



# State of North Carolina

OFFICE OF THE COMMISSIONER OF BANKS

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## MEMO

TO: Chief Executive Officer of the Bank Addressed

FROM: David B. Hanson *DBH*  
Chief Deputy Commissioner of Banks

DATE: November 2, 2005

RE: Calculation of the Unimpaired Capital Fund

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This memo is intended to respond to recent questions and concerns about the State's interpretation of North Carolina General Statute (NCGS) §53-1(9) wherein the unimpaired capital fund is defined.

While Section 53-1(9) defines unimpaired capital, the statute was written before the existence of accounting concepts of goodwill, other intangible assets, and unrealized gains(losses) on securities, etc. Since the statute is silent on these issues, the employment of such accounting concepts has caused confusion among the users of the statute, specifically when calculating the unimpaired capital fund for determining the institution's legal lending limit.

NCGS §53-48, the statute that defines the legal lending limit for state-chartered commercial banks, was amended in 2004 to add the provision that the limit would be the greater of:

- 1) Fifteen (15) percent of unimpaired capital for unsecured loans and extensions of credit and ten (10) percent of unimpaired capital for loans secured with readily marketable collateral, as defined in the statute, **OR**
- 2) The percentage permitted for national banks in this State by statute or regulation of the Comptroller of Currency.

In order to promote consistency and parity with national banks, the Office of the Commissioner of Banks is calculating the unimpaired capital fund for state-chartered banks in a manner similar to that of the Office of the Comptroller of Currency (OCC).<sup>\*</sup> Going forward, the unimpaired capital fund of the bank should be determined from the most recent call report date and would equal the sum of the following:

- Tier 1 Capital (RC-R, Line 11)
- Tier 2 Capital (RC-R, Line 18) (Including qualifying subordinated debt)
- ALLL – Include the balance not already included in Tier 2 for the purposes of the calculation of risk-based capital



This calculation of the unimpaired capital fund will also be used to determine the limitations set for premises and fixed assets (NCGS §53-43(3)), investments in securities (NCGS §53-46), investments in mutual funds (NCGS §53-46.1), investments in stocks (NCGS §53-47), as well as loans (NCGS §53-48).

*\*(Reference: Lending Limits – 12 C.F.R. Part 32.2(b) Definition of Capital and Surplus)*