

Arizona Department of Financial Institutions



SUBSTANTIVE POLICY STATEMENT

Section: Banks

August 01, 2012

Subject: Legal Lending Limit

Policy Statement # BA-2

Arizona Revised Statutes § 6-352 prescribes the percent of a bank's capital that may be lent to one borrower. This policy statement clarifies how the Department will view those situations under which loans to apparent separate borrowers will be combined to determine compliance with the legal lending limits.

To ensure that Arizona state-chartered banks are not placed at a competitive disadvantage to national banks headquartered in this State, the Department has adopted the Office of the Comptroller of the Currency's "Common Enterprise" definition. Accordingly, in determining legal lending limitations, the Department will use the following definition of "Common Enterprise":

1. Whether two or more persons are engaged in a "Common Enterprise" will depend upon a realistic evaluation of the facts and circumstances of particular transactions.
2. Where the expected source of repayment for each loan or extension of credit is the same for each person, a "Common Enterprise" will be deemed to exist and the loans or extensions of credit must be combined.

- 3. Where loans or extensions of credit are made to persons who are related through common control, including where one person is controlled by another person, a "Common Enterprise" will be deemed to exist if the persons are engaged in independent business or there is substantial financial interdependence among them. A "Common Enterprise" will be deemed to exist when 50 percent or more of one person's gross receipts or gross expenditures (on an annual basis) are derived from transactions with one or more persons related through common control defined in paragraph (5) of this section. Gross receipts and expenditures include gross revenues/expenses, inter-company loans, dividends, capital distributions and similar receipts for payments.**
- 4. A "Common Enterprise" will also be deemed to exist when separate persons borrow from a bank for the purpose of acquiring a business enterprise of which those persons will own more than 50 percent of the voting securities.**
- 5. For the purposes of paragraph (3) of this section, "control" shall be presumed to exist when:**
 - a.) One or more persons acting in concert directly or indirectly own, control, or have power to vote 25 percent or more of any class of voting securities of another person; or**
 - b.) One or more persons acting in concert control, in any manner, the election of a majority of the directors, trustees or other persons exercising similar functions of another person; or**
 - c.) Any other circumstances exist which indicate that one or more persons acting in concert directly or indirectly exercise a controlling influence over the management or policies of another person.**

Questions regarding this policy statement should be directed to our Financial Institutions Division at (602) 771-2800.