



STATE OF LOUISIANA
OFFICE OF FINANCIAL INSTITUTIONS
BATON ROUGE, LOUISIANA



FORMAL LOAN COMMITMENTS

OFI Advisory Opinion No. 2
October 1, 2001

Purpose

This advisory opinion is to clarify when to include loan commitments for purposes of calculating a financial institution's loan-to-one-borrower limit. On occasion, violations of the Louisiana Banking Law (LBL) occur because management does not realize that a formal loan commitment is included in the calculation of the legal lending limit. Generally, loan commitments should be included; however, circumstances may exist that would cause their exclusion from the calculation.

Issue

Does a violation of the LBL occur when a loan commitment exceeds a financial institution's legal lending limit but has not actually been funded?

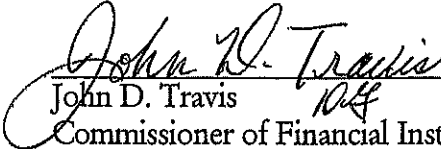
Analysis

Loan commitments may exceed a bank's legal lending limit and be a violation of state law. If a financial institution enters into a **binding commitment** to fund a loan or line of credit, the institution must do so when called on or failure to advance the funds could subject the financial institution to possible legal action for breach of the agreement or alternative legal theories such as fraudulent or tortious misrepresentation, negligence, promissory estoppel, or detrimental reliance. These types of "binding" extensions of credit would be included in the loan-to-one-borrower limits.

A financial institution may, however, enter into a loan commitment that exceeds its legal lending limit as long as it is not unconditionally obligated to advance funds under such agreement in an amount, which would cause a violation. One way to avoid this is to include specific language in the loan agreement limiting the actual advance of funds by the financial institution to an amount that would not cause a violation.

Conclusion

Regardless of actual funding, OFI examiners will cite an apparent violation of the LBL if a loan commitment exceeding the financial institution's statutory limits is formally originated *and* the institution is obligated to fund the loan in excess of its legal lending limit.



John D. Travis
Commissioner of Financial Institutions