

## **CHAPTER 13-02-09**

### **LOAN LIMITATION TO ONE BORROWER OR CONCERN**

#### **Section**

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#### **13-02-09-01. Purpose.**

This chapter is intended to safeguard the depositors of state banking associations by requiring the diversification of loan portfolios and repayment sources.

**History:** Effective September 1, 1986.

**General Authority:** NDCC 6-01-04

**Law Implemented:** NDCC 6-03-59

#### **13-02-09-02. Definitions.**

In determining the total direct, indirect, or contingent liability of a borrower for purposes of North Dakota Century Code section 6-03-59, the following definitions apply:

1. "Contingent liability" includes a potential economic obligation of an enterprise if:
  - a. It is probable that a liability will be incurred; and
  - b. The amount of the liability can be reasonably estimated.
2. "Corporation" means any entity organized and incorporated under law, including a limited liability company.
3. "Direct liability" means all obligations of an enterprise for which it has primary responsibility for repayment.
4. "Indirect liability" includes a potential economic obligation of an enterprise if:
  - a. It is probable that a liability will be incurred; and
  - b. The amount of the liability can be reasonably estimated.
5. "Limited partnership" means a partnership formed by two or more persons having one or more general partners and one or more limited partners, and includes a limited liability partnership.
6. "Parent corporation" means a corporation which owns or controls one or more subsidiaries.
7. "Probable" means that a future event or events that would cause a contingency to become a liability are likely to occur.
8. "Subsidiary" means a corporation which is owned or controlled by a parent corporation.

**History:** Effective September 1, 1986; amended effective December 1, 1998.

**General Authority:** NDCC 6-01-04

**Law Implemented:** NDCC 6-03-59

### **13-02-09-03. Liabilities of a borrower.**

1. Standby letters of credit must be included in determining the total direct, indirect, or contingent liability of a borrower who is a beneficiary of the standby letter of credit.
2. The obligations of a general partnership must be included in determining the total direct, indirect, or contingent liability of each general partner of the partnership.
3. The obligations of a limited partnership must be included, to the extent of each limited partner's share of ownership of the limited partnership, in determining the total direct, indirect, or contingent liability of each limited partner of the limited partnership, if one of the conditions of subsection 4 of section 13-02-09-04 exists. The entire obligation of a limited partnership must be included in determining the total direct, indirect, or contingent liability of the general partner of a limited partnership.
4. An extension of credit to a borrower which is participated in by the banking association to a third party with recourse must be included in determining the total direct, indirect, or contingent liability of that borrower.
5. If an extension of credit is secured by a pledged certificate of deposit drawn on the lending bank and payable to the borrower, the face value of the certificate of deposit or the borrower's obligation secured by the certificate of deposit, whichever is less, may not be considered in determining the total liability of a borrower.
6. If an extension of credit which is transferred by the banking association to a third party without recourse fails to comply with applicable call report instructions to be treated as a sale, the extension of credit must be considered in determining the total direct, indirect, or contingent liability of that borrower. Transfers that do not meet the conditions for sale treatment must be accounted for according to prevailing call report instructions.

**History:** Effective September 1, 1986; amended effective December 1, 1998.

**General Authority:** NDCC 6-01-04

**Law Implemented:** NDCC 6-03-59

### **13-02-09-04. Loans to corporations and principals.**

1. Obligations of a parent corporation must be combined with obligations of subsidiary corporations in which the parent owns or controls a twenty-five percent or more interest, if one of the conditions in subsection 4 exists.
2. Obligations of subsidiary corporations must be combined, if one of the conditions in subsection 4 exists.
3. Except as provided in subsection 5, obligations of an individual who owns or controls a twenty-five percent or more interest in a corporation must be combined with the obligations of said corporation, if one of the conditions in subsection 4 exists.
4. Combining under this section is required if:
  - a. The primary source of repayment for the obligation is the profits or cash flow of the same individual, parent corporation, or other subsidiary.
  - b. One or more loans is for the accommodation of the individual, parent corporation, or other subsidiary.
  - c. The borrowing corporations are not separate concerns, in reality, but merely departments or divisions of a single enterprise.

5. If an extension of credit would otherwise be required to be combined under subsection 3, and the extension of credit is secured by a purchase money security interest for an individual borrower's personal use, or is secured by a first lien on the residence of, and the residence is owned by or is expected to be owned by (after the extension of credit) the borrower, the extension of credit may not be combined.

**History:** Effective September 1, 1986.

**General Authority:** NDCC 6-01-04

**Law Implemented:** NDCC 6-03-59

#### **13-02-09-05. Loans to members of a partnership or association.**

Where persons are engaged in a common enterprise, whether in the form of a partnership, joint venture, or other association, and individually borrowed funds are to be used in that enterprise, the loans must be considered as a single extension of credit, unless the bank has established that the enterprise is not the source of repayment.

**History:** Effective September 1, 1986; amended effective December 1, 1998.

**General Authority:** NDCC 6-01-04

**Law Implemented:** NDCC 6-03-59