



**MARYLAND COMMISSIONER OF
FINANCIAL REGULATION**

ADVISORY



April 17, 2020

**LEGAL LENDING LIMIT
COVID-19 PANDEMIC
GUIDANCE**

This Advisory addresses the legal lending limits for Maryland-chartered commercial banks (“Banks”) and credit unions (“Credit Unions”) during the COVID-19 pandemic.

The Commissioner of Financial Regulation (“Commissioner”) and staff (collectively, “OCFR”) appreciates that a growing number of Maryland-chartered financial institutions may be anticipating regulatory hurdles arising from customers that have been negatively affected by the COVID-19 outbreak and the COVID-19 control measures undertaken by state and federal authorities. In consideration of the unusual circumstances and a recent Executive Order from Maryland Governor Hogan, the Commissioner is issuing guidance about Maryland’s legal lending laws for consideration by financial institutions as they review their financial condition and develop plan for future actions.

The OCFR will work with any financial institution that may experience, or anticipates experiencing, lending limit problems or has questions about the application of the lending limit laws and regulations.

BANKS

Pursuant to Md. Code Ann., Fin. Inst. (“FI”) § 3-601(c)(2), the total amount of all liabilities of any one person to a commercial bank for loans may not exceed ten percent (10%) of the Bank’s unimpaired capital and surplus, or thirty percent (30%) of the Bank’s unimpaired capital and surplus if the excess over ten percent (10%) is approved by two-thirds vote of the Bank’s Board of Directors and is secured by currency or obligations of the United States or obligations of the State of Maryland (“State”) or any political subdivision (collectively “State Limit”).

Pursuant to 12 U.S.C. § 84(a) and 12 C.F.R. § 32.3(a), the total amount of all outstanding loans and extensions of credit to any person to a national bank may not

exceed fifteen percent (15%) of the national bank's unimpaired capital and surplus, and the total outstanding loans and extensions of credit to any one person to a national bank that has a perfected security interest in readily marketable collateral that has a current market value of at least one hundred percent (100%) of the amount of the loan that exceeds the fifteen percent (15%) limit may not exceed ten percent (10%) of unimpaired capital and surplus (collectively "Federal Limit").

Pursuant to FI § 5-504(b), the Commissioner of Financial Regulation ("Commissioner") may grant approval to Banks to engage in any additional activity, service or other practice that national banking associations may engage in under federal law, subject to the Commissioner determining that the approval: (1) is reasonably required to protect the welfare of Maryland's general economy and of banking institutions, or (2) is not detrimental to the public interest or to banking institutions. The Commissioner's approval must impose the same conditions that federal law requires or permits as to national banking associations.

On January 13, 2013, the Commissioner issued a Wildcard Lending Limit Declaratory Ruling (the "Ruling"), which, inter alia, stated the Commissioner's determination that allowing Banks to elect the Federal Limit "is reasonably required to protect the welfare of the Banks, and is not detrimental to the public interest or to Banks". Accordingly, the Commissioner:

1. Approved Banks' election of the Federal Limit to the same extent and subject to the same conditions as permitted for national banking associations;
2. Prohibited Banks from making simultaneous dual election of the State Limit and Federal Limit;
3. Required that the Banks' election must apply to all general lending practices, policies, and applicable activities; and
4. Required any changes in the election to be approved by the Banks' Board of Directors, with the approval documented in the boards' meeting minutes, and notification given to the Commissioner.

On March 21, 2020, the President of the United States signed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). Pursuant to Section 4011(a)(2) and (b) of the CARES Act, the Comptroller of the Currency ("Comptroller") may by order exempt any transaction or series of transactions from the requirements of the Federal Limit upon a finding by the Comptroller that such an exemption is in the public interest and otherwise consistent with the purposes of 12 U.S.C. § 84.

On April 3, 2020, the Governor of Maryland issued the ORDER OF THE GOVERNOR OF THE STATE OF MARYLAND NUMBER 20-04-03-01, amending and restating the Order dated March 16, 2020 (“Order”), in which the Governor found that inter alia, the spread of COVID-19 is likely to result in loss of work and loss of income for some residents of Maryland and likely to also result in loss of business and income for some businesses in Maryland, which may impact their ability to pay for rental real estate. In Section VI of the Order, the Governor granted the Commissioner the authority to suspend any provision of the State Limit upon request by a Bank, to allow the Bank to engage in a series of transactions exceeding the State Limit if the Commissioner finds that doing so would not reasonably be expected to impair the safety or soundness of the Bank.

According to the terms of the Ruling, Banks are prohibited from making simultaneous dual elections. Banks must elect to follow either the Maryland Limit or the Federal Limit; they may not follow both. Banks that may be considering seeking relief from the State Limit or that are considering a change to their election are encouraged to contact the OCFR to discuss their plans and the implications of and procedures for changing their election prior to taking any actions. At a minimum, a Bank that has elected to follow the Federal Limit and seeks to change its election, must have the election change approved by the Bank’s Board of Directors, the approval must be documented in the Board’s meeting minutes, and notification of the change must be given to the Commissioner.

In order to maintain parity with national banks and effectuate the intent of the Order for Banks that have elected the Federal Limit, the Commissioner has determined that exemptions to the Federal Limit found to be in the public interest and consistent with 12 U.S.C. § 84 by the Comptroller would not be reasonably expected to impair the safety and soundness of Banks that are well-capitalized or adequately-capitalized within the meaning of 12 U.S.C. § 1831o and its implementing regulations. Accordingly, to the extent that the Comptroller issues guidance for national banks concerning the identification of transactions or series of transactions that are exempt from the Federal Limit and conditions for such exemptions, the Commissioner hereby determines that the Comptroller’s exemptions are reasonably required to protect the welfare of the Banks, and are not detrimental to the public interest or to Banks that are well-capitalized or adequately-capitalized within the meaning of 12 U.S.C. § 1831o and its implementing regulations. The Commissioner imposes the same conditions on the exemptions imposed by the CARES Act and the Comptroller.

CREDIT UNIONS

Pursuant to FI § 6-604, the total amount of all loans made directly or indirectly to any member by a Credit Union may not exceed ten percent (10%) of the Credit Union’s total assets (“Total Credit Union Limit”). Pursuant to COMAR 09.03.01.14D(4)(a), the aggregate amount of outstanding member business loans (defined at COMAR

09.03.01.14A(4)), net of any portion fully secured by a member's primary residence, secured by share or deposit accounts(s), or subject to an advance purchase commitment by an agency of the federal government or of a state or any of its political subdivisions, to any one member or group of associated members may not exceed the greater of fifteen percent (15%) of the Credit Union's net worth or \$100,000 ("Member Business Loan Limit"). Pursuant to COMAR 09.03.01.14D(4)(c), some Credit Unions may have requested from, and been granted by, the Commissioner a higher Member Business Loan Limit ("Revised Member Business Loan Limit"). For the purpose of clarity, the Total Credit Union Limit includes the Member Business Loan Limit and Revised Member Business Loan Limit, if applicable.

Pursuant to Section VI(b) of the Order, upon the request of a credit union, the Governor authorized the Commissioner to suspend FI § 6-604 to allow a credit union to engage in a transaction or series of transactions exceeding the Total Credit Union Limit, if the Commissioner finds that doing so would not reasonably be expected to impair the safety or soundness of the credit union. In order to effectuate the intent of the Order, the Commissioner has determined that suspending the Member Business Loan Limit and Revised Member Business Loan Limit, if applicable (included in the Total Credit Union Limit), would not reasonably be expected to impair the safety or soundness of credit unions that are well-capitalized or adequately-capitalized.

Credit Unions that request a waiver of Member Business Loan Limits or Revised Member Business Loan Limits must comply with COMAR 09.03.01.14F, and the Regional Director of the National Credit Union Administration also must approve of the waiver. Credit Unions that may be considering seeking relief from the Member Business Loan Limits are encouraged to contact the OCFR.

The Commissioner urges Banks and Credit Unions to review the Order at <https://governor.maryland.gov/2020/04/06/executive-order-20-04-03-01-evictions/> and strongly encourages them to contact our Office if they consider using the flexibility provided by the Order. Please also visit our website at <http://www.labor.maryland.gov/finance/> for additional COVID-19 related resources.



Office of the Commissioner of Financial Regulation
Maryland Department of Labor