



GEORGIA BANKERS ASSOCIATION
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Georgia Banking Update

March 2010

Updated facts and figures.

Ideas and solutions to strengthen our marketplace, keep more people in their jobs, more companies in business, and prevent more banks from being closed.

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Executive Summary

Georgia's banking environment remained challenging throughout 2009 and into the early part of 2010. The broad economic recession, continued weakness in the residential real estate sector and growing concerns about commercial real estate are causing continued stress on many Georgia banks.

While there is appropriate attention to the difficulty some banks are facing, it must be noted that a vast majority of Georgia's banks and thrifts (80 percent) remain well capitalized based on year-end 2009 reports. Forty Georgia banks and savings institutions reported total-risk-based capital of 20 percent or more, which is two-times the generally accepted regulatory minimum. Fifty-two Georgia banks and savings institutions maintain 12 percent or higher Tier-1 capital, which also is two-times the generally accepted regulatory minimum

Bank performance in many parts of the state continues to struggle in the aftermath of the severe housing, real-estate and credit-market disruptions that began in 2007. The banks encountering the most difficulty continue to be those with significant concentrations of loans to residential builders and developers.

Three general factors continue to contribute to a difficult environment for Georgia's banks and credit availability for their customers. First, the economy remains weak, with unemployment, bankruptcies and loan delinquencies remaining high. Second, many banks continue to reserve more of their capital to protect against losses and maintain thresholds required by regulations. And third, an estimated one-third of Georgia's banks are operating under regulatory orders that simply make it difficult, if not impossible, to work with troubled borrowers or grant more loans even though the banks often want to do so.

Perhaps the most visible consequence of the economic downturn has been an increase in bank closures in Georgia. Since 2008, 32 Georgia banks have closed out of 352 active banks at the beginning of 2008. However, to put that in perspective, other states such as Nevada and Oregon have experienced a higher percentage of their banks closing than Georgia. Nationally in 2008-2009 165 banks were closed out of more than 8,300 banks operating. While that does indicate an extremely challenging banking environment, it pales in comparison to the more than 1,000 banks and savings institutions that were closed in 1988 and 1989, the height of the last period of significant stress on the financial services industry. See Appendix A on page 14 for more details.

Because of these closures and continued public speculation about even more closures, it remains critical that bank consumers understand their FDIC-insured deposits are fully protected. No one has ever lost a penny of FDIC-insured deposits, and that protection is paid for by banks, not taxpayers.

There are several key economic and regulatory issues that continue to be of concern to many Georgia banks. Unfortunately, there are no easy fixes for these issues. As with any recovery from widespread economic stress, the key elements necessary are generally time for the economy as a whole to recover and flexibility from all parties involved. However, we've identified several ideas and solutions we believe would strengthen our marketplace, keep more people in their jobs, more companies in business, and prevent more banks from being closed.

1. Protect real estate values

- Encourage more flexibility and less drastic interpretation of fair-value guidance and property valuations.

2. Conserve and replenish bank capital

- Allow a higher percentage of loan loss reserves to be counted as regulatory capital. There is an artificial cap of no more than 1.25 percent of a bank's loan loss reserve to be counted as Tier 2 capital. This capital is already on the banks' balance sheets, so allowing this as regulatory capital would not create any further risk to the bank or the FDIC fund. As of the most current FDIC data, 242 of Georgia's banks are losing credit for about \$2.5 billion in loan loss reserves that exceed 1.25% of total risk-weighted assets. The 18 thrifts in Georgia are not allowed to count any of their reserves for the purposes of regulatory capital.
- Eliminate restrictions and barriers to private capital investment in the banking industry.
- Give serious consideration to responsible implementation of recent proposals for providing specific capital investments from repaid TARP funds in viable community banks that are interested.

3. Take other key steps to stabilize banks

- Provide certain banks time and flexibility for reducing brokered deposits and allow them to renew at least a percentage of brokered deposits that are already on their books. Merely allowing banks to maintain their existing wholesale funding base would substantially increase the funding available for loans in Georgia.

4. Support policy and regulatory actions that enable lending

- Look for flexible or reasonable methods to slow the pace of regulatory enforcement actions that trigger lending restrictions on banks.
- Re-examine Regulation Z "higher-priced" loan categories that have resulted in less credit being available to many customers of traditional banks.

Working in partnership, we believe banks, regulators and policymakers can use these ideas and solutions to speed economic recovery and market stability. Some progress is being made, directly aided by GBA's advocacy and grassroots member activity helping all parties better understand the issues and consequences. For example:

- The first bill passed by the General Assembly and signed by the Governor this year was GBA's priority legislation that allows state chartered banks to renew loans that would have otherwise exceeded the bank's lending limit because of capital erosion. The bill ensures state banks have the same flexibility in renewing these loans as nationally chartered banks. This is a good bill for borrowers and banks.
- The FDIC has declared the entire state of Georgia a high-rate market in 2010 for determining deposit rate caps required of banks that are less than well capitalized or under certain regulatory orders. That provides some flexibility for affected members looking for the ability to use the local rate rather than being forced to price based on the lower national rate set by FDIC. Those affected must still maintain deposit rates within 75 basis points of the local market averages for all local deposits, and all banks and branches within the bank's market area must be included in that average. So, the caps based on local rates should still ensure local deposit pricing doesn't go to the extreme.
- Regulators issued guidance aimed at ensuring prudent lending to small businesses as well as balanced and reasonable supervision of small business portfolios by regulators ([FIL-5-2010](#)). The guidance specifically said examiners would not adversely classify small business loans solely due to a decline in the collateral value below the loan balance, provided the borrower has the willingness and ability to repay the loan according to reasonable terms.
- The FDIC in 2009 instituted a two-step process for disposing of closed bank assets and loan participations, allowing banks to bid on these assets before other investors as well as allowing bids for single loans or assets instead of larger pools. We believe this prevented asset valuations from declining much further than they did and protected the Deposit Insurance Fund from steeper losses.
- Regulators in October 2009 issued loan workout guidance intended to give banks more flexibility to work with paying commercial real estate customers and avoid requiring additional collateral for or accelerated payment of loans when collateral values have sharply declined ([FIL-61-2009](#)).
- The FDIC has recently favored loss-sharing agreements as the preferred method for resolving bank closures. The transaction leaves most assets in the private sector and gives the acquiring bank a longer period to resolve problem loans, which prevents more rapid devaluation for assets in the local market. Combined, these results could reduce overall losses to the FDIC fund as well as for the acquiring bank.
- FASB rulings earlier this year provided needed relief to some banks related to fair-value and mark-to-market accounting as they relate to accounting for the value of their securities-related assets (SFAS 157). However, this relief is **not related** directly to guidance on actual real-estate loans, so more work is needed.
- Rather than levying an additional special FDIC premium assessment on banks, the FDIC instituted a premium-prepayment rule to replenish the Deposit Insurance Fund. This is not a perfect solution because it takes liquidity out of banks and eliminates an earning asset, but it is not damaging to regulatory capital important for lending and protection against losses. The FDIC also exempted certain banks from the prepayment requirement.
- A new law extends the net operating loss carry back period from two to five years for all companies except TARP and Capital Purchase Program recipients. This is helpful for a majority of Georgia banks, although

we believe the benefit should apply to all institutions. It would also be helpful to have the rule apply through 2010.

- The \$8,000 first-time homebuyer tax credit has been extended for those who enter sales contracts by April 30, 2010, and close within 60 days. It also added a \$6,500 credit for homebuyers who have lived in their current residences for five consecutive years. This will help further reduce the inventory of unsold homes and lots.

Additionally, there are preliminary signs that economic improvement is occurring. Georgia's unique demographics and business climate set a solid underlying foundation for recovery.

Georgia is historically a leader in population and business growth, mortgage rates remain extremely low, mortgage volume has increased, housing inventories have declined from peak levels, metro-Atlanta home prices, especially, have increased in some submarkets and consumer confidence has been tracking upward. Some banks are reporting anecdotally that sales of foreclosed properties are now outpacing new foreclosures. However lagging indicators such as declining bank asset quality, high unemployment, muted retail spending and continued foreclosures will continue for the near future, all of which will continue to temper recovery in the short term.

Based on those facts, and if we are able to work in good partnership with regulators and other policymakers, we are guardedly optimistic that while the local economy and the banking environment will continue to struggle in the short term, we'll see more significant signs of improvement in the coming quarters. The information in this report contains more specific analysis and detail about banking performance as well as regulatory concerns and key federal and state legislative issues of importance to Georgia's banking industry.

Georgia's Banks, at a Glance

Through Year-End 2009

- There are 341 FDIC-insured banks and savings institutions and more than 2,800 banking offices operating in Georgia¹. Of those, 303 are based in Georgia²
- Georgia-based banks employ about 47,500 people²
- Conservatively, GBA estimates that all banks operating in Georgia employ about than 60,000 people
- 80 percent of Georgia's banks remain well capitalized based on the regulatory guideline for having a 10% or higher total risk-based capital ratio.² 40 banks have a more than a 20 percent total risk-based capital ratio and 52 banks have a more than 12 percent tier-one capital ratio, twice the regulatory thresholds.
- 37 percent of Georgia's banks were profitable through the end of the third quarter²
- The bulk of the decline in loan and leases are from the construction and development category, which declined by \$11 billion, or 33 percent, from year-end 2008 – not a surprise at all because of the real estate market.
- Georgia's 26 bank companies receiving Capital Purchase Program Investments have paid the U.S. Government \$317.8 million in dividends through January as a return on its investment. The minimum guaranteed dividend payment is 5% per year for the first three years.

Chart data as reported by FDIC (as of Dec. 31, 2009)

Measurement (Year-to-date data)	Georgia 12/31/09	Georgia 12/31/08	Georgia 9/30/09	Georgia 6/30/09	Georgia 3/31/09	National 12/31/09	National 12/31/08
Institutions	305	334	313	324	328	8,012	8,099
Employees	47,541	50,848	47,901	49,024	50,054	2.06M	2.1M
Assets	271.4B	\$300.3B	\$276.2B	\$283.1B	\$289.3B	\$13.1T	\$13.3T
Deposits	209.5B	\$209.3B	\$212.1B	\$213.7B	\$216.9B	\$9.2T	\$9.1T
Gross Loans and Leases	\$193.5B	\$215.5B	\$198.6B	\$212.0B	\$214.1B	\$7.2T	\$7.4T
% Profitable	37	51	40	42	55	70	72
Cost of Funding Earning Assets	1.65%	2.51%	1.73%	1.83%	1.90%	1.28%	1.34%
Net Interest Margin	3.22%	3.18%	3.16%	3.03%	2.96%	3.47%	3.46%
Net Income attributable to bank	-\$3.3B	\$106.0M	-\$2.6B	-1.8B	-1.2B	\$12.5B	\$4.6B
Return on Assets	-1.17%	0.04%	-1.21%	-1.27%	-1.63%	0.09%	0.10%
Return on Equity	-10.83%	0.33%	-11.20%	-11.84%	-15.56%	0.90%	0.93%
Loss Allowance/Loans	2.71%	1.86%	2.57%	2.30%	2.15%	3.12%	2.97%
Noncurrent Loans/Loans	6.25%	4.06%	5.90%	5.54%	4.77%	5.37%	4.94%
Equity Capital to Assets	10.73%	10.47%	10.87%	10.62%	10.49%	11.04%	10.9%
Total Risk-Based Capital Ratio	12.91%	11.74%	12.73%	12.20%	11.87%	14.34%	14.17%
Other Real Estate Owned	\$3.1B	\$2.2B	\$2.8B	\$2.8B	\$2.5B	\$41.3B	\$37.4B
Net Charge-Offs	\$5.7B	\$2.8B	\$4.1B	\$2.5B	\$1.1B	\$172.6B	\$135.9B
Net Charge Offs to Loans	2.83%	1.31%	2.67%	2.34%	2.00%	2.49%	2.38%

¹ FDIC Summary of Deposits, most recent available, through June 30, 2009. The 18 banks closed since that time as of March 1, 2010, have been subtracted from the 359 listed in the market share report on the web site.

² FDIC Statistics on Depository Institutions, Georgia-based institutions only, most recent available, through Dec. 31, 2009. For consistency in the number of banks, we subtracted the two closed banks since Dec. 31 as of March 1, 2010, from the 305 listed by the FDIC year-end data.

Key Regulatory Issues Facing Georgia's Banks

- Regulatory interpretations of accounting guidelines/FASB 114/5; fair value of real estate
- Downward pressure on asset prices caused by market forces and unintended consequences of government stability programs
- Difficulty of obtaining reasonable and consistent property appraisals continues to put downward pressure on property and collateral values
- Brokered deposits: Requirements prohibiting banks that are considered to be less than "well capitalized" from renewing brokered deposits or seeking new brokered deposits creates immediate funding and liquidity problems for banks that can least afford them
- Loan-Loss Reserve effect on regulatory capital: Artificial disallowance of at least \$2.3 billion of capital in Georgia banks
- Access to capital and sources of liquidity continue to be limited by the market and regulatory issues.
- Unintended credit constriction caused by new Regulation Z requirements
- Extension of unlimited FDIC-insurance coverage for noninterest-bearing accounts

Regulatory interpretations of accounting guidelines/FASB 114/5; fair value of real estate

Regulatory methods for applying certain accounting guidelines, primarily FASB 114 and FASB 5, need to be reviewed. The major ongoing concerns and frustration banks are having with these methods are related to how regulators are interpreting the rules for determining how loans are classified and how much capital banks should be required to reserve for losses or potential losses against those assets. Bank regulators, in some cases, seem to be taking more aggressive positions than the guidelines require. These interpretations are causing banks to use real capital for theoretical real estate losses, putting further stress on bank capital levels. For example, in some cases, regulators are taking an overly aggressive stance on classifying loans as impaired, collateral dependent or nonperforming even if the borrower continues to make payments. Regulatory guidance issued in October 2009 to field examiners related to this issue may be helpful because banks may not be criticized as aggressively going forward if the primary issue is that the collateral has declined in value rather than the inability of the borrower to continue to make monthly payments. In other cases, banks have been directed to define loans as confirmed losses when there is still uncertainty as to whether the loan can be repaid. In the past, these loans would have been charged off only at the time of foreclosure after all payment opportunities had been exhausted, not while the bank was still working with borrowers and payments were still being made. And, in some instances, regulators have required banks to use extremely short timeframes, three-to-six months instead of three-to-five years, to set historical loss ratios used to evaluate loans and determine appropriate reserves. These short-term loss ratios, of course, have been much higher during the recent downturn and are at levels most banks have never experienced. These and many other recent changes in regulatory policy are having a serious and detrimental effect on bank capital.

Downward pressure on asset prices caused by market forces continues to put downward pressure on property and collateral values

We are seeing extreme discounting on many poor-performing loans and bank-owned or FDIC-controlled assets. This is being caused by a number of understandable factors, but is a cause for concern. In some cases, banks with strong capital levels have more pricing flexibility to cleanse their balance sheets of bank-owned assets now at the low market prices instead of trying to keep them on the books to protect capital until the market moves prices upward.

The effects of overly aggressive discounting also hurts borrowers when the value of their real estate-pledged collateral is artificially devalued, resulting in their struggling to meet either loan covenants requiring specific levels of collateral or selling properties at these lower values to repay or pay down loans. Banks are also being required to write down their real estate portfolios to these new values, which are unnecessary hits to capital. With market forces as well as government programs and actions, even well-intended ones, driving asset prices and valuations downward this steeply and this quickly, our fear is that there is not enough capital in the marketplace to sustain many banks located in the most troubled geographic areas. These factors are causing banks to burn through capital at an alarming rate at a time when the private capital markets remain constrained.

Appraisals: difficulty in obtaining reasonable, consistent valuations

Obtaining good appraisals in the current market is extremely difficult. Because the real estate market is so weak, appraisal assumptions sometimes do not realistically reflect absorption periods that take into account the naturally increasing demand as the economy recovers. This is especially true for vacant lots as their values will improve once today's excess inventory of homes is absorbed. Regardless of the type of property being appraised in this environment, the result is appraised values seem unreasonably low when considering more realistic sales and absorption periods. Our recommendation is that all appraisers should consider the environment for improved sales in the future when determining market values. Otherwise, they are appraising the value of the collateral at the lowest point of the business cycle with little regard for the realistic expectation that the supply and demand equation calls for improvement in the not-too-distant future.

Furthermore, bankers have told us that regulatory field examiners are applying their own appraisal methodology in evaluating the validity of independent appraisals. Or, in the absence of a newly revised appraisal in the loan file, they are making their own determination of value based upon their own methodology. We fully acknowledge that field examiners must review appraisals with a critical eye. However, we suggest further discussion about whether it is within the scope of the regulators' work to override independent appraisals using their own methodology. This is of greater concern when regulatory determinations are based upon extremely conservative assumptions based on today's slow pace of absorption instead of more reasonable historical absorption estimates as indicated above. We encourage our regulators to continue to support rational methodologies for valuations.

We also understand that the Home Valuation Code of Conduct (HVCC) deployed in May 2009 by Freddie Mac and Fannie Mae is causing concern from banks and appraisers related to valuations. With its implementation, banks are more frequently using Appraiser Management Companies to order appraisals. The concern is that while the intent is to ensure fair and accurate independent appraisals, it may be having the unintended consequence that non-local appraisers are being assigned to do work when they aren't as familiar with local markets. These appraisers have more difficulty in determining appropriate valuations because of their lack of local market knowledge and history, creating valuation disruption in the lending process. FHA announced the adoption of portions of HVCC effective Jan. 1, 2010, but FHA policy will allow lenders to order their own appraisals under certain circumstances.

Brokered deposits

Requirements prohibiting banks that are considered to be less than "well capitalized" from renewing brokered deposits or seeking new brokered deposits create immediate funding and liquidity problems for banks that can least afford them. There are reasonable ways to lessen the impact without increasing risk to the deposit insurance fund or artificially distorting the local deposit market. One possible helpful easing of the regulation would allow "adequately capitalized" banks to renew maturing brokered deposits but continue to prohibit them from acquiring new brokered deposits. This would allow some funding stability for the bank without increasing the potential cost to the deposit insurance fund. If the statute cannot be changed regarding brokered deposits, banks having to shed those deposits should be allowed to reduce their reliance over a longer period of time than simply upon renewal. If the FDIC could

require an orderly reduction of brokered deposits of perhaps 10 percent per quarter or some other reasonable number, the impact would less.

Loan-Loss Reserve effect on regulatory capital: The artificial disallowance of \$2.3 billion of capital from Georgia banks

The current regulatory threshold, which states loan loss reserves above 1.25 percent of risk-weighted assets cannot be included in calculations for meeting regulatory capital guidelines, should be reviewed. Banks have prudently reserved above this level in the current climate in order to protect against possible losses. This is real capital that banks have on hand and is available. By removing the cap, banks will have stronger capital ratios without affecting the safety of the system. Current calculation rules on Total Risk-Based Capital as of Sept. 30, 2009, artificially disallow \$2.3 billion of valid capital in Georgia banks. John Dugan, Comptroller of the Currency, the principal federal regulator for national banks, has suggested removing this arbitrary cap and allowing 100 percent of the bank's allowance for loan losses to count towards regulatory capital. As Dugan says, "If any counts, why not all?" We fully support this change.

Access to capital, sources of liquidity remain limited; regulatory deadlines for raising capital are too short

Capital for banks to support lending and sources of investment capital for banks remain limited as continued uncertainty in the banking sector is keeping some investors on the sidelines.

GBA is supportive of ideas to deploy more capital investments to community banks that qualify and choose to apply for such investments, with the understanding these banks will provide specified dividends or returns on the investments to ensure taxpayer funds are appropriately managed.

One factor limiting capital deployment for lending is that a growing number of banks are under severe regulatory orders, and some of these orders require significantly higher capital levels beyond the current definitions for a bank being well-capitalized. We are certainly not suggesting the regulators abandon their responsibility to take whatever action they deem appropriate as they work with the bank to return to health. However, in an environment where private capital is extremely difficult to attract to the industry, the capital requirements in these orders are proving insurmountable. We encourage the regulators to consider the bank's longer-term plans for raising capital rather than imposing such short timelines, sometimes as short as 60 days.

In regard to private equity investors, on Aug. 26, 2009, the FDIC adopted guidelines for private equity investors interested in purchasing failed banks. The proposals would impose higher capital requirements for non-bank equity investors as well as requirements for guaranteeing ownership for three years as a mechanism to encourage sound long-term management instead of simply flipping the investment purely for profit. The FDIC is aiming to balance the need for new investors in banks as well as the need to ensure long-term safety and soundness and protection of the Deposit Insurance Fund. We appreciate that the board adopted a less-restrictive capital requirement (10 percent) than originally proposed (15 percent), and are hopeful this will drive new investment.

In a related issue, we have seen the private capital market respond favorably to loss-share arrangements with closed banks. However, for the overall stability of the FDIC fund and the industry itself, the policies of the Administration and the regulators need to be such that private capital is rewarded for investing without putting a bank through the closure/resolution process.

And, we understand that certain other regulatory hurdles, such as percentage of ownership restrictions, also are turning investors with significant capital away from the market. The Bank Holding Company Act, which restricts

control ownership of a bank on a percentage basis, should be revisited, and new methods of controlling ownership risk should be considered.

Unintended credit constriction caused by new Regulation Z requirements

On October 1, 2009, amendments to Regulation Z, the Truth in Lending Act, became effective that address consumer protections for certain mortgage and home-equity loans. Intended to prevent unscrupulous subprime lending, parts of the new regulation apply to all loans secured by a consumer's principal residence. An unintended consequence of these new rules is that the loans covered by the definition of "higher-priced loans" are some home purchase loans, home-improvement loans, refinancings and home equity loans that had previously been considered as prime loans by our members. For most community banks, these are bread and butter mortgage loans made by community banks to customers who simply don't qualify for loans eligible for sale in the secondary market. These are not the negative-amortization, option-payment, short-term-teaser-rate, investment-grade loans traded by investors and Wall Street investment banks that have been so problematic throughout the recent financial crisis. These are three- or five-year balloon loans with an intended 15-20 year amortization. These are mortgages that are conservatively underwritten and the vast majority of our banks' customers never miss a payment. The purpose of the three-year term was to provide consumers with certain tax savings. With the new guidelines, these low-cost, in-house home mortgages have become impossible for many banks to make. Under the new requirements, underwriting for this type of mortgage must show that the borrower can repay the loan in full within three years as opposed to the intended 15-20 year period. Also, few community banks have the ability to escrow for taxes and insurance as is required by the new change. The result is that the new provisions actually make reasonable mortgage credit less available for consumers in markets throughout Georgia where there are few options. In many cases, the costs and compliance risk associated with the new rules are causing many banks to simply stop making these types of mortgage loans available.

Possible extension of unlimited FDIC-insurance coverage for noninterest-bearing accounts

On Aug. 26, 2009, the FDIC extended through June 30, 2010, the Temporary Account Guarantee Program that fully insures noninterest-bearing checking accounts including Demand Deposit Accounts (DDAs) and any transaction account that has unlimited withdrawals and that cannot earn interest. Also included are low-interest NOW accounts (those earning no more than 0.5 percent interest) and IOLTA accounts. Depending on the economy in the coming months, we believe there could be a need for an additional extension of this program and encourage the FDIC to carefully study the ramifications should the program expire before consumer confidence has been totally restored.

Federal Legislative Issues

Summary of Issues

- Significant reform packages proposed
 - Consumer Financial Protection Agency
 - Systemic risk
 - Prudential regulation
- Bankruptcy cram-down
- Overdraft protection programs
- Interchange fees

New regulatory oversight being considered

The Obama Administration outlined in a white paper on June 17, 2009, its plan for financial services restructuring and regulatory reform. Since then, the U.S. House and Senate have begun debate about their own versions of sweeping financial services reform. These are large, complex proposals that represent the most significant change for our industry in decades and leave no sector of the financial marketplace untouched. The proposals could bring about the most dramatic changes to the banking industry in the past 70 years. Of most importance to bankers throughout Georgia are the proposals dealing with consumer protection, systemic risk oversight and prudential regulatory responsibilities.

- **Consumer Financial Protection Agency:** The idea is to create a massive, entirely new agency that would separate regulation of products from regulation of the institutions offering the products. The agency would have sweeping rulemaking, supervision, and enforcement authority.

GBA view on this: Separating the regulation of the safety and soundness of banks from the regulation of specific products these same banks offer their customers is not a good idea. Making improvements to enhance consumer protection under the existing legal and regulatory structures – particularly aimed at filling gaps in regulation and supervision of non-bank financial providers – would, in our view, be more successful and faster than a new, separate consumer regulator. Concentrating these efforts on the non-bank lenders is especially important when one considers these companies made 94% of the high-cost mortgage loans that have so damaged our economy.

Another important component of the debate about the proposed CFPB is the need to **preserve federal preemption** of state laws for nationally chartered banks and thrifts. For those institutions that operate in multiple states, preemption ensures a common set of rules rather than requiring the cost of complying with laws that may vary greatly from state to state. This also eliminates confusion for consumers and businesses that bank with these institutions in more than one state or territory.

- **Systemic risk:** There are a variety of proposals and approaches being debated about how to best prevent future financial services industry crises and to put an end to the idea that some companies are “too big to fail.”

GBA view on this: We support the need to develop ways of recognizing interconnected and complex threats to our nation’s economy and financial services system. An important component of any system to better manage systemic risk includes a clearly-defined process and authority designated for handling the failure of a large financial institution so it doesn’t send shock waves throughout the economy. We want to

get away from taxpayers having to prop up an institution because someone thinks it's "too big to fail" and establish a process to resolve complex, large financial institutions. Any involvement of the FDIC in resolution authority of non-depository institutions should be structured so as to not interfere with its primary mission to protect depositors or cause increased premiums for FDIC members.

- **Prudential regulation:** The House and Senate regulatory reform proposals each have components looking to streamline and change the structure of which federal agencies regulate the variety of different types of banks, thrifts and credit unions consumers and businesses associate with general consumer and commercial banking. As it stands now, the prudential regulators are the Federal Reserve for bank holding companies, the FDIC for state-chartered banks, the OCC for nationally chartered banks, the OTS (a division of the Treasury Department) for thrifts and the NCUA for credit unions. These regulators oversee safety and soundness regulation as well as consumer protection for the specialized charters under which their banks operate. Under the current regulatory framework, the United States has what is referred to as a "dual banking system," in which there is a choice between either a state or federal bank charter. The dual banking system provides a balance between state and national powers regulating banks and encourages important regulatory independence rather than a single, all-powerful bank regulator.

GBA view on this: Regulatory independence, charter choice and specialization of certain types of financial institutions ensure competitive and regulatory balance in the marketplace. Charter choice provided through the dual banking system must be preserved. More than 80 percent of banks headquartered in Georgia have opted for a state-issued charter. It is important to protect the dual banking system regardless of what Congress ultimately decides is the appropriate regulatory mechanism for individual institutions. We also support retaining the specialized Thrift charter as a part of the financial services system. Georgia has 20 savings institutions with thrift charters. These institutions specialize in real estate lending, particularly loans for single-family homes and other residential properties. These are regulated home lenders that make safe and sound home loans, not the type of subprime or exotic mortgage loans that were commonly sold by brokers and lenders operating outside the existing bank regulatory framework. So, maintaining the thrift charter is an important component of ensuring consumer access to credit for homes and a competitive banking industry. This proposal will harm borrowers by eliminating the charter that has an explicit focus on mortgage lending at a time when these bankers' experience is needed most.

Bankruptcy cram-down

There continues to be interest among some legislators and activists to allow bankruptcy judges to arbitrarily rewrite the terms of a mortgage contract, including reducing (cram-down) the amount owed on a mortgage, changing the interest rate or stretching out the term of the mortgage. GBA feels these provisions will increase the cost and availability of credit for all borrowers, thereby undermining other efforts to stabilize the housing market. We encourage the Georgia Congressional Delegation to oppose the idea.

Overdraft Protection Programs

The Federal Reserve adopted new regulations recently on overdraft programs after a comment period back in the spring of 2009 and a lengthy final adoption period. Effective July 1, 2010, financial institutions are prohibited from charging consumers fees for paying overdrafts on automated teller machines and one-time debit card transactions unless the consumer consents, or opts-in, to the overdraft service for those types of transactions. If the consumer does not opt-in to the program, these transactions will be declined. We believe those regulations need to have a chance to work before Congress passes legislation with prescriptive rules. There are currently two bills regarding overdraft protection programs that we are concerned with. H.R. 3904, the Overdraft Protection Act of 2009 by Rep. Carolyn Maloney (D-NY) and S. 1799, similar legislation introduced by Sen. Chris Dodd (D-CT). In short, the bills

would require a customer to opt-in to overdraft coverage, the bank could not charge more than one overdraft fee per month or six per year, limits the fee to “reasonable and proportional,” the bank must notify the customer within one day of the fee being charged, the bank must notify the customer at ATM or branch if a fee would be triggered and allow them to cancel, the transaction posting order must not be “in such a manner that the consumer does not incur avoidable overdraft coverage fees,” and the bank may not charge an overdraft fee if it is the result of a debit hold that exceeds the amount of the actual transaction. Both bills could see action in the near future and the GBA has encouraged members of the Georgia congressional delegation to oppose these bills that will regulate and limit overdraft services – services that government and private testing have found bank customers value and expect. We believe the legislation will mean more hassle and costs for those who find important payments returned or rejected. These bills will increase cost to all checking account customers and would present business and technological challenges that would mean a complete retooling and redesign of checking account features and particularly pricing.

Interchange fees

Interchange is the fee retailers pay to access the credit and debit card payment system, usually a penny or two on each dollar, for the ability to accept electronic payments. In return, retailers are provided safe and guaranteed payments and bear no risk associated with fraud, failure to pay or data breaches. Retailers have asked Congress to pass the so-called Credit Card Fair Fee Act, which will arbitrarily determine rates and terms for interchange fees. GBA feels the proposed legislation is unnecessary as interchange fees are a cost of doing business for merchants, similar to employee salaries and other expenses. Many banks use the income provided by interchange fees to subsidize and provide consumer services such as fee-free checking accounts. The availability of that type of fee-free product could be limited if artificial price caps are imposed and interchange income drops significantly. About 80% of Georgia banks responding to a recent GBA survey said interchange income is an important part of their non-interest income stream, and 85% had not received complaints about interchange fees from their business or retail banking customers. Legislation has been introduced in the House (H.R. 2382 and H.R. 2695) and Senate (S. 1212) on behalf of the retailers. House Financial Services Committee Chairman Barney Frank has stated this will not be addressed in his committee this year. Additionally, a study released Nov. 19 by the independent Government Accountability Office on the issue confirmed that merchants receive significant benefits when they accept credit and debit cards for purchases, and consumers ultimately could be harmed if Congress lowered what merchants pay to accept such cards. According to the study, legislative or regulatory efforts to mandate lower interchange fees would reduce costs for merchants, but may not lower the prices of goods and services for consumers. In fact, the GAO study concludes that lowering fees may result in increased cardholder costs or reduced credit availability.

Appendix A – Georgia Financial Institution Closures 2008-2010

Since 2008, 32 Georgia banks have been closed out of 352 banks operating on Jan. 1, 2008. (See next page for a listing). Nationally, there were 165 bank closings in 2008-2009 out of about 8,300 compared to about 1,000 in 1988/1989.

In perspective, the charts below show how Georgia compares to other states since the beginning of 2008.³

State	# of Closures	# of Total Banks	% of Total Banks
Nevada	6	44	13.6%
Oregon	4	40	10.0%
Georgia	32	352	9.1%
Arizona	5	57	8.8%
California	24	313	7.7%
Washington	6	97	6.2%
Florida	19	317	6.0%
Idaho	1	19	5.3%
Utah	3	68	4.4%
Illinois	23	671	3.4%

State	# of Closures	Total Assets	Total Deposits
Nevada	6	314,264,924	194,800,387
California	24	99,461,235	70,245,953
Alabama	3	27,505,825	21,723,385
Florida	19	23,242,084	16,821,272
Texas	8	19,472,488	16,507,956
Georgia	32	18,793,068	16,387,155
Illinois	23	18,519,800	17,079,570
Ohio	2	12,045,143	9,097,396
Washington	6	3,855,011	3,500,480
Indiana	1	2,839,747	2,254,025

³ Georgia Department of Banking and Finance, as of Feb. 26, 2010

Summary of 2008-2010 Georgia Bank Closures (beginning with most recent)

Bank	Date Closed	Date Established	Acquired by	Deposits Acquired	Estimated Cost to FDIC Fund
First National Bank of Georgia, Carrollton	1/29/2010	9/16/1946	Community & Southern Bank, Carrollton	All deposits	\$260.4 million
Community Bank and Trust, Cornelia	1/29/2010	8/3/1900	SCBT, N.A., Orangeburg, SC	All deposits	\$354.5 million
Rockbridge Commercial Bank, Atlanta	12/18/2009	11/13/2006	No acquirer, BB&T, Winston Salem, N.C., paying agent for direct deposits from Fed. Govt.	None – Insured deposits paid directly to depositors	\$124.2 million
The Tattnell Bank, Reidsville	12/4/2009	10/22/1900	HeritageBank of the South, Albany	All deposits	\$13.9 million
First Security National Bank, Norcross	12/4/2009	6/25/1985	State Bank and Trust Company, Macon	All deposits	\$30.1 million
The Buckhead Community Bank, Atlanta	12/4/2009	2/6/1998	State Bank and Trust Company, Macon	All deposits	\$241.4
United Security Bank, Sparta	11/6/2009	9/12/1932	Ameris Bank, Moultrie	All deposits	\$58 million
American United Bank, Lawrenceville	10/23/2009	12/20/2004	Ameris Bank, Moultrie	All deposits	\$44 million
Georgian Bank, Atlanta	9/24/2009	11/14/2001	First Citizens Bank and Trust Company, Inc., Columbia, SC	All deposits	\$892 million
First Coweta Bank, Newnan	8/21/2009	7/12/2004	United Bank, Zebulon	All deposits, except brokered	\$48 million
ebank, Atlanta	8/21/2009	8/17/1998	Stearns Bank, N.A., St. Cloud, MN	All deposits	\$63 million
Security Bank of Bibb County, Macon	7/24/2009	11/4/1988	State Bank & Trust Company, Pinehurst	All deposits	\$807 million*
Security Bank of Houston County, Perry	7/24/2009	8/28/1909	State Bank & Trust Company, Pinehurst	All deposits	*included with Security Bank of Bibb County
Security Bank of Jones County, Gray	7/24/2009	9/14/1987	State Bank & Trust Company, Pinehurst	All deposits	*included with Security Bank of Bibb County
Security Bank of Gwinnett County, Suwanee	7/24/2009	2/24/2003	State Bank & Trust Company, Pinehurst	All deposits	*included with Security Bank of Bibb County
Security Bank of North Metro, Woodstock	7/24/2009	5/20/2002	State Bank & Trust Company, Pinehurst	All deposits	*included with Security Bank of Bibb County
Security Bank of North Fulton, Alpharetta	7/24/2009	9/19/2003	State Bank & Trust Company, Pinehurst	All deposits	*included with Security Bank of Bibb County
First Piedmont Bank, Winder	7/17/2009	4/15/1998	First American Bank and Trust Company, Athens	All deposits	\$29 million

Bank	Date Closed	Date Established	Acquired by	Deposits Acquired	Estimated Cost to FDIC Fund
Community Bank of West Georgia, Villa Rica	6/26/2009	3/25/2003	No acquirer, United Community Bank, Blairsville, paying agent	None – Insured deposit paid directly to depositors	\$85 million
Neighborhood Community Bank, Newnan	6/26/2009	4/20/2000	CharterBank, West Point, GA	All deposits	\$66.7 million
Southern Community Bank, Fayetteville	6/19/2009	6/2/2000	United Community Bank, Blairsville	All deposits	\$114 million
Silverton Bank, Atlanta	5/1/2009	2/3/1986	No acquirer; Bridge Bank created, liquidation in process	All deposits were insured	\$1.3 billion
American Southern Bank, Kennesaw	4/24/2009	8/30/2005	Bank of North Georgia, Alpharetta	All deposits, except brokered	\$41.9 million
Omni National Bank, Atlanta	3/27/2009	3/8/1976	No acquirer; SunTrust Bank, Atlanta paying agent operated branches for 30 days	Insured deposits	\$290 million
First City Bank, Stockbridge	3/20/2009	11/27/1905	No acquirer, SunTrust Bank, Atlanta, acquired direct deposits	None – Insured deposits paid directly to depositors	\$100 million
Freedom Bank of Georgia, Commerce	3/6/2009	2/17/2004	Northeast Georgia Bank, Lavonia, GA	All deposits	\$36.2 million
First Bank Financial Services, McDonough	2/6/2009	1/28/2002	Regions Bank, Birmingham, AL	All deposits	\$111 million
Haven Trust Bank, Duluth	12/12/2008	1/24/2000	BB&T, Winston Salem, NC	All deposits	\$200 million
First Georgia Community Bank, Jackson	12/5/2008	9/8/1997	United Bank, Zebulon, GA	All deposits	\$72.2 million
The Community Bank, Loganville	11/21/2008	10/5/1946	Essex Bank, Tappahannock, VA	All deposits	\$200-\$240 million
Alpha Bank and Trust, Alpharetta	10/24/2008	5/8/2006	Stearns Bank, N.A., St. Cloud, MN	Insured deposits	\$158.1 million
Integrity Bank, Alpharetta	8/29/2008	11/1/2000	Regions Bank, Birmingham, AL	All deposits	\$250-\$350 million

Types of bank closure transactions (basic definitions)

1. **All deposits, some loans/assets acquired by another bank:** The FDIC as receiver, arranges for another bank to acquire all deposits of a closing bank. Those accounts are transferred to the new bank as in any other bank merger or acquisition. The acquiring bank may take on some loans or other assets, but for the most part, FDIC takes over resolution of loans.
2. **Insured deposits only, some loans/assets acquired by another bank:** In this case, the FDIC as receiver, arranges for another bank to acquire the insured deposits of a closing bank. Those accounts are transferred to the new bank, and the FDIC acts as receiver to resolve issues with brokered deposits and handle claims on uninsured deposits. The acquiring bank may take on some loans or other assets, but for the most part, FDIC takes over resolution of loans.
3. **All deposits acquired by another bank, loss-sharing agreement with FDIC for loans.** The FDIC arranges for another bank to acquire all deposits and loans. These accounts are transferred to the new bank as in any other bank merger or acquisition. The loans remain in the hands of the acquiring bank, not managed by FDIC. Under loss sharing, the FDIC agrees to absorb a significant portion of the loss—typically 80 percent—on a specified pool of assets while offering even greater loss protection in the event of financial catastrophe, and the acquiring bank is liable for the remaining portion of the loss. The transaction gives the acquiring bank a longer period to resolve problem loans, which could reduce overall losses to the FDIC fund as well as for the acquiring bank.
4. **New Bank Charter:** In this case, the FDIC grants a new charter to a non-bank equity investor or group of investors, who acquire the closed bank's deposits and assets. In the recent past, this type of transaction includes a loss-sharing agreement for loans.
5. **Payout of insured deposits:** In this instance, the FDIC cannot find a buyer for deposits/assets of the closing bank, so it makes arrangements to directly pay insured depositors as soon as possible. A paying agent is named by FDIC to handle direct deposits of the closed institution giving those customers time to find a new bank relationship.

Appendix B – Georgia Banks Receiving CPP Investments

(Listed in order of date funds invested)

Bank	Total Assets	City	Investment Amount	Dividend Paid to Gvt. to Date	Date Funds Invested
1. SunTrust Banks, Inc.	\$185b	Atlanta	\$4.8b	\$254,756,944	11/14/2008 12/31/2008
2. Ameris Bancorp	\$2.4b	Moultrie	\$52m	\$2,556,667	11/21/2008
3. United Community Banks Inc.	\$8.6b	Blairsville	\$180m	\$8,500,000	12/5/2008
4. Fidelity Southern Corp.	\$1.8b	Atlanta	\$48m	\$2,182,389	12/12/2008
5. Synovus Financial Corp.	\$36.2b	Columbus	\$973m	\$43,823,003	12/19/2008
6. Colony Bancorp, Inc.	\$1.3b	Fitzgerald	\$28m	\$1,190,000	1/9/2009
7. The Queensborough Company	\$861m	Louisville	\$12m	\$555,900	1/9/2009
8. Metro City Bank	\$289m	Doraville	\$7.7m	\$332,223	1/30/2009
9. Georgia Commerce Bancshares, Inc.	\$296m	Atlanta	\$8.7m	\$367,466	2/6/2009
10. CBB Bancorp	\$114m	Cartersville	\$2.6m	\$106,059	2/20/2009
11. Hamilton State Bancshares	\$288m	Hoschton	\$7m	\$280,827	2/20/2009
12. Liberty Shares, Inc.	\$769m	Hinesville	\$17.3m	\$693,240	2/20/2009
13. Midtown Bank and Trust	\$213m	Atlanta	\$5.2m	\$203,957	2/27/2009
14. Citizens Bancshares Corp.	\$348m	Atlanta	\$7.5m	\$258,061	3/6/2009
15. Peoples South Bancshares, Inc.	\$515m	Colquitt	\$12.3m	\$464,586	3/6/2009
16. First Intercontinental Bank	\$250m	Doraville	\$6.4m	\$234,404	3/13/2009
17. CSRA Bank Corp	\$101m	Wrens	\$2.5m	\$82,840	3/27/2009
18. Tifton Banking Co.	\$153m	Tifton	\$3.8m	\$119,658	4/17/2009
19. Georgia Primary Bank	\$180m	Atlanta	\$4.5m	Not allowed per state law prohibiting denovo banks from paying any dividend until cumulatively profitable	5/1/2009
20. Gateway Bancshares	\$218m	Ringgold	\$6m	\$169,858	5/8/2009
21. One Georgia Bank	\$248m	Atlanta	\$5.5m	Not allowed per state law prohibiting denovo banks from paying any dividend until cumulatively profitable	5/8/2009
22. United Bank Corporation	\$689m	Barnesville	\$14.4m	\$460,639	5/22/2009
23. River City Bank (RCB Financial Corp.)	\$213m	Rome	\$8.9m	\$190,254	6/19/2009
24. Alliance Bancshares	\$115m	Dalton	\$2.9m	\$62,824	6/26/2009
25. South Crest Financial Group	\$630m	Fayetteville	\$12.9m	\$230,444	7/17/2009
26. Mountain Valley Bancshares, Inc.	\$149m	Cleveland	\$3.3m	\$24,979	9/25/2009
Investment and dividend totals			\$6.27B	\$317,847,222	

Data as of Jan.31, 2009; U.S. Treasury Department's most-current transactions report and Jan. 31. Dividend and Interest Report, available at <http://www.financialstability.gov/latest/reportsanddocs.html>

Appendix C – Mortgage Modification Efforts in Georgia

Georgia's homeowners are not immune to the economic stresses, making it harder to stay current on their mortgages. However, about 86.5 percent of mortgage borrowers continue to pay their loans on time.

The delinquency rate for mortgage loans on residential properties in Georgia was 13.53 percent at the end of the fourth quarter of 2009, an increase of 60 basis points from the previous quarter, according to the most current Mortgage Bankers Association information⁴.

Statewide, the percentage of prime fixed rate loans in foreclosure is 2.1 percent and the percentage of prime ARM loans in foreclosure is 5.63 percent. The number of subprime fixed rate loans in foreclosure is 7.48 percent and the number of subprime ARM loans in foreclosure is 14.57 percent according to the same MBA information.

While stresses on homeowners are likely to continue because of Georgia's high unemployment rate and continued economic weakness in the near term, progress is being made by mortgage servicers to help Georgians stay in their homes. There are two general measures of this progress.

First, according to the HOPE NOW Alliance of the largest mortgage servicers nationally, the participants had either made repayment plans or mortgage modifications for 220,872 Georgia homeowners from July 2007 through September 2009⁵. Of those, 151,373 Georgia homeowners received repayment plans and 69,499 Georgia homeowners received loan modifications. These numbers include participants' bank-specific efforts as well as modifications and repayment plans made as part of the government's Making Home Affordable mortgage modification and foreclosure prevention program.

The Mortgage Bankers Association reports 1.66 million mortgages serviced in Georgia. Based on that number and the HOPE Now modification report, we estimate that 13.3 percent of the state's mortgages have been modified in some form since 2007.

Second, Georgia has the sixth most active total trial and permanent modifications, 37,567, by participants in the Home Affordable Modification Program through December 2009, according to the Treasury Department's update released in mid February⁶ (reminder, HAMP figures do not include all modification programs instituted by companies, just those that fit the scope of the official government program).

Here is some information about why banks feel it is important to help homeowners with efforts to continue to make payments and stay in their homes if at all possible.

- First and foremost, foreclosure is a last resort for banks. We want our customers to be able to stay in their homes and make their loan payments.
- The biggest reason most consumers have trouble making their payments is because of a sudden financial hardship – loss of their job, high medical costs not covered by insurance and divorce, for example.

⁴ Mortgage Bankers Association, Georgia Press Release, Feb. 19, 2010

⁵ https://www.hopenow.com/media/state_data/GA%20Info%20July%202007%20-%20September%2009.pdf

⁶ <http://www.financialstability.gov/docs/press/January%20Report%20FINAL%2002%2016%2010.pdf>

- Foreclosure is a process that takes time — not a sudden emergency. Money emergencies that may eventually lead to a foreclosure can happen quickly, but our members are being extremely flexible in trying to work with borrowers first, before moving to foreclose. In most cases the foreclosure process does not begin until a borrower is several months behind, especially now as lenders have more options and incentives available to help homeowners modify loans.
- Banks do not want to become property owners or property managers, especially in this environment. If a bank has to foreclose, it has to take on the day-to-day cost of keeping the property up and trying to sell it. And, in today's economy, banks want as few unresolved loans or foreclosed properties on their books. Foreclosures cost more than can be made back from the sale of these homes.
- Unfortunately, unless the underlying reason for the original default, such as job loss, changes for someone who has defaulted, or has any foreseeable chance of changing, then the lender has no choice but to pursue foreclosure.
- The volume of modification requests alone are causing banks to have to hire up, add shifts and provide new training for employees. Some banks we've talked to say they've hired thousands of new employees just to work on modifications and repayment plans. They're working as fast as they can, but this simply takes time.
- The lenders' workload was exacerbated when low mortgage rates drove the performing mortgage customers into a refinancing frenzy. While this may have slowed the modification pace, such low rates are a good development. Many of those refinances have undoubtedly put some of those borrowers into less-risky situations for the long run.
- Re-defaults have been high on modified loans. Depending on when the modification was done, between 18.7 percent and 33.3 percent of the loans modified since the second quarter of 2008 were 60 or more days delinquent again in three months, and between 58.5 percent and 60.7 percent were 60 or more days delinquent again after 12 months.⁷
- It is important that banks work with borrowers to do all that's possible to avoid modifications that could eventually re-default. Unfortunately, sometimes a borrower's personal money situation makes a modification actually less helpful for both the consumer and the bank in the long run.
- Foreclosure, and maybe even bankruptcy, as bad as it is, may be in an individual's long-term best interest: they no longer have the pressure of the mortgage, taxes, insurance and maintenance – when they've got daily living expenses to cover – the laws on the books give people a chance for a fresh start. Nobody wants to be in this position, but that's why we have the procedures in place.

⁷ OCC and OTS Mortgage Metrics Report, third Quarter 2009; <http://www.occ.gov/ftp/release/2009-163a.pdf> p. 7