

GUIDANCE DOCUMENT

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STATEMENT OF POLICY #9

LOAN LIMITS

The Nebraska Department of Banking and Finance ("Department") sets forth Statement of Policy #9 regarding the maximum amount a bank may loan to a customer.

The purpose of the loan limit is to prevent undue concentration of credit by a bank to a customer. A loan includes all proceeds lent to a customer. In addition, lent money would include any loan that is guaranteed, should the loan be in default and/or the borrower does not have the ability or financial capacity to repay the loan and reliance to pay is placed on the guarantor. The general state statute for lending limits is Neb. Rev. Stat. § 8-141. For purposes of the state lending limit, both ledger and nonledger assets of an individual, firm, corporation, or partnership will be combined to determine the total amount which has been loaned.

A loan made to a bank insider is governed by Neb. Rev. Stat. § 8-143.01 and Regulation O (12 CFR Part 215). A bank insider is a statutorily defined term. Management and the Board of Directors are ultimately responsible for ensuring compliance with all applicable state and federal laws, rules, and regulations.

A loan is generally defined as the furnishing or delivery of anything of value under the condition that the thing of value loaned will be repaid, or a position is offered in a derivative contract. The requirements are 1) the actual advancement of something of value to the borrower, and 2) the promise to repay that advancement.

COMMITMENTS TO ADVANCE FUNDS ARE COMBINED WITH A BORROWER'S LOANS

Any time a bank makes a commitment to advance funds to a customer, which funds can be drawn upon at any time by the borrower, the total amount of that commitment is combined with the borrower's loans for the purposes of the lending limit. Examples of such commitments are listed below.

Bank Credit Cards. Bank credit cards are preapproved lines of credit made by the bank to a borrower. For this reason, all credit card limits will be combined with any other loan made to a cardholder when determining whether loans made to a borrower are within the bank's lending limit. If cards are issued to bank executive officers, care must be taken that such card limit, when combined with personal borrowings do not exceed the limits for executive officers contained in Neb. Rev. Stat. § 8-143.01.

Checking Plus Agreements. In checking plus agreements, the bank is committed to extend funds to cover insufficient fund checks written by customers. These agreements are a type of loan, and must be combined with all other types of debt for the purposes of determining the bank's loan limit to a borrower. As with credit cards, the key is the

amount of funds the bank is committed to extend, not whether funds have actually been advanced.

Overdrafts. All overdrafts are loans for the purposes of the lending limits. If a borrower's line of credit is at the maximum, any overdraft will create a lending limit violation.

Master Notes. For Master Notes that unconditionally obligate the bank to extend a line of credit to a borrower, the amount considered advanced for lending limit purposes is the total amount which may be drawn, whether or not actually advanced. Therefore, it will be considered a violation of the bank's lending limit if the bank writes such a master note in excess of its lending limit on that date, even though the funds are not actually advanced. In order to avoid such a violation, the bank would need an irrevocable participation agreement from another financial institution effective the same date as the master note. A line of credit that gives the bank total discretion in making advances against the line of credit is not considered the lending of funds until the bank actually advances the funds.

Letters of Credit. Letters of credit are commitments by the bank to advance funds on behalf of the borrower, and as such, must be combined with any outstanding loans to the borrower.

Addressing an Apparent Violation

On occasion, a state-chartered bank may inadvertently make a loan, a loan commitment, or an advance that is in apparent violation of the applicable legal lending limit. Apparent violations which have been addressed by the bank will be noted in the Report of Examination. The bank may use any of the following methods to address an apparent lending limit violation:

1. The bank may reduce the loan through the sale of the loan (or the nonconforming portion, at a minimum) in a nonrecourse participation agreement. A reduction resulting from the transfer of a portion of the outstanding credit to another borrower, considered a "nominee" relationship, is not acceptable.
2. The bank may reduce the loan through the receipt of payments. Charging off a portion of the loan to a level within the applicable legal lending limit does not correct the apparent violation.
3. For a legally binding line of credit in which the maximum amount to be funded when combined with the borrower's other loans exceeds the bank's legal lending limit, the bank may be able to renegotiate the maximum amount of the line of credit or provide in its line of credit agreements that the bank is not obligated to fund the line of credit if this would cause the bank to exceed applicable statutory maximum lending limits.

4. The bank may obtain additional collateral that qualifies the loan for a higher legal lending limit.
5. The bank may increase its legal lending limit by increasing its capital stock or surplus accounts through transfers from its undivided profits or retained earnings account.

Apparent Violation Caused by a Merger

If a bank merges with another, both banks may have direct or indirect debt to the same borrower(s). Consequently, the merged or surviving bank may have combined debt which exceeds its legal lending limit even though the borrower(s) was within the legal lending limit at both banks individually.

Following a merger, the surviving bank will be expected to use reasonable judgment in determining how to bring the combined debt into compliance with its legal lending limit consistent with sound banking practices. The bank should consider using one of the methods noted above in addressing the situation. The bank would also be expected to document its efforts to address the situation for review by the examination staff at future examinations. No additional loans, commitments, or legally binding lines of credit may be extended to the borrowers(s) while the apparent violation exists.

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