



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

J. VIRGIL MATTINGLY, JR.
GENERAL COUNSEL

March 30, 1995

Charles R. Haley
Executive Vice President
The Peoples Bank
P.O. Box 4250
Eatonton, GA 31024-4250

Dear Mr. Haley:

This is in response to your letter requesting certain interpretations of Regulation O (12 C.F.R. Part 215). Your inquiry concerns [REDACTED], the majority stockholder of The Peoples Bank, Eatonton, Georgia ("Bank"), and her husband, [REDACTED]. Your letter indicates that the [REDACTED] are executive officers of Bank, and that they currently have a number of loans from Bank ("Existing Loans") that have been used for various purposes. The Existing Loans total less than \$100,000, and are secured by a first lien on the [REDACTED] principal residence in Eatonton.

In your letter, you indicate that the [REDACTED] are planning to build a second home in South Carolina, and ask whether it would be consistent with Regulation O for Bank to provide financing for that transaction while retaining the Existing Loans. In particular, you ask whether Bank may make a loan to both of the [REDACTED], jointly, or a loan to Mrs. [REDACTED], individually, to finance the proposed transaction. You also ask whether each of the [REDACTED] may borrow, separately, up to \$100,000 from Bank under Regulation O's provisions for "other purpose" loans to executive officers. See 12 C.F.R. 215.5(c)(4).

Section 215.5(c)(2) of Regulation O provides that, under certain conditions, a state member bank may extend credit to an executive officer "in any amount to finance or refinance the purchase, construction, maintenance, or improvement of a residence of the executive officer". Section 215.5(c)(4) provides that, in addition, a member bank may extend credit to an executive officer "for any other purpose not specified in paragraphs (c)(1) through (c)(3)

of this section, if the aggregate amount of extensions of credit to that executive officer under this paragraph does not exceed at any one time the higher of 2.5 percent of the bank's capital and unimpaired surplus or \$25,000, but in no event more than \$100,000." Staff understands that Bank's capital and unimpaired surplus exceeds \$4,000,000. Hence, the limit on Bank's "other purpose" loans to any executive officer under section 215.5(c)(4) ("Other Purpose Limit") is \$100,000.

Staff has reviewed the facts and circumstances presented in your letter in light of these regulatory provisions, and has concluded that, with certain limitations, it would be consistent with Regulation O for Bank to provide financing for the construction of the South Carolina residence while retaining the Existing Loans. In particular, staff believes that, because the aggregate amount of the Existing Loans is less than the Bank's Other Purpose Limit, the Existing Loans are authorized under section 215.5(c)(4) of Regulation O. Hence, such loans are permissible under Regulation O, provided that the other requirements of the rule (including requirements relating to terms and creditworthiness) are satisfied. In addition, staff believes that the proposed construction financing would be authorized under section 215.5(c)(2) of Regulation O relating to residential mortgage loans, provided that the requirements of that section (including requirements relating to security for the loan and use and ownership of the property) are satisfied. Hence, the proposed financing also would be permissible under Regulation O if the other requirements of the rule (including requirements relating to terms and creditworthiness and director approval) are met.^{1/} Staff further believes that this financing may be provided either through a joint loan to the [REDACTED] or by a loan to one of the [REDACTED] so long as the specific arrangements would satisfy the requirements of Regulation O referenced in this paragraph.

With respect to your additional question concerning compliance with the Other Purpose Limit, staff believes that, in general, the aggregate amount of loans that Bank may make to the [REDACTED] under section 215.5(c)(4)

^{1/} In addition, staff notes that these transactions would continue to be governed by general standards of safety and soundness, prohibitions against fraud and abuse, and corporate fiduciary duties, as well as, in some circumstances, other provisions of federal banking law such as section 23A of the Federal Reserve Act (12 U.S.C. § 371c).

of Regulation O is \$100,000. By operation of Regulation O's tangible economic benefit rule (12 C.F.R. 215.3(f)) and the Board's interpretations of that rule, it is not the case that each of Mrs. [REDACTED] and Mr. [REDACTED] may borrow separately up to that limit. The tangible economic benefit rule provides that "[a]n extension of credit is considered made to an insider to the extent that the proceeds are transferred to the insider or are used for the tangible economic benefit of the insider." 12 C.F.R. 215.3(f)(1). Staff believes that a loan to the spouse of an insider generally will be considered made to the insider for purposes of the tangible economic benefit rule. Accordingly, a loan made to Mr. [REDACTED] generally will be treated as a loan also made to Mrs. [REDACTED], and vice versa, for purposes of Regulation O.

These opinions apply only with respect to the facts and circumstances described above, and do not purport to address any other issue that may be raised by the transactions in question. In addition, staff understands that Bank's primary federal regulator is the Federal Deposit Insurance Corporation ("FDIC"). Bank may wish to contact the FDIC for confirmation of the opinions expressed herein.

I hope that this information is helpful, and apologize for the delay in responding to your inquiries. If you have any further questions concerning this matter, please contact Stephen Van Meter of my staff at (202) 452-3554.

Sincerely,

(signed)

J. Virgil Mattingly, Jr.

cc: Douglas Jones, Esq.