

Section 5-5A-22

Limits of indebtedness.

(a) No bank shall make a loan to any one person which, when combined with all other loans to such person, would cause total loans to that person to exceed:

- (1) Ten percent of the capital accounts of the bank, if such loans are not secured, or
- (2) Twenty percent of the capital accounts of the bank, if loans in excess of 10 percent of capital are fully secured.

(b) No loans which would exceed the limitation set forth in subsection (a)(1) shall be made unless duly authorized or approved in advance by the board of directors of the bank, a committee of the board of directors of the bank, or a loan committee, with such authorization or approval recorded in minutes of the meeting at which the authority was given.

(c)(1) As used in this section, the term "capital accounts" shall include capital, surplus, and undivided profits as defined in Section 5-1A-2, together with obligations of the bank subordinated in priority upon liquidation or dissolution to the claims of depositors of the bank. The term shall also include such reserves as may from time to time be permitted to be included by the superintendent.

(2) In calculating total loans to a person under this section the following rules shall govern:

a. In computing the total liabilities of any person to a bank, there shall be included all liabilities to the bank as maker or acceptor of paper discounted with or sold to such bank and the liability of the indorser, drawer, or guarantor who obtains a loan from or discounts paper with or sells paper under his or her guaranty or repurchase agreement to such bank.

b. In computing the total liabilities of any person to a bank, there shall be included all liabilities to the bank of any partnership or any unincorporated association of which such person is a member, any loans made for such person's benefit or for the benefit of such partnership or unincorporated association, and any loans made to, or for the benefit of, a corporation of which such person owns 35 percent or more of the capital.

c. In computing the total liabilities of any partnership or unincorporated association to a bank, there shall be included all liabilities of its individual members to such bank, loans made for the benefit of such partnership or unincorporated association or any member thereof, and any loan made to, or for the benefit of, any corporation of which any member owns 35 percent or more of the capital.

d. In computing the total liabilities of any corporation to a bank, there shall be included all loans made for the benefit of the corporation, and all loans to, or for the benefit of any partnership or unincorporated association, or any member thereof, who owns 35 percent or more of the capital of such corporation.

e. In computing the total liabilities of any person to a bank, direct or indirect loans to such person's spouse will be aggregated and treated as loans to such person until the bank can satisfy the superintendent that each spouse has a separate net worth and available assets or cash flow to independently repay and service each individual spouse's debts, and such net worth, assets, or cash flow of each is not dependent on decisions made or actions taken by the other.

f. In computing total liabilities of any person to a bank, any credit exposure to a person arising from a "derivative transaction," repurchase agreement, reverse repurchase agreement, securities lending transaction or securities borrowing transaction between the bank and the person shall be included. For the purposes of this subparagraph f. the term "derivative transaction" shall include any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(d) There shall be excluded from the limits set forth in subsection (a) the following:

(1) Indebtedness evidenced by commercial paper drawn in good faith against actually existing values and secured by a security interest upon goods in transit with shippers' order, bills of lading, or comparable instruments attached;

(2) Deposits in a reserve depository or a Federal Reserve Bank;

(3) Loans to the extent secured by:

a. Obligations of, and obligations guaranteed by the United States, the State of Alabama, any political subdivision of the State of Alabama, any public body of the State of Alabama, or a public body of any political subdivision of the State of Alabama if the obligations or guarantees are general obligations thereof;

b. Obligations which the bank would be authorized to acquire without limit as investment securities;

c. Guarantees or commitments or agreements to take over or purchase made by any department, bureau, board, commission, or establishment of the United States or any corporation owned directly or indirectly by the United States; or

d. At least a like amount of cash or deposits held by the lending bank.

(4) Investment securities acquired by the bank;

(5) Such other loans, liabilities, or transactions as shall from time to time be established by regulations of the State Banking Department.

(e) It shall be the duty of the superintendent to order any loans in excess of the amount fixed in this section reduced to the legal limit within 30 days of the superintendent's issuance of a written

report of examination detailing such excess. If such reduction is not made by the bank within 30 days of the superintendent's order, the superintendent may take appropriate action, including ordering the excess charged to profit and loss if, in his or her opinion, such excess is not well secured, or may by order impose civil money penalties against the bank not to exceed the amount of interest and fees paid or contracted to be paid to the bank on the loan or loans in excess of the amount fixed in this section. If such order of the superintendent is not complied with, the superintendent may proceed as in other cases provided for violation of the orders of the superintendent, and the bank shall have the same rights to a hearing and of appeal as are provided in Section 5-2A-12.

[This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.](#)

(Acts 1980, No. 80-658, p. 1259, §5-5-22; Act 2007-224, p. 284, §1.)