related to that issue.

CBA submitted a comment letter which is pasted in below asking that the Department consider providing transitional guidance regarding the rule changes on loans to one borrower. In our comment letter, we asked that the DBF place such transitional guidance in writing, even if they did not include such guidance as a part of the official rulemaking. We also urged the Department to provide sufficient flexibility in its transitional guidance to allow bankers to work with borrowers through these difficult times and avoid any possible liability issues from borrowers related to the rule changes.

As you may have noted the DBF adopted the rules without changes, so no transitional guidance was included in the rules themselves. Further, no mention was made regarding transitional guidance in the announcement of the adoption of the rules. **However, subsequent communication with Commissioner Rob Braswell has revealed that the DBF does plan to provide transitional guidance in writing regarding the new loans to one borrower rules. Commissioner Braswell indicated that such guidance will be included in the Department's September Bulletin.**

CBA Comment Letter to DBF



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August 13, 2009

Rob Braswell, Commissioner
Georgia Department of Banking & Finance
2990 Brandywine Road, Suite 200

Atlanta, Georgia 30341-5565

Dear Commissioner Braswell:

The Community Bankers Association of Georgia (CBA) appreciates the opportunity to submit comments on proposed rulemakings by the Department of Banking and Finance. CBA is a non-profit trade association representing community financial institutions in the state of Georgia. CBA has over 290 member institutions, including state and nationally chartered commercial banks and thrift institutions, geographically dispersed throughout the state of Georgia. The Association provides support services for the community financial institutions in the state by providing extensive education and training programs, group purchasing programs, governmental affairs representation, and various networking opportunities.

The purpose of this letter is to comment on the proposed rulemaking issued for comment by the Department of Banking and Finance on July 13, 2009. Specifically, we would like to comment on the proposed changes to the two sections of Rule 80-1-5, dealing with the limits on loans to one borrower, and with how loans to separate legal entities may be combined for legal lending limit purposes going forward.

From discussions with the Department, we understand that the proposed changes to these rules are largely designed to eliminate the practice of "stacking" (i.e. considering separate legal entities, usually in the form of limited liability corporations, to be separate borrowers for legal lending limit purposes, when in reality the business of the two corporations is not separate and there is a common usage of funds and/or a common source of repayment for the loans to all the separate legal entities,) and we concur with this intent. We especially concur with the intent for situations where it appears the separate legal entities may have been created partially for the express intent of circumventing the rules limiting loans to one borrower. The fact is that most community bankers have interpreted the law and the current rules consistent with the intent of these newly proposed rules for many years. There are, however, situations that have evolved due to economic circumstances where two or more legal entities may now be considered to be a "common enterprise," when originally there was a total separate usage of funds and a genuine, separate source of repayment.

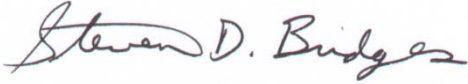
While we believe the proposed rulemaking promotes "safety and soundness," and we support the adoption of these proposed rules, we believe there needs to be written guidelines to provide bankers and examiners with guidance regarding how specific situations will be handled in the transition from the previous rules to the new rules. It may not be necessary to include the written guidance as a part of the official rule; however, we believe written transitional guidance that is publicly available and widely distributed is necessary.

Some questions that community bankers have raised in regard to the transition include: How will a loan that was within the legal limit when it was made, but that would not be within the legal limit under the new rules, be treated? (i.e. Will it automatically be considered in violation of the law when this new rule is adopted?) Can loans that were legal when they were made be renewed with no advance of new funds; even though the borrower's total line may exceed the new limit on loans to one borrower after the renewal? Related to the previous question, how will a banker be allowed to treat loans when, per agreement with the borrower, the debt was originally structured to be amortized over a stated period with payment of interest plus a principal reduction at interim loan maturity dates until the loan is fully repaid (i.e. debt to be amortized over a five year period with the loan or note to be set on an annual maturity basis, with payment of interest plus principal reduction each year at maturity until paid?) We are certain there are many other variations of the situations indicated by these questions. The need for written transitional guidance is clear in view of the fact that we have already received indications from bankers that different examiners have given bankers different opinions on the interpretation of the new rules in regard to these transitional situations.

We, therefore, encourage the Department to provide the banking community with written transitional guidance for the new rules being proposed; and we urge the Department to provide the banks with significant flexibility in this transitional guidance to allow the bankers to work through any specific transitional situations they may have in a manner that will be in the best interest of the bank and the borrower. Without such flexibility the bank may be left in a situation of unnecessarily holding loans in a past due status, possibly having to place them in a non-performing or even a non-accrual status. In some of these situations, this would be true even when in reality the loan is performing as agreed, per the loan agreement with the borrower. Community bankers are also concerned that without adequate flexibility the bank could incur liability for failure to comply with the terms of their original agreement with the borrower. Additionally, community bankers are concerned they could be accused of "pushing a struggling borrower over the edge," perhaps into bankruptcy, if they no longer have the ability to continue to work with the borrower because of the change in this legal lending limit rule.

Thank you again for the opportunity to comment on these proposed rules of the Department of Banking and Finance. We urge you to give serious consideration to the concerns raised above in regard to the transition to these new rules. The Community Bankers Association of Georgia and its member banks stand ready to further explain our comments or to assist the Department in any way possible to assure that these new rules will be workable for the community bankers of the state. Please do not hesitate to call on us. Initial contact should be made with Steve Bridges, Executive Director of Legislative and Regulatory Affairs, at (770) 541-4490.

Sincerely,



Steven D. Bridges
Executive Director of Legislative and Regulatory Affairs

"Promoting The Preservation And Continued Development of Community Banking In Georgia"

Community Bankers Association of Georgia

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