DEPARTMENT OF REGULATORY AGENCIES

Division of Banking

COMMERCIAL BANKS

3 CCR 701-1

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

CB1.1 Scope [Section 11-102-103, C.R.S.]

A. The Rules constitute a procedural guide for appearance and practice before, and action by, the Colorado State Banking Board. The Rules are promulgated pursuant to the provisions of the Colorado Banking Code, Section 11-102-103, C.R.S.

B. The regulations constitute substantive determinations of the Banking Board implementing various provisions of the Colorado Banking Code, as amended. Such regulations have been promulgated pursuant to the provisions of the Colorado Banking Code, Section 11-102-103, C.R.S.

CB1.11 Application Documents Confidential.

Applications and exhibits attached thereto shall be open to the public for reasonable examination in advance of the hearing. Upon request and for good cause shown, the Commissioner may suppress and treat as confidential all Financial and Biographical Reports attached to the application.

CB1.20 Decision and Order.

Copies of a decision and order of the Board shall be furnished by the Commissioner to all parties to the proceedings, to appropriate state and federal supervisory authorities, and to such other interested persons as the Commissioner may determine.

Every decision and order shall be signed by the Commissioner and shall bear the date of official publication. A copy of every decision and order shall be attached to the official minutes of the Board together with a certificate showing the persons to whom copies thereof have been provided.

CB101.7 Messenger Service

A. Definition. For purposes of this Rule, a "messenger service" refers to any service, such as a courier service or armored car service, that is used by a state bank (institution) and its customers to pick up from, and deliver to, specific customers at locations such as their homes or offices, items relating to transactions between the institution and such customers.

B. Pickup and delivery of items relating to nonbranching activities. An institution may establish and operate a messenger service, or use, with its customers, a third party messenger service, to transport items relevant to the institution's transactions with its customers without regard to the limitations set forth in Title 11, Article 105, C.R.S., provided the service does not engage in branching functions within the meaning of Section 11-101-401(10), C.R.S. In establishing or using such a facility, the institution may establish terms, conditions, and limitations that it deems appropriate to assure compliance with safe and sound banking practices.

C. Pickup delivery of items pertaining to branching functions by a messenger service established by a third party.

1. An institution and its customers may use a messenger service to pick up from, and deliver to, customers items that relate to branching functions within the meaning of Section 11-101-401(10), C.R.S. without regard to the limitations set forth in Title 11, Article 105, C.R.S., provided the messenger service is established and operated by a third party. In using such a facility, an institution may establish terms, conditions, and limitations, not inconsistent with this Rule, as it deems appropriate to assure compliance with safe and sound banking practices.

2. Whether a messenger service is established by a third party is based on a case-by-case review of all of the circumstances, provided a messenger service is established by a third party if:

    a. A party other than the institution owns the service and its facilities, or rents them from another party other than the institution, and employs the persons engaged in the provision of the service; and

    b. The messenger service:

        (1) Makes its services available to the public, including other depository institutions;

        (2) Retains ultimate discretion to determine which customers and geographical areas it will serve;

        (3) Maintains ultimate responsibility for scheduling, movement, and routing;

        (4) Does not operate under the name of the institution, and the institution and the messenger service do not advertise, or otherwise represent, that the institution itself is providing the service, although the institution may advertise that its customers may use one or more third party messenger services to transact business with the institution;

        (5) Assumes responsibility for the items during transit and maintains adequate insurance covering holdups, employee fidelity, and other in-transit losses; and

        (6) Enters into contracts with customers that provide that the messenger service acts as the agent for the customer when the items are in transit between the institution and the customer and, in the case of items intended for deposit, such items shall not be deemed to have been deposited until delivered to the institution at an established institution office, and, in the case of items representing withdrawals, such items shall be deemed to be paid when the item is given to the messenger service.

3. An institution is permitted to defray all or a part of the costs incurred by a customer in transporting items through a messenger service. Payment of such expenses may only cover costs associated with each transaction involving the customer and the messenger service. The institution may impose such terms, conditions, and limitations as it may deem appropriate with respect to the payment of such cost.

D. Pickup and delivery of items pertaining to branching activities where the messenger service is established by the institution.

An institution may establish and operate a messenger service to transport items relevant to the institution's transactions with its customers if such transactions involve one or more branching functions within the meaning of Section 11-101-401(10), C.R.S., provided the institution receives approval to establish the proposed branch pursuant to the relevant provisions of Title 11, Article 105, C.R.S. and Banking Board Rule CB101.54.

CB101.10 Fiduciary Self-Dealing [Section 11-102-104, C.R.S.]

A. Unless lawfully authorized by the instrument creating the relationship, by court order or by Colorado law, funds held by a state bank as fiduciary shall not be invested in stock or obligations of, or property acquired from, the bank or its directors, officers or employees of such affiliates. If the retention of stock or obligations of the bank or its affiliates is authorized by the instrument creating the relationship, by a court order or by Colorado law, a state bank as fiduciary may exercise rights to purchase its own stock or securities convertible into its own stock when offered pro rate to stockholders. When the exercise of rights or receipt of the stock dividend results in fractional share holding, additional fractional shares may be purchased to compliment the fractional shares acquired.

B. A state bank may sell assets held by it as fiduciary in one account if the transaction is fair to both accounts and if such transaction is not prohibited by the terms of the governing instrument.

C. A state bank may deposit funds of the estate or trust account as time or demand deposits in its own banking department and may borrow money on behalf of the fiduciary account from itself and may pledge or encumber estate or trust assets as security for such loan, provided such transactions are fair to the fiduciary account.

CB101.24 Agricultural Credit Corporations. [Section 11-105-304, C.R.S.]

A. A state bank may invest in an agricultural credit corporation upon application to and approval by the Banking Board. The Banking Board shall retain continuing authority to grant or deny each individual request based upon the information submitted therewith.

CB101.29 Bankers' Blanket Bond [Section 11-103-601, C.R.S.]

A. Any bankers' blanket bond procured by a state bank to satisfy the requirements of Section 11-103-601, C.R.S., shall provide that the bonding company providing the bond shall give at least ninety (90) days notice of cancellation or non-renewal of such bond to the bank and to the Commissioner.

B. Any state bank that experiences difficulty in obtaining and maintaining blanket bond coverage shall notify the Commissioner:

1. When there is a lapse in fidelity coverage; and

2. Monthly thereafter concerning actions and progress in obtaining coverage.

CB101.31 Lease Financing [Section 11-102-104, C.R.S.]

A. General Authority

A state bank may engage in lease financing transactions provided the lease is a net, full payout lease, representing a non-cancelable obligation of the lessee. A "net lease" is a lease in which the bank is not directly or indirectly obligated to assume the expenses of maintaining the property. A "full payout" lease is a lease for which the bank expects to realize both return of its full investment and the cost of financing the property over the term of the lease. This payout can come from (1) rentals; (2) estimated tax benefits; and (3) the estimated residual value of the property at the expiration of the term of the lease.

B. Limitations

Lease financing transactions entered into pursuant to this Rule are subject to the limitations on loans or extensions of credit pursuant to Banking Board Rule CB101.64. The Banking Board reserves the right to determine that such leases are also subject to the limitations of any other law, rule, or order.

C. Restrictions on Transactions with Affiliates

Lease financing transactions entered into pursuant to this Rule are subject to the following restrictions on transactions with affiliates:

1. The terms and circumstances of the transaction, including credit standards, must be substantially the same, or at least as favorable to the bank or its subsidiary as those prevailing at the time for comparable transactions with or involving other non affiliated companies;

2. In the case of any affiliate, the aggregate amount of lease transactions of the bank and its subsidiaries does not exceed 10 percent of the total capital of the bank; and

3. In the case of all affiliates, the aggregate amount of lease transactions of the bank and its subsidiaries does not exceed 20 percent of the total capital of the bank.

For the purposes of this Rule, any transaction by a bank with any person shall be deemed to be a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to that affiliate.

D. A bank may purchase or construct a municipal building, such as a school building, or other similar public facility and, as holder of legal title, lease the same to a municipality or other public authority having resources sufficient to make payment of all rentals as they become due. The lease agreement shall provide that upon its expiration the lessee will become owner of the building or facility.

E. Reference

1. Banking Board Rule CB101.64 is a Rule enacted by the Colorado State Banking Board and is administered by the Colorado Division of Banking.

2. For more detailed information pertaining to these provisions, please contact the Secretary to the Colorado State Banking Board at 1560 Broadway, Suite 1175, Denver, Colorado 80202, (303) 894-7575.

CB101.32 Activities That are Primarily Investments in Real Estate [Section 11-105-304(9)(a), C.R.S.

A. Pursuant to the provisions of Section 11-105-304(9)(a), C.R.S., a state chartered bank may make investments, not to exceed ten percent of its total assets, that are primarily investments in real estate, or may acquire and hold the voting stock of one or more corporations the activities of which are primarily investments in real estate; except that, unless otherwise approved by the Banking Board:

1. No state bank that has a regulatory composite examination rating (CAMELS) of "4" or "5" from any regulator shall make investments pursuant to Section 11-105-304(9)(a), C.R.S.; and

2. No state bank that has a regulatory composite examination rating (CAMELS) of "3" from any regulator and that is subject to a memorandum of understanding, cease and desist order, written agreement imposed by or entered into with any regulator of the state bank shall make total investments pursuant to Section 11-105-304(9)(a), C.R.S., in excess of five percent of its total assets.

CB101.36 Assessments and Fees

(Repealed and recodified within 701-10, AR16)

CB101.37 Transactions With Affiliates and Loans to Executive Officers, Directors, and Principal Shareholders [Section 11-105-302, C.R.S.]

A. Transactions With Affiliates

1. General Restrictions

a. A bank and its subsidiaries may engage in a covered transaction with an affiliate only if:

(1) In the case of any affiliate, the aggregate amount of covered transactions of the bank and its subsidiaries will not exceed 10 percent of the capital stock and surplus of the bank; and

(2) In the case of all affiliates, the aggregate amount of covered transactions of the bank and its subsidiaries will not exceed 20 percent of the capital stock and surplus of the bank.

b. For the purpose of this Rule, any transaction by a bank with any person shall be deemed to be a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate.

c. A bank and its subsidiaries may not purchase a low-quality asset from an affiliate unless the bank or such subsidiary, pursuant to an independent credit evaluation, committed itself to purchase such asset prior to the time such asset was acquired by the affiliate.

d. Any covered transactions and any transactions exempt under Paragraph (A)(4) of this Rule between a bank and an affiliate shall be on terms and conditions that are consistent with safe and sound banking practice.

2. Definitions

a. For the purpose of this Rule, the term “affiliate” with respect to a bank means:

(1) Any company that controls the bank and any other company that is controlled by the company that controls the bank;

(2) A bank subsidiary of the bank;

(3) Any company:

(a) That is controlled directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the bank or any company that controls the bank; or

(b) In which a majority of its directors or trustees constitute a majority of the persons holding any such office with the bank or any company that controls the bank.

(4) Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the bank or any subsidiary or affiliate of the bank; or

(5) Any investment company with respect to which a bank or any affiliate thereof is an investment advisor as defined in paragraph (1)(a)(20) of the investment company act of 1940; and

(6) Any company that the Division of Banking determines to have a relationship with the bank or any subsidiary or affiliate of the bank, such that covered transactions by the bank or its subsidiary with that company may be affected by the relationship to the detriment of the bank or its subsidiary.

b. The following shall not be considered to be an affiliate:

(1) Any company, other than a bank, that is a subsidiary of a bank, unless a determination is made under Paragraph (A)(2)(a)(6) of this Rule not to exclude such subsidiary company from the definition of affiliate;

(2) Any company engaged solely in holding the premises of the bank;

(3) Any company engaged solely in conducting a safe deposit business;

(4) Any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest; and

(5) Any company where control results from the exercise of rights arising out of a bonafide debt previously contracted, but only for the period of time specifically authorized under applicable state or federal law or regulation or, in the absence of such law or regulation, for a period of two years from the date of the exercise of such rights or the effective date of this Rule, whichever date is later, subject upon application to authorization by the Banking Board for good cause shown for extensions of time of not more than one year at a time; however, such extensions in the aggregate shall not exceed three years.

c. A company or shareholder shall be deemed to have control over another company if:

(1) Such company or shareholder, directly or indirectly, or acting through one or more other persons, owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company;

(2) Such company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company; or

(3) The Division of Banking determines that such company or shareholder, directly or indirectly, exercises a controlling influence over the management or policies of the other company; and

(4) Notwithstanding any other provision of this Rule, no company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in Paragraph (A)(2)(a)(3) of this Rule, or if the company owning or controlling such shares is a business trust.

d. The term “subsidiary” with respect to a specified company means a company that is controlled by such specified company.

e. The term “bank” includes a state bank, industrial bank, and banking association.

f. The term “company” means a corporation, partnership, business trust, association, or similar organization and, unless specifically excluded, the term “company” includes a “member bank” and a “bank.”

g. The term “covered transaction” means with respect to an affiliate of a bank:

(1) Loan or extension of credit to the affiliate;

(2) A purchase of or an investment in securities issued by the affiliate; and

(3) A purchase of assets, including assets subject to an agreement to repurchase, from the affiliate, except such purchase of real and personal property as may be specifically exempted by the Banking Board by order of regulation.

h. The term “aggregate amount of covered transactions” means the amount of the covered transactions about to be engaged in added to the current amount of all outstanding covered transactions.

i. The term “securities” means stocks, bonds, debentures, notes, or other similar obligations.

j. The term “low quality asset” means an asset that falls in any one or more of the following categories:

(1) An asset classified as “substandard,” “doubtful,” or “loss,” or treated as “other loans especially mentioned” in the most recent report of examination or inspection of an affiliate prepared by either a federal or state supervisory agency;

(2) An asset in a nonaccrual status;

(3) An asset on which principal or interest payments are more than thirty days past due; or

(4) An asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor.

k. The term “person” means an individual or a company.

3. Collateral for Certain Transactions with Affiliates

a. Each loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate by a bank or its subsidiary shall be secured at the time of the transaction by collateral having a market value equal to:

(1) One hundred percent of the amount of such loan or extension of credit, guarantee, acceptance, or letter of credit, if the collateral is composed of:

(a) Obligations of the United States or its agencies;

(b) Obligations fully guaranteed by the United States or its agencies as to principal and interest;

(c) Notes, drafts, bills of exchange or bankers acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(d) A segregated, earmarked deposit account with the member bank.

(2) One hundred ten percent of the amount of such loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of obligations of any state or political subdivision of any state;

(3) One hundred twenty percent of the amount of such loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of other debt instruments, including receivables; or

(4) One hundred thirty percent of the amount of such loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of stock, leases, or other real or personal property.

b. Any such collateral that is subsequently retired or amortized shall be replaced by additional eligible collateral where needed to keep the percentage of the collateral value relative to the amount of the outstanding loan or extension of credit, guarantee, acceptance, or letter of credit equal to the minimum percentage required at the inception of the transaction.

c. A low-quality asset shall not be acceptable as collateral for a loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate.

d. The securities issued by an affiliate of the bank shall not be acceptable as collateral for a loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, that affiliate or any other affiliate of the bank.

e. The collateral requirements of this paragraph shall not be applicable to an acceptance that is already fully secured either by attached documents or by other property having an ascertainable market value that is involved in the transaction.

4. Exemptions: The provisions of this section, except Paragraph (A)(1)(d) of this Rule, shall not be applicable to:

a. Any transaction, subject to the prohibition contained in Paragraph (A)(1)(c) of this Rule, with a bank:

(1) Which controls 80 percent or more of the voting shares of the member bank;

(2) In which the bank controls 80 percent or more of the voting shares; or

(3) In which 80 percent or more of the voting shares are controlled by the company that controls 80 percent or more of the voting shares of the bank.

b. Making deposits in an affiliated bank or affiliated foreign bank in the ordinary course of correspondent business, subject to any restrictions that the Division of Banking may prescribe.

c. Giving immediate credit to an affiliate for uncollected items received in the ordinary course of business.

d. Making a loan or extension of credit to, or issuing a guarantee, acceptance, or letter of credit on behalf of, an affiliate that is fully secured by:

(1) Obligations of the United States or its agencies;

(2) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(3) A segregated, earmarked deposit account with the bank.

e. Purchasing securities issued by any company of the kinds described in section 4(c)(1) of the Bank Holding Company Act of 1956.

f. Purchasing assets having a readily identifiable and publicly available market quotation and purchased at that market quotation or, subject the prohibition contained in Paragraph (A)(1)(3) of this Rule, purchasing loans on a nonrecourse basis from affiliated banks.

g. Purchasing from an affiliate a loan or extension of credit that was originated by the bank and sold to the affiliate subject to a repurchase agreement or with recourse.

5. Rulemaking and Additional Exemptions

a. The Banking Board may issue such further regulations, including definitions consistent with this Paragraph (A)(2) of this Rule, as may be necessary to administer and carry out the purposes of this section and to prevent evasions thereof and as are consistent with federal banking law or regulation.

b. The Banking Board may, at its discretion, by regulation exempt transactions or relationships from the requirements of Paragraph (A)(1) and (A)(3) of this Rule if it finds such exemptions to be in the public interest and consistent with the purposes of this paragraph and as are consistent with federal banking law or regulation.

B. Restrictions on Transactions With Affiliates

1. General Provisions

a. Terms. A bank and its subsidiaries may engage in any of the transactions described in Paragraph (B)(1)(b) of this Rule only:

(1) On terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to such bank or its subsidiary, as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies; or

(2) In the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to or would apply to nonaffiliated companies.

b. Transactions covered. Paragraph (B)(1)(a) of this Rule applies to the following:

(1) Any covered transaction with an affiliate;

(2) The sale of securities or other assets to an affiliate, including assets subject to an agreement to repurchase;

(3) The payment of money or the furnishing of services to an affiliate under contract, lease, or otherwise;

(4) Any transaction in which an affiliate acts as an agent, or broker, or receives a fee for its services to the bank or to any other person; and

(5) Any transaction or series of transactions with a third party:

(a) If an affiliate has a financial interest in the third party; or

(b) If an affiliate is a participant in such transaction or series of transactions.

c. Transactions that Benefit an Affiliate. For the purpose of Paragraph (B)(1) of this Rule, any transaction by a member or its subsidiary with any person shall be deemed to be a transaction with an affiliate of such bank if any of the proceeds of the transaction are used for the benefit of, or transferred to, such affiliate.

2. Prohibited Transactions

a. In General. A bank or its subsidiary:

(1) Shall not purchase as fiduciary any securities or other assets from any affiliate unless such purchase is permitted:

(a) Under the instrument creating the fiduciary relationship;

(b) By court order; or

(c) By law of the jurisdiction governing the fiduciary relationship; and

(2) Whether acting as a principal or fiduciary, shall not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of such bank.

b. Exception. Paragraph (B)(1)(a)(2) of this Rule shall not apply if the purchase or acquisition of such securities has been approved, before such securities are initially offered for sale to the public, by a majority of the directors of the bank who are not officers or employees of the bank or any affiliate thereof.

c. Definitions. For the purpose of Paragraph (B) of this Rule:

(1) The term “security” has the meaning given to such term in section 3(a)(10) of the Securities Exchange Act of 1934; and

(2) The term “principal underwriter” means any underwriter who, in connection with a primary distribution of securities:

(a) Is in privity of contract with the issuer or an affiliated person of the issuer;

(b) Is acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or

(c) Is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

3. Advertising Restriction. A member bank or any subsidiary or affiliate of a member bank shall not publish any advertisement or enter into any agreement stating or suggesting that the bank shall in any way be responsible for the obligations of its affiliates.

4. Definitions. For the purpose of Paragraph (B) of this Rule:

   a. The term “affiliate” has the meaning given to such term in Paragraph (A)(2)(a) of this Rule; but does not include any company described in Paragraph (A)(2)(b) of this Rule, or any bank;

   b. The terms “bank,” “subsidiary,” “person,” and “security,” other than security as used in Paragraph (B)(2) of this Rule have the meanings given to such terms in Paragraph (A)(2) of this Rule; and

   c. The term “covered transaction” has the meaning given to such term in Paragraph (A)(2)(g) of this Rule, but does not include any transaction which is exempt from such definition under Paragraph (A)(4) of this Rule.

5. Regulations. The Banking Board may prescribe regulations as are consistent with federal banking law or regulation to administer and carry out the purposes of Paragraph (B) of this Rule, including:

   a. Regulations to further define terms used in Paragraph (B) of this Rule; and

   b. Regulations to:

      (1) Exempt transactions or relationships from the requirements of Paragraph (B) of this Rule; and

      (2) Exclude any subsidiary of a bank holding company from the definition of affiliate for purposes of Paragraph (B) of this Rule if the Banking Board finds such exemptions or exclusions are in the public interest and are consistent with the purposes of Paragraph (B) of this Rule.

C. Loans to Executive Officers, Directors, and Principal Shareholders

1. General Prohibitions

   a. Terms and Creditworthiness

      No bank may extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of that person unless the extension of credit:

      (1) Is made on substantially the same terms (including interest rates and collateral) as, and following credit-underwriting procedures that are not less stringent than, those prevailing at the time for comparable transactions by the bank with other persons that are not covered by this Rule; and

      (2) Does not involve more than the normal risk of repayment or present other unfavorable features.

      (3) Exception. Nothing in this Rule shall prohibit any extension of credit made pursuant to a benefit or compensation program that:

(a) Is widely available to employees of the bank and, in the case of extensions of credit to an insider of its affiliates, is widely available to employees of the affiliates at which that person is an insider; and

(b) Does not give preference to any insider of the bank over the other employees of the bank and, in the case of extensions of credit to an insider of its affiliates, does not give preference to any insider of its affiliates over other employees of the affiliates at which that person is an insider.

b. Prior Approval

(1) No bank may extend credit (which term includes granting a line of credit) to any of its executive officers, directors, or principal shareholders or to any related interest of that person in an amount that, when aggregated with the amount of all other extensions of credit to that person and to all related interests of that person, exceeds the higher of $25,000 or 5 percent of the bank's total capital unless:

(a) The extension of credit has been approved in advance by a majority of the entire Board of Directors of the bank; and

(b) The interested party has abstained from participating directly or indirectly in the voting.

(2) In no event may a bank extend credit to any one of its executive officers, directors, or principal shareholders, or to any related interest of that person, in an amount that, when aggregated with all other extensions of credit to that person, and all related interests of that person, exceeds $500,000, except by complying with the requirements of this paragraph.

(3) Approval by the Board of Directors under Paragraph (C)(1)(b)(1) and (b)(2) of this44 Rule is not required for an extension of credit that is made pursuant to a line of credit that was approved under Paragraph (C)(1)(b)(1) of this Rule within 14 months of the date of the extension of credit. The extension of credit must also be in compliance with the requirements of Paragraph (C) of this Rule.

(4) Participation in the discussion, or any attempt to influence the voting by the Board of Directors regarding an extension of credit constitutes indirect participation in the voting by the Board of Directors on an extension of credit.

c. Lending Limit

No bank may extend credit to any of its executive officers or principal shareholders or to any related interest of that person in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person, exceeds the lending limit of the bank specified in Banking Board Rule CB101.64. This prohibition does not apply to an extension of credit by a bank to a company of which the bank is a subsidiary or to any other subsidiary of that company.

d. Aggregate Lending Limit

(1) General Limit. A bank may not extend credit to any insider unless the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to all of its insiders, does not exceed the bank's total capital.

(2) Banks with Deposits of Less Than $100,000,000. Banks with deposits of less than $100,000,000 may by resolution of its Board of Directors increase the general limit specified in Paragraph (C)(1)(d)(1) of this Rule for a period ending May 18, 1993, to a level not to exceed two times the bank's total capital, if:

(a) The Board of Directors determines that such higher limit is consistent with prudent, safe, and sound banking practices in light of the bank's experience in lending to its insiders and is necessary to attract or retain directors or to prevent restricting the availability of credit in small communities;

(b) The resolution sets forth the facts and reasoning on which the Board of Directors bases the finding, including the amount of the bank's lending limit to its insiders as a percentage of the bank's total capital as of the date of the resolution;

(c) The bank has submitted the resolution to the Division of Banking;

(d) The bank meets or exceeds, on a fully phased-in basis, all applicable capital requirements established by the Banking Board; and

(e) The bank received a satisfactory composite rating in its most recent report of examination.

e. Overdrafts

(1) No bank may pay an overdraft of an executive officer or director of the bank or executive officer or director of its affiliates on an account at the bank, unless the payment of funds is made in accordance with:

(a) A written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment; or

(b) A written, preauthorized transfer of funds from another account of the account holder at the bank.

(2) This prohibition does not apply to payment of inadvertent overdrafts on an account in an aggregate amount of $1,000 or less, provided:

(a) The account is not overdrawn for more than five business days; and

(b) The bank charges the executive officer or director the same fee charged any other customer of the bank in similar circumstances.

(3) This prohibition does not apply to the payment by a bank of an overdraft of a principal shareholder of the bank, unless the principal shareholder is also an executive officer or director. This prohibition also does not apply to the payment by a bank of an overdraft of a related interest of an executive officer, director, or principal shareholder of the bank.

2. Additional Restrictions on Loans to Executive Officers

a. No bank may extend credit to any of its executive officers, and no executive officer of a bank shall borrow from or otherwise become indebted to the bank, except in the amounts, for the purposes, and upon the conditions specified in Paragraphs (C)(2)(c) and (d) of this Rule.

b. No bank may extend credit in an aggregate amount greater than the amount permitted in Paragraph (C)(2)(c)(3) of this Rule to a partnership in which one or more of the bank's executive officers are partners, and either individually or together, hold a majority interest. For the purposes of Paragraph (C)(2)(c)(3) of this Rule, the total amount of credit extended by a bank to such partnership is considered to be extended to each executive officer of the bank who is a member of the partnership.

c. A bank is authorized to extend credit to any executive officer of the bank:

(1) In any amount to finance the education of the executive officer's children;

(2) In any amount to finance or refinance the purchase, construction, maintenance, or improvement of a residence of the executive officer, if the extension of credit is secured by a first lien on the residence and the residence is owned (or expected to be owned after the extension of credit) by the executive officer. ("First lien" for the purpose of this Paragraph of this Rule includes not only a first mortgage or deed of trust but also a second or other junior mortgage or deed of trust where the bank holds all prior encumbrances and such junior encumbrance has the same priority with respect to liens of third parties as the first mortgage or deed of trust); and in the case of a refinancing, that only the amount thereof used to repay the original extension of credit, together with the closing costs of the refinancing, and any additional amount thereof used for any of the purposes enumerated in this paragraph (C)(2)(c)(2), are included within this category of credit; and

(3) For any other purpose not specified in Paragraphs (C)(2)(c)(1) and (2) of this Rule, if the aggregate amount of loans to that officer under this paragraph does not exceed at any one time the higher of 2.5 percent of the bank's total capital or $25,000, but in no event more than $100,000.

d. Any extension of credit by a bank to any of its executive officers shall be:

(1) Promptly reported to the bank's board of directors;

(2) In compliance with the requirements of general prohibitions, of Paragraph (C)(1) of this Rule;

(3) Preceded by the submission of a detailed current financial statement of the executive officer; and

(4) Made subject to the condition that the extension of credit will, at the option of the bank, become due and payable at any time that the officer is indebted to any other bank or banks in an aggregate amount greater than the amount specified for a category of credit in Paragraph (C)(2)(c) of this Rule.

3. Reference

a. Banking Board Rule CB101.64 is a Rule enacted by the Colorado State Banking Board and is administered by the Colorado Division of Banking.

b. This Rule does not include amendments to or editions of the referenced material later than the effective date of this Rule, June 30, 1997.

c. For more detailed information pertaining to these provisions, please contact the secretary to the Colorado State Banking Board at 1560 Broadway, Suite 1175, Denver Colorado 80202, (303) 894-7575.

CB101.38 Loans Secured by Corporate Stock [Section 11-105-302, C.R.S.]

A. No state bank shall make any loan or discount secured by the shares of its own capital stock or by its obligations subordinate to deposits. No state bank shall purchase the stock of any other corporation except such as it may necessarily acquire in the protection or satisfaction of previously existing loans made in good faith and except as provided by statute, including Section 11-105-304, C.R.S. A state bank may purchase its own stock upon obtaining written approval from the Colorado Division of Banking, and the affirmative vote of shareholders owning two-thirds of the bank's capital stock. The repurchase of such stock shall be in accordance with Section 7-106-302, C.R.S. This Rule shall not apply to any investment made by a bank acting as a fiduciary pursuant to the authority of Section 11-106-102, C.R.S., nor shall it apply to investments made pursuant to the authority of Sections 11-105-304(2), 11-105-304(9)(a), or 11-105-501, C.R.S.

CB101.39 Sale of Federal Funds [Section 11-105-302, C.R.S.]

A. Definition. "Sale of Federal funds" means, for purposes of this Rule, any transaction among depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at Federal Reserve banks or from credits to new or existing deposit balances due from a correspondent depository institution.

B. Sales of Federal funds with a maturity of one business day, or under a continuing contract, are not "loans and extensions of credit" for purposes of lending limits. However, sales of Federal funds with a maturity of more than one business day are subject to the lending limits.

C. A "continuing contract" refers to an agreement that remains in effect for more than one business day but has no specified maturity and requires no advance notice for termination.

CB101.40 Investment in Small Business Investment Companies [Section 11-105-304, C.R.S.]

A. Shares of stock in small business investment companies organized under the Small Business Investment Act of 1958, 15 USC 661 et seq., administered by the Small Business Administration, shall be eligible for purchase by state banks to the extent that in no event shall any state bank hold shares in an amount aggregating more than three percent of the bank's total capital.

B. This Rule does not include amendments to or editions of the referenced material later than the effective date of the Rule, July 1, 1990. For more detailed information pertaining to these provisions, please contact the secretary to the Colorado State Banking Board at 1560 Broadway, Suite 1175, Denver, Colorado 80202, 303-894-7584.

CB101.41 Investment in a Bank Service Corporation [Section 11-105-304, C.R.S.]

A. A state bank may invest not more than 10 percent of total capital, as defined in Banking Board Rule CB101.52, Paragraph (B)(33), in a bank service corporation. No state bank shall invest more than 5 percent of its total assets in a bank service corporation.

CB101.42 Loans [Section 11-105-303, C.R.S.]

Any state bank may make, arrange, purchase, or sell the following types of loans and extensions of credit.

A. Real Estate Lending

1. General.

a. Any state bank may make, arrange, purchase, or sell loans or extensions of credit secured by liens on interests in real estate.

2. Scope.

a. For the purposes of this Rule, loans secured by liens on interests in real estate include loans made upon the security of condominiums, leaseholds, cooperatives, forest tracts, construction project loans (except as specified in Paragraphs (B)(6) and (7) of this Rule), and land sales contracts.

B. Other

1. Insured or Guaranteed Loans.

a. When the bank relies substantially on the insurance or guaranty of a governmental agency in making a loan. This includes loans that are:

(1) Insured under the provisions of the National Housing Act, 12 USC 1701 et seq., administered by the Secretary of Housing and Urban Development;

(2) Insured under the provisions of the Bankhead-Jones Farm Tenant Act, 7 USC 1000 et seq., administered by the Secretary of Agriculture, or under the Housing Act of August 28, 1937, 42 USC 1401 et seq., administered by the Department of Housing and Urban Development, or Title V of the Housing Act of 1949, 42 USC 1441 et seq., administered by the Department of Housing and Urban Development;

(3) Guaranteed by the Secretary of Housing and Urban Development, for the payment of obligations of which the full faith and credit of the United States is pledged;

(4) Fully guaranteed or insured by a state, any agency or instrumentality of a state, or by a state authority for the payment of obligations of which the full faith and credit of the state is pledged, if under the terms of the guaranty or insurance agreement the bank will be assured of repayment in accordance with the terms of the loan;

(5) At least 20 percent guaranteed or insured under the provisions of the Servicemen's Readjustment Act, 38 USC 1801 et seq., administered by the Administrator of Veterans Affairs;

(6) Guaranteed under section 802 of the Housing and Community Development Act, 42 USC 5301 et seq., administered by the Secretary of Housing and Urban Development;

(7) Subject to a firm commitment to insure by a Government insuring agency. A firm commitment is a commitment in which a specific mortgagor is named; and

(8) Loans in which the Small Business Administration cooperates through agreements to participate on an immediate or deferred or guaranteed basis under the Small Business Act, 15 USC 631 et seq., administered by the Small Business Administration.

b. When the bank relies substantially upon private company mortgage insurance or guaranty, but only to the extent of the insurance or guaranty.

2. Loans where the Bank looks for repayment by relying primarily on the borrower's general credit standing and forecast of income.

3. Loans secured by an assignment of rents under a lease.

4. Loans secured by the pledge or assignment of another real estate mortgage.

5. Loans secured by a valid lien on timber.

6. Loans having maturities not to exceed sixty (60) months made to finance the construction of a building or buildings, where there is a valid and binding agreement entered into by a financially responsible lender or other party to advance the full amount of the bank's loan upon completion of the building or buildings.

7. Loans having maturities not to exceed sixty (60) months made to finance the construction of residential or farm buildings.

8. Loans for which a security interest is taken in a mobile home.

9. Loans made previously where a security interest in real estate is taken subsequently in good faith.

10. Any type loan that a national bank has the authority to make pursuant to the provisions of Section 24 of the National Bank Act, 12 USC 1 et seq., administered by the Comptroller of the Currency.

11. Any type loan approved from time to time by the Banking Board.

C. Reference

This Rule does not include amendments to or editions of the referenced material later than the effective date of the rule, July 1, 1990. For more detailed information pertaining to these provisions, please contact the secretary to the Colorado State Banking Board at 1560 Broadway, Suite 1175, Denver, Colorado 80202, 303 894-7584.

CB101.44 Dividends [Section 11-103-406, C.R.S.]

A. Purpose

This Rule applies restrictions to the declaration and payment of dividends by a state chartered commercial bank.

B. Definitions

For the purposes of this Rule, the following definitions apply:

1. Capital surplus means the total of surplus as reportable in the bank's Report of Condition and Income and surplus on perpetual preferred stock.

2. Retained net income means the net income of a specified period less the total amount of all dividends declared in that period.

C. Earnings Limitation on Payment of Dividends

Unless the dividend is approved by the Banking Board, a bank shall not declare a dividend if the total amount of all dividends, including the proposed dividend, declared by such state bank in any calendar year exceeds the total of the bank's retained net income of that year to date, combined with its retained net income of the preceding two years. The bank's net income during the current year and its retained net income from the prior two calendar years is reduced by any net losses incurred in the current or prior two years, and any required transfers to surplus or to a fund for the retirement of preferred stock.

D. Date of Declaration of Dividend

The state bank shall use the date a dividend is declared for the purposes of determining compliance with this Rule.

CB101.45 Generally Accepted Accounting Principles [Section 11-103-502(3)(a), C.R.S.]

A. Generally accepted accounting principles (GAAP) as defined in this Rule shall consist of those opinions and statements generally recognized and supported by the Accounting Principles Board (APB) or the Financial Accounting Standards Board (FASB).

B. While it is the Banking Board's intention to require that GAAP be followed whenever appropriate, certain statements filed by banks with various state and federal regulatory agencies are supervisory and regulatory documents, not primarily accounting documents. Because of the special supervisory, regulatory, and economic policy needs of these reports, the instructions do not always follow GAAP. In reporting transactions not covered in principle by regulatory instructions, banks may follow GAAP. However, in such circumstances, unless the bank has already obtained a ruling from another regulatory agency pursuant to the policies expressed in Section 11-101-102, C.R.S., a specific ruling shall be sought promptly from the Banking Board.

C. References: GAAP are issued by the FASB which is an arm of the Financial Accounting Foundation, an independently chartered institution. The APB is a committee of the American Institute of Certified Public Accountants. This Rule does not include amendments to or editions of the referenced material later than the effective date of this Rule. For more detailed information pertaining to this Rule, please contact the Secretary to the Colorado State Banking Board at 1560 Broadway, Suite1175, Denver, Colorado 80202, 303-894-7584.

CB101.46 Standards for Determining Value of Asset [Section 11-102-102(3)(a), C.R.S.]

A. For purposes of this Rule, the standard for the value of an asset shall be the lower of cost or market.

B. Valuation reserves, such as for bad debts or fixed asset depreciation, shall be established and assets will be depreciated or amortized, where appropriate, as required by generally accepted accounting principles or regulatory authorities.

C. References: Generally accepted accounting principles are issued by the Financial Accounting Standards Board which is an arm of the Financial Accounting Foundation, an independently chartered institution. This Rule does not include amendments to or editions of the referenced material later than the effective date of the rule, July 1, 1990. For more detailed information pertaining to these provisions, please contact the secretary to the Colorado State Banking Board at 1560 Broadway, Suite 1175, Denver, Colorado 80202, 303-894-7584.

CB101.47 Reports of New Executive Officers, Directors, and Persons in Control and Related Late Filing Penalty [Section 11-102-303(8) and (9), C.R.S.]

A. Any person who becomes an executive officer, director, or person responsible, directly or indirectly, for the management, control or operation of a bank, must notify the Division of Banking in writing within ninety (90) days thereafter.

The written notice must include a statement describing any civil or criminal offenses of which such person has been found guilty or liable by any federal or state court or federal or state regulatory agency.

B. In addition, any person who becomes an executive officer, director, or person responsible, directly or indirectly, for the management, control, or operation of a bank, must file a biographical report with the Division of Banking within ninety (90) days thereafter, if:

1. The bank has been chartered less than two (2) years;

2. Within the preceding two (2) years, the bank has undergone a change in control that required a notice to be filed pursuant to Section 11-102-303, C.R.S.;

3. Within the preceding two (2) years, the bank holding company became a registered bank holding company, unless the bank holding company is owned or controlled by a registered bank holding company, or the bank holding company was established in a reorganization in which substantially all of the shareholders of the bank holding company were shareholders of the bank prior to the bank holding company's formation; or

4. The bank or bank holding company is not in compliance with all minimum capital requirements applicable to the institution as determined on the basis of the institution's most recent report of condition, examination, or is otherwise in a troubled condition as indicated by a composite rating of 3, 4, or 5 at the institution's most recent examination by a state or federal banking regulator.

   The biographical report to be filed with the Division of Banking may be either on the form provided by the Division of Banking or the form filed with the institution's federal regulator for reporting the change of executive officer, director, or person in control.

C. For the purposes of this Rule, except as provided in Paragraph (D), the term “director” does not include an advisory director who:

   1. Is not elected by the shareholders of the bank;

   2. Is not authorized to vote on any matters before the board of directors; and

   3. Provides solely general policy advice to the board of directors.

D. The Banking Board or the Division of Banking may otherwise determine that additional reporting is required of any person who becomes an executive officer, director, or person in control. Written notice will be provided by the Division of Banking to such person of any additional requirements.

E. The Banking Board may assess a $25.00 per day penalty for late filing of reports of new executive officers, directors, and persons in control that are required by Section 11-102-303(8) and (9), C.R.S., and this Rule. Said penalty may be waived by the Banking Board pursuant to statute. Filing of an incorrect report form is not grounds for the waiving of the penalty.

CB101.48 Investment in Federal Home Loan Bank [Section 11-105-304(7), C.R.S.]

A. A state bank may purchase and hold stock in and become a member of the Federal Home Loan Bank for the purpose of utilizing the services of, or otherwise interacting with, the Federal Home Loan Bank. The Federal Home Loan Bank Act, 12 USC 1424, provides Federal Home Loan Bank membership to any eligible bank insured by the Federal Deposit Insurance Corporation.

B. The Federal Home Loan Bank Act, also known as 12 USC 1424, amended 1989, is a law enacted by the United States Congress and administered by the Federal Housing Finance Board. This Rule does not include amendments to or editions of the referenced material later than the effective date of this Rule, November 30, 1990. For detailed information pertaining to these provisions, please contact the secretary to the Colorado State Banking Board at 1560 Broadway, Suite 1175, Denver, Colorado 80202, 303-894-7584.

CB101.49 Scope of Directors' Examinations [Section 11-103-502(3)(b), C.R.S.]

A. Definitions

   For purposes of this Rule, the term “reviewer” shall mean such public accountant or other independent person(s) as determined by the Banking Board.

B. Examination Scope

For the purposes of Section 11-103-502(3)(b), C.R.S., a state bank (institution) at a minimum shall perform annually the procedures as set forth in Appendix A as the scope of a directors' examination. The recommended procedures are intended to address the high risk areas common to all financial institutions. However, each institution must review its own particular business and determine if additional procedures are required to cover other high risk areas. The reviewer should be informed of, and permitted access to, all examination reports, administrative orders, and any additional communications between the institution and the Division of Banking, including the Colorado State Banking Board, as well as the appropriate federal regulatory agency. The reviewer should obtain institution management's written representation that he or she has been informed of, and granted access to, all such documents prior to completion of the field work.

C. Extent of Testing

Where the procedures set forth in Appendix A require testing or determinations to be made, sampling may be used. Both judgmental and statistical sampling may be acceptable methods of selecting samples to test. Sample sizes should be consistent with generally accepted auditing standards, or as agreed upon by the reviewer and the institution client. In any event, the sampling method and extent of testing, including sample size(s) used, should be disclosed in the directors' examination report.

D. Reports to be Filed with the Division of Banking

After the completion of the procedures or agreed-upon procedures set forth in Appendix A, the independent reviewer should evaluate the results of his/her work and promptly prepare and submit a report addressed to the board of directors of the institution. This report should detail the findings and suggestions resulting from performance of these procedures. Independent reviewers should include in their report, at a minimum:

1. Financial statements (balance sheet and statement of earnings as of the examination date);

2. The accounts or items on which the procedures were applied;

3. The sampling methods used;

4. The procedures and agreed-upon extent of testing performed;

5. The accounting basis, either generally accepted accounting principles (GAAP) or regulatory required accounting, on which the accounts or items being audited are reported;

6. The reviewer's findings; and

7. The date as of which the procedures were performed.

The reviewer should sign and date the report, which should also disclose the reviewer's business address.

The institution must send a copy of the report, the engagement letter, and any management letter or similar letter of recommendation to the Division of Banking and the appropriate federal regulators within thirty (30) days after its receipt, but no later than one hundred fifty (150) days after the date of examination. In addition, each institution should promptly notify the Division of Banking when any reviewer is engaged to perform a directors' examination and when a change in its reviewer occurs.

E. References

Generally accepted accounting principles are issued by the Financial Accounting Standard Board which is an arm of the Financial Accounting Foundation, an independently chartered institution. Section 23A of the Federal Reserve Act, also known as 12 USC 371c, is a law enacted by the United States Congress and administered by the Board of Governors of the Federal Reserve System. Regulation O of the Board of Governors of the Federal Reserve System, also known as 12 CFR 215, is a regulation enacted by the Federal Reserve Board under the authority granted by the United States Congress and administered by the Board of Governors of the Federal Reserve System.

This Rule does not include amendments to or editions of the referenced materials later than the effective date of the Rule, October 24, 1990.

For more detailed information pertaining to this Rule, please contact the secretary to the Colorado State Banking Board at 1560 Broadway, Suite 975, Denver, CO 80202, 303-894-7575.

Appendix A - CB101.49

For the purposes of Section 11-103-502(3)(b), C.R.S., a state bank (institution), at a minimum, shall have the following procedures performed annually.

A. Loans

1. Determine that the institution has policies that address the lending and collection functions. Read the institution's loan policies to determine whether they address the following items:

   a. General fields of lending in which the institution will engage and the types of loans within each field;

   b. Descriptions of the institution's normal trade area and circumstances under which the institution may extend credit to borrowers outside of such area;

   c. Limitations on the maximum volume of each type of loan product in relation to total assets;

   d. Responsibility of the board of directors in reviewing, ratifying, or approving loans;

   e. Lending authority of the loan or executive committee (if such a committee exists);

   f. Adherence to legal limits;

   g. Types of secured and unsecured loans that will be granted;

   h. Circumstances under which extensions or renewals of loans are granted;

i. Guidelines for rates of interest and terms of repayment for secured and unsecured loans;

j. Documentation required by the institution for each type of secured and unsecured loan;

k. Limitations on the amount advanced in relation to the value of various types of collateral;

l. Limitations on the extension of credit through overdrafts;

m. Level or amount of loans granted in specific industries or specific geography locations;

n. Guidelines for participations purchased and/or sold;

o. Guidelines for documentation of new loans prior to approval and updating loan files throughout the life of the loan;

p. Guidelines for loan review procedures by institution personnel including:

(1) An identification or grouping of loans that warrant the special attention of management;

(2) For each loan identified, a statement or indication of the reason(s) why the particular loan merits special attention; and

(3) A mechanism for reporting periodically to the board on the status of each loan identified and the action(s) taken by management.

q. Collection procedures, including, but not limited to, actions to be taken against borrowers who fail to make timely payments;

r. Guidelines for nonaccrual loans (i.e., when an asset should be placed on nonaccrual, individuals responsible for identifying non-performing assets and placing them on nonaccrual, and circumstances under which an asset will be placed back on accrual.); and

s. Guidelines for in-substance foreclosures.

2. Review the board of directors' minutes to determine that the loan policies have been reviewed and approved. Through review of the board of directors' minutes and through inquiry of executive officers, determine whether the board of directors revises the policies and procedures periodically as needed.

3. Obtain Loan Committee or, if applicable, board of directors' minutes and through a comparison of loans made throughout the period with lending policies, determine whether loans are being made within the loan authorization policy.

4. Select a sample of borrowers, including loans from each major category, and determine through examination of loan files and other institution reports whether lending and collection policies are being followed (e.g., type of loan is in accordance with loan policy, funds were not advanced until after loan approval was received from proper loan authorization level, loan is within collateral policies, insurance coverage is adequate, and institution is named as loss payee).

5. Select a sample of borrowers from each major category of secured loans and determine through examinations of files and other institution reports whether collateral policies are being followed (e.g., loan is adequately collateralized, documentation is present and properly prepared, assignments are perfected, and collateral is properly valued, marketable, and has not become susceptible to deterioration in realizable value).

6. Review policies for checking floor plan merchandise, warehouse inventory and accounts receivable by responsible institution personnel and test for compliance.

7. Determine whether participations purchased and participations sold transactions have been reported to and authorized by the board of directors or loan committee, if applicable, through review of appropriate minutes.

8. On a test basis, review participations purchased to confirm that the institution does its own independent credit analysis. Also, review participation documents and determine that terms and conditions between the lead institution and participants are specified, including:

    a. Which party is paid first;

    b. What happens in the event of default;

    c. How set-offs received by either institution are to be treated;

    d. How collection expenses are to be divided; and

    e. Who is responsible to collect the note in the event of default

9. Confirm sample of participations purchased and participations sold with participating institutions to verify that they are legitimate transactions and that they are properly reflected as being with or without recourse in the institution's records.

10. Balance detail ledgers or reconcile computer generated trial balances with the general ledger control accounts for each major category of loans, including loans carried as past due or in a nonaccrual status.

11. Confirm a sample of all loans within each major category; include past due and nonaccrual loans in the verification process.

12. Review multiple loans to the same borrower with the same person as guarantor to determine if they were made on consecutive days to circumvent the loan authorization policy and to determine whether policies and procedures are designed to assure that all related credits are considered in loan granting and administration. Review these loans for relationships to institution insiders or their related interests.

13. From reports to the board on the status of loans identified as warranting special attention, review the disposition of a sample of loans no longer appearing on these reports.

14. Test loan interest income and accrued interest by:

    a. Determining the institutions method of calculating and recording interest accruals;

    b. Obtaining trial balances of accrued interest;

c. Testing the reconciliation of the trial balances to the general ledger;

d. Determining that interest accruals are not made on nonaccrual loans;

e. Selecting sample items from each major category of loans:

(1) Determining the stated interest rate and appropriate treatment of origination fees and costs;

(2) Testing receipt of payments and correctness of entries to applicable general ledger accounts;

(3) Calculating accrued interest and comparing it to the trial balance; and

(4) Reviewing recorded book value for appropriate accretion of discount (net origination fees) and amortization of premium (net origination costs); and

f. Performing an analytical review of yields on each major category of loans for reasonableness.

B. Allowance for Credit Losses

1. Test charge-offs and recoveries for proper authorization and/or reporting by reference to the board of directors' minutes. Review charged-off loans for any relationship with institution insiders or their related interests.

2. Review the institution's computation of the amount needed in the allowance for credit losses as of the end of the most recent quarter. Documentation should include consideration of the following matters:

a. General, local, national, and international (if applicable) economic conditions;

b. Trends in loan growth and depth of lending staff with expertise in these areas;

c. Concentrations of loans (e.g., by type, borrower, geographic area, and sector of the economy);

d. The extent of renewals and extensions to keep loans current;

e. The collectibility of nonaccrual loans;

f. Trends in the level of delinquent and classified loans compared with previous loan loss and recovery experience;

g. Results of regulatory examinations; and

h. The collectibility of specific loans on the “watch list” taking into account borrower financial status, collateral type and value, payment history, and potential permanent impairment.

C. Securities

1. Review the investment policies and procedures established by the institution's board of directors. Review the board of directors', or investment committee, minutes for evidence that the policies and procedures are periodically reviewed and approved. The policies and procedures should include, but not be limited to:

   a. Investment objectives, including use of “held for sale” and trading activities;

   b. Permissible types of investments;

   c. Diversification guidelines to prevent undue concentration;

   d. Maturity schedules;

   e. Limitation on quality ratings;

   f. Hedging activities and other uses of futures, forwards, options, and other financial instruments;

   g. Handling exceptions to standard policies;

   h. Valuation procedures and frequency;

   i. Limitations on the investment authority of officers; and

   j. Frequency of periodic reports to the board of directors on securities holdings.

2. Test the investment procedures and ascertain whether information reported to the board of directors, or investment committee, for securities transactions is in agreement with the supporting data by comparing the following information on such reports to the trade tickets for a sample of items, including futures, forwards, and options:

   a. Descriptions;

   b. Interest rate;

   c. Maturity;

   d. Par value, or number of shares;

   e. Cost; and

   f. Market value on date of transaction, if different than cost.

3. Using the same sample items, analyze the securities register for accuracy and confirm the existence of the sample items by examining securities physically held in the institution and confirming the safekeeping of those securities held by others.

4. Balance investment subledger(s) or reconcile computer-generated trial balances with the general ledger control accounts for each type of security.

5. Review policies and procedures for controls that are designed to ensure that unauthorized transactions do not occur. Ascertain through reading of policies, procedures, and board of directors' minutes whether investment officers and/or appropriate committee members have been properly authorized to purchase/sell investments and whether there are limitations or restrictions on delegated responsibilities.

6. Obtain a schedule of the book, par, and market values of securities, as well as the rating classifications. Test the accuracy of the market values of a sample of securities and compare the ratings listed to see that they correspond with those of the rating agencies. Review the institution's documentation on any permanent declines in value that have occurred among the sample of securities to determine that any recorded declines in market value are appropriately computed. Examine the institution's computation of the allowance account for securities, if any, for proper presentation and adequacy.

7. Test securities income and accrued interest by:

    a. Determining the institution's method of calculating and recording interest accruals;

    b. Obtaining trial balances of accrued interest;

    c. Testing the reconciliation of the trial balances to the general ledger;

    d. Determining that interest accruals are not made on defaulted issues;

    e. Selecting items from each type of investment and money market holdings:

        (1) Determining the stated interest rate and most recent interest payment date of coupon instruments by reference to sources of such information that are independent of the institution;

        (2) Testing timely receipt of interest payments and correctness of entries to applicable general ledger accounts;

        (3) Calculating accrued interest and comparing it to the trial balance; and

        (4) Reviewing recorded book value for appropriate accretion of discount and amortization of premium; and

    f. Performing an analytical review of yields on each type of investment and money market holdings for reasonableness.

8. Review investment accounts for volume of purchases, sales activity and length of time securities have been held. Inquire as to the institution's intent and ability to hold securities until maturity. If there is frequent trading in an investment account, such activity may be inconsistent with the notion that the institution has the intent and ability to hold securities to maturity. Test gains and losses on disposal of investment securities by sampling sales transactions and:

    a. Determining sales prices by examining invoices or brokers' advices;

    b. Checking for the use of trade date accounting and the computation of book value on trade date;

c. Determining that the general ledger has been properly relieved on the investment, accrued interest, premium, discount and other related accounts;

d. Recomputing the gain or loss and compare to the amount recorded in the general ledger; and

e. Determining that the sales were approved by the board of directors or a designated committee or were in accordance with policies approved by the board of directors.

D. Insider Transactions

NOTE: For purposes of this section of the procedures, insiders include all affiliates of the institution, including its parent holding company, and all subsidiaries of the institution, as those terms are defined in section 23A of the Federal Reserve Act, as well as the institution's executive officers, directors, principal shareholders, and their related interests, as those terms are defined in section 215.2 of Federal Reserve Regulation O.

1. Review the institution's policies and procedures to ensure that extensions of credit to, and other transactions with, insiders are addressed. Ascertain that these policies include specific guidelines defining fair and reasonable transactions between the institution and insiders, and test insider transactions for compliance with these guidelines and statutory and regulatory requirements. Ascertain that the policies and procedures on extensions of credit comply with the requirements of Federal Reserve Regulation O.

2. Obtain an institution-prepared list of insiders, including any business relationships they may have other than as a nominal customer. Also obtain a list of extensions of credit to, and other transactions that the institution, its affiliates, and its subsidiaries have had with, insiders that are outstanding as of the audit date or that have occurred since the prior year's external auditing procedures were performed. Compare these lists to those prepared for the prior year's external auditing program to test for completeness.

3. Review the board of directors' minutes, loan trial balances, supporting loan documentation, and other appropriate institution records in conjunction with the list of insiders obtained from the institution to verify that a sample of extensions of credit to, and transactions with, insiders were:

   a. In compliance with institution policy for similar transactions and were at prevailing rates and terms at that time;

   b. Subjected to the institution's normal underwriting criteria and deemed by the institution to involve no more than a normal degree of risk, or present no other unfavorable features;

   c. Approved by the board of directors in advance with the interested party abstaining from voting; and

   d. Within the aggregate lending limits imposed by Regulation O or other legal limits.

4. Review the institution's policies and procedures to ensure that expense accounts of individuals who are executive officers, directors, and principal shareholders are addressed and test a sample of the actual expense account records for compliance with these policies and procedures.

E. Internal Controls - General Accounting and Administrative Controls

1. Review the board of directors' minutes to verify that account reconciliation policies have been established and approved and are reviewed periodically by the board of directors. Determine that management has implemented appropriate procedures to ensure the timely completion of reconciliations of accounting records and the timely resolution of reconciling items.

2. Determine whether the institution's policies regarding segregation of duties and required vacations for employees, including those involved in the EDP function, have been approved by the board of directors and verify that these policies and the implementing procedures established by management are periodically reviewed, are adequate, and are followed.

3. Confirm a sample of deposits in each of the various types of deposit accounts maintained by the institution. Inquire about controls over dormant deposit accounts.

4. Test to determine that reconciliations are prepared for all significant asset and liability accounts and their related accrued interest accounts, if any, such as “due from” accounts; demand deposits; NOW accounts; money market deposit accounts; other savings deposits; certificates of deposit; and other time deposits. Review reconciliations for:

   a. Timeliness and frequency;

   b. Accuracy and completeness; and

   c. Review by appropriate personnel with no conflicting duties.

5. Compare a sample of balances per reconciliations to the general ledger and supporting trial balances.

6. Examine detail and aging of a sample of reconciling items from those accounts whose reconciliations have been tested and reviewed and a sample of items in suspense, clearing, and work-in-process accounts by:

   a. Testing aging;

   b. Determining whether items are followed up on and appropriately resolved on a timely basis; and

   c. Discussing items remaining on reconciliations and in the suspense account with appropriate personnel to ascertain whether any should be written off.

      Review a sample of charged-off reconciling and suspense items for proper authorization.

7. Verify through inquiry and observation that the institution maintains adequate records of its off-balance sheet activities, including, but not limited to, its outstanding letters of credit and its loan commitments. Review the institution's procedures for monitoring the extent of its credit exposure from such activities to determine whether probable or reasonably possible losses exist.

F. Internal Controls - Electronic Data Processing Controls

1. Read the board of directors' minutes to determine whether the board of directors has reviewed and approved the institution's electronic data processing (EDP) policies, including those regarding outside servicers, if any, and the in-house use of individual personal computers (PCs) and personalized programs for official institution records, at least annually, confirm that management has established appropriate implementing procedures, and verify the institution's compliance with these policies and procedures.

   a. The policies and procedures for either in-house processing or use of an outside service center should include:

      (1) A contingency plan for continuation of operations and recovery when power outages, natural disasters, or other threats could cause disruption and/or major damage to the institution's data processing support, including compatibility of servicer's plan with that of the institution;

      (2) Requirements for EDP-related insurance coverage that include the following provisions:

         (a) Extended blanket bond fidelity coverage to employees of the institution or servicer;

         (b) Insurance on documents in transit, including cash letters; and

         (c) Verification of the insurance coverage of the institution or service bureau and the courier service;

      (3) Review of exception reports and adjusting entries approved by supervisors and/or officers;

      (4) Controls for input preparation and control and output verification and distribution;

      (5) “Back-up” of all systems, including off-premises rotation of files and programs;

      (6) Security to ensure integrity of data and system modifications; and

      (7) Necessary detail to ensure an audit trail.

   b. When an outside service center is employed, the policies and procedures should address the following additional items:

      (1) The requirement for a written contract for each automated application detailing ownership and confidentiality of files and programs, fee structure, termination agreement, and liability for documents in transit;

      (2) Review of each contract by legal counsel; and

      (3) Review of each third party review of the service bureau, if any.

2. In the area of general EDP controls, determine through inquiry and observation that policies and procedures have been established for:

a. Management and user involvement and approval of new or modified application programs;

b. Authorization, approval and testing of system software modifications;

c. The controls surrounding computer operations processing;

d. Restricted access to computer operations facilities and resources including:

(1) Off-premises storage of master disks and PC disks;

(2) Security of the data center and the institution's PCs; and

(3) Use and periodic changing of passwords.

3. With respect to EDP applications controls, inquire about and observe:

a. The controls over:

(1) Input submitted for processing;

(2) Processing transactions;

(3) Output;

(4) Applications on PCs; and

(5) Telecommunications both between and within institution offices.

b. The security over unissued or blank supplies of potentially negotiable items; and

c. The control procedures on wire transfers including:

(1) Authorizations and agreements with customers, including who may initiate transactions;

(2) Limits on transactions; and

(3) Call back procedures.

G. Trust Function

1. Supervisory Review

a. Determine the significant functions of the department, including areas of responsibility within the department and the financial institution.

b. Review the institution's written policies to determine that sufficient guidelines are established to meet fiduciary responsibilities and to comply with applicable laws. Policies should include:

(1) Account acceptance;

(2) Closed account review;

(3) Investments;

(4) Account review;

(5) Discretionary distributions;

(6) Conflicts of interest; and

(7) Other as needed for scope of fiduciary activities.

c. Ascertain the qualifications of the staff and of the board of directors giving consideration to the nature of the fiduciary responsibilities accepted.

d. Determine if board policies are implemented and followed.

2. Accounting and Physical Controls

a. Verify account assets. Include a confirmation from holders of assets retained outside the department.

b. Determine that the assets are adequately safeguarded, and held separately from other assets of the institution.

c. Verify that a vault record of assets under joint custody is maintained.

d. Verify prompt ledger control of assets, including worthless assets, received as original and subsequent deposits of assets, including stock splits and dividends.

e. Verify that fiduciary cash accounts are regularly and appropriately reconciled to demand deposit or money market account statements.

f. Verify that internal balancing control procedures are performed each time account ledgers are posted.

g. Verify that suspense or operating accounts are reconciled at least monthly, contain only appropriate items, and are cleared in a timely manner.

h. Reconcile or verify the proper reconcilement of each of the following to the department's general ledger at least quarterly:

(1) Income cash;

(2) Principal cash;

(3) Invested income;

(4) Invested principal;

(5) Each type of investment, such as stock, bonds, real estate loans and real estate; and

(6) Investments by issuer.

i. If applicable, verify reconcilements or reconcile outstanding bonds for bond trusteeships, or paying agent activities.

j. Verify the accurate payment of dividends.

3. Activity Control

a. Verify fees paid to the trust company.

b. Verify proceeds from sales of assets to brokers' invoices, sellers' receipts, or other evidence of sales price.

c. Verify payment for purchases of assets to brokers' invoices, sellers' receipts, or other evidence of purchase price.

d. Verify accuracy of amounts and receipt of income from investments.

4. Compliance

a. Verify that transactions between fiduciary accounts and directors, officers or employees of the institution, its holding company or other related entity do not constitute self-dealing. In general, self-dealing is considered to exist when the fiduciary uses or obtains the property held in a fiduciary capacity for his or her own benefit.

b. Review fiduciary account holdings of the following items in light of self-dealing issues.

(1) Stock, obligations, repurchase agreements, or deposit accounts with the institution, its affiliates or other related organizations in which there exists such an interest that might affect the best judgment of the institution.

(2) Obligations of directors, officers and employees of the institution, its holding company or affiliates or other entities with whom there exists a connection that might affect the exercise of the best judgment of the institution.

c. Verify that all accounts for which the institution has investment responsibilities are reviewed in accordance with Section 11-103-502(4), C.R.S.

d. Verify that cash receipts are promptly invested or distributed.

e. Verify and review the annual audit of each collective investment fund.

5. Administrative Review

a. Complete administrative reviews of all major account types, including but not limited to, personal trusts, estates, corporate trusts, collective investment funds, pension trusts and profit sharing trusts. An acceptable administrative review would perform the following practices:

(1) Determine that the original or authenticated copy of the governing instrument is on file;

(2) Determine that synoptic and history records are current, reliable and comprehensive;

(3) Determine that accounts are administered and invested in conformance with management policies, governing instruments, laws, regulations and sound fiduciary principles;

(4) Determine that the minutes of the board of directors and committee meetings document the review of trust company activities; significant practices for the board of directors' review include the acceptance of new accounts, the closing of accounts and the review of discretionary payments of principal or income; and

(5) Test the accuracy of account statements submitted to beneficiaries.

CB101.50 Qualifications for Independent Person(s) Assuming Responsibility for Due Care of Directors' Examinations [Section 11-103-502(3)(b), C.R.S.]

A. Qualifications

The following persons may qualify to be responsible for conducting a directors' examination of state-chartered banks:

1. A Certified Public Accountant(s) who holds an active certificate under the laws of this state, or who may practice in this state under a reciprocal agreement between Colorado and the holder's state of certification.

2. A qualified independent person(s) or firm whose credentials have been submitted to and approved by the Colorado State Banking Board to conduct such examinations. The Banking Board will take into consideration such things as past proven work of the person or firm, professional reputation, training and education, and capacity to perform the examination in a timely manner.

3. The Banking Board reserves the right to revoke any previously approved qualification for due cause.

B. Independence

A person who conducts or reviews and/or approves a directors' examination (person) of a state-chartered bank (institution) must be independent with respect to the institution in fact and appearance.

Independence will be considered impaired if, for example, during the period of the directors examination, or at the time of the issuing of the report, the person:

1. Had or was committed to acquire any direct or material indirect financial interest in the institution;

2. Was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the institution;

3. Had any joint closely-held business investment with the institution or any officer, director, or principal stockholder thereof that was material in relation to the net worth of either the institution or the person; or

4. Had any loan to or from the institution or any officer, director, or principal shareholder thereof other than loans of the following kinds made by a financial institution under normal lending procedures, terms, and requirements:

   a. Loans obtained by the person that are not material in relation to the net worth of the borrower;

   b. Home mortgages; and

   c. Other secured loans, except those secured solely by a guarantee of the person.

Independence will also be considered to be impaired if, during the period covered by the financial statements, during the period of the directors' examinations, or at the time of the issuing of the report, the person:

1. Was connected with the institution as a promoter, underwriter, voting trustee, director or officer, or in any capacity equivalent to that of a member of management or of an employee;

2. Was a trustee for any pension or profit sharing trust of the institution;

3. Received or had a commitment to receive other compensation from the institution or a third party, for services or products of others to be procured by the institution; or

4. Received or had a commitment from the institution to receive a contingent fee. For this purpose, a contingent fee means compensation for the performance of services payment of which, or the amount of which, is contingent upon the findings or results of such services.

CB101.51 Minimum Capital Ratios [Section 11-103-201, C.R.S.] [Repealed eff.09/14/2023]

CB101.52 Capital Standards [Section 11-103-201, C.R.S.]

A. Incorporation by Reference

Code of Federal Regulations Title 12 - Banks and Banking Chapter II - Federal Reserve System Subchapter A - Board of Governors of the Federal Reserve System Part 217 Capital Adequacy of Bank Holding Companies, Savings and Loan Holding Companies, and State Member Banks (Regulation Q) (“12 CFR 217 FRB”), as effective on April 10, 2023 is hereby incorporated by reference. No later amendment or edition of 12 CFR 217 FRB is incorporated into this Section CB101.52. All referenced laws and regulation shall be available for copying or public inspection during regular business hours from the Division of Banking, Department of Regulatory Agencies, 1560 Broadway, Suite 975, Denver, CO 80202. The Division of Banking will provide a certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy. 12 CFR 217 FRB is also available at: https://banking.colorado.gov/banking-home/rules-statutes.

Code of Federal Regulations Title 12 - Banks and Banking Chapter II - Federal Reserve System Subchapter A - Board of Governors of the Federal Reserve System Part 208-Membership of State Banking Institutions in the Federal Reserve System (Regulation H) ("Prompt Corrective Action-FRB") as effective on April 10, 2023 is hereby incorporated by reference. No later amendment or edition of Prompt Corrective Action-FRB is incorporated into this Section CB101.52. All referenced laws and regulation shall be available for copying or public inspection during regular business hours from the Division of Banking, Department of Regulatory Agencies, 1560 Broadway, Suite 975, Denver, CO 80202. The Division of Banking will provide a certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy. 12 CFR 217 FRB is also available at: https://banking.colorado.gov/banking-home/rules-statutes.

Code of Federal Regulations Title 12 - Banks and Banking Chapter III - Federal Deposit Insurance Corporation Subchapter B - Regulations and Statements of General Policy Part 324 Capital Adequacy of FDIC-Supervised Institutions, which includes Subpart H Prompt Corrective Action ("12 CFR 324 FDIC") as effective on April 10, 2023 is hereby incorporated by reference. No later amendment or edition of 12 CFR 324 FDIC is incorporated into this Section CB101.52. All referenced laws and regulation shall be available for copying or public inspection during regular business hours from the Division of Banking, Department of Regulatory Agencies, 1560 Broadway, Suite 975, Denver, CO 80202. The Division of Banking will provide a certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy. 12 CFR 324 FDIC is also available at: https://banking.colorado.gov/banking-home/rules-statutes.

CB101.53 Loan Production Office [Section 11-105-101(1) and 11-102-104(1)(a)]

A. Definitions:

1. A Loan Production Office (LPO) is any location in Colorado that is not a branch and where the only activities conducted are the solicitation and origination of loans by employees or agents of a bank or a subsidiary. Loan approvals must be made at the main office or branch location of a bank or its subsidiary.

2. A Branch means any branch bank, branch office, branch agency, additional office, or branch place of business situated in Colorado or another state of a financial institution located in this or another state at which deposits are received, checks are paid, and money is lent and trust powers may be exercised, if approved by its chartering authority.

B. A Colorado state bank or a state bank chartered in another jurisdiction that intends to open a LPO in Colorado, or operate a LPO under a name which differs in any way from the name approved by the Banking Board, shall file an application on the appropriate form provided by the Division of Banking (Division).

C. A bank or bank holding company that intends to open a LPO in Colorado shall provide the banking board with the name or names under which it proposes to conduct the business of such bank, or bank holding company. The bank or bank holding company shall not be eligible to open a LPO if the proposed name is either:

1. Identical to or deceptively similar to the name of any existing Colorado financial institution or LPO previously approved to operate in Colorado; except that this paragraph (a) shall not apply if the bank or bank holding company obtains express written consent of the affected existing Colorado financial institution or LPO; or

2. Likely to cause the public to be confused, deceived, or mistaken.

D. Application to Operate a LPO or Application to Change Location of a LPO shall be filed with the Banking Board on a form provided by the Division. The completed application shall be filed at least thirty (30) days prior to the anticipated first day of operations or use of a new name.

1. Every LPO application shall include the name or names under which the applicant proposes to conduct the business of such LPO. The application shall be accompanied by the applicable fee as set by the Banking Board pursuant to Section 11-102-104(11), C.R.S.

E. When processing a LPO application:

1. The Division will review all existing names and DBAs of banks or LPOs operating within the State of Colorado and compare the proposed name with existing approved bank or LPO names. Division staff will evaluate the proposed name to ensure it's not identical to existing names. If the proposed name is not identical, staff will conduct the procedure outlined in subsection E.2. If the proposed name is identical, then the applicant will be notified and asked to provide a new name.

2. The Division shall commence a fourteen (14) calendar day comment period by posting the proposed name on the Division's website and distributing the proposed name by email to its distribution mailing list;

a. If no objections are received within the fourteen (14) calendar day period, the Division shall proceed with processing the application and submitting it to the Banking Board for approval;

b. If an objection is received within the fourteen (14) calendar day period, the Division will notify the applicant. The applicant and the objector should provide a written response to the Division within thirty (30) calendar days, which the Division will provide to the Banking Board for its consideration.

c. If the objector wishes to withdraw its objection, it may do so and provide express written consent to the LPO name.

3. The Board will evaluate the objection and written response, if any, and approve or deny the LPO name.

4. In the event of the Banking Board's denial of a proposed name, with or without an objection, the Applicant must submit a new name, which will be evaluated and published by the Division as outlined in (E)(1) and (E2), to operate in Colorado so that the new name is not identical to or deceptively similar to the name of any existing Colorado financial institution, or likely to cause the public to be confused, deceived, or mistaken.

F.

G. The applicant shall have one year from the date of approval in which to open the LPO and will notify the Division of its opening.

CB101.54 Branching Practices [Section 11-105-601, C.R.S., et. seq.]

A. Notification of intent to establish a branch pursuant to Section 11-105-602(3)(a), C.R.S.

1. Any bank, no matter the location of its principal place of business, upon thirty (30) days' prior written notice to the Banking Board or the Commissioner, may establish one or more de novo branches anywhere in this or any other state.

2. The notice of intent to establish a branch shall be filed on a form provided by the Division of Banking.

B. Change in Location of a Branch

1. The Banking Board may take into consideration the following factors in determining whether to approve or to deny an application for change in location of a branch:

   a. There are significant supervisory concerns with respect to the applicant or any affiliated institution; or,

   b. The applicant's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of an financial institution, is less than satisfactory; or,

   c. Any financial or other business arrangement, direct or indirect, involving the principal office or branch and insiders (directors, officers, employees, and shareholders owning or controlling, directly or indirectly, ten percent or more of the outstanding voting stock thereof) involves terms and conditions more favorable to the insiders than would be available in a comparable transaction with unrelated parties.

2. The location of a branch can be changed as follows:

   a. A financial institution, without Banking Board approval, may relocate a branch not in excess of one-half mile from its approved location provided written notice is submitted to the Bank Commissioner at least thirty (30) days prior to relocation. The notice must include the new address of the branch and the effective date of the relocation.

   b. A financial institution desiring to relocate a branch more than one-half mile from the approved location shall file an application with the Banking Board.

3. Application to change location of a branch shall be filed on a form approved by the Division of Banking.

C. Establishment of a Mobile Branch

1. Definitions

   For purposes of this Rule, the term mobile branch shall refer to a vehicle equipped and operated in such a manner as to permit employees or agents of the financial institution to conduct transactions pertaining to branching activities as defined pursuant to Section 11-101-401, C.R.S. A messenger service established by the financial institution pursuant to Banking Board Rule CB101.7(D) for the pickup and delivery of items pertaining to branching activities is considered a mobile branch. The other provisions of this Rule, except for Paragraph (B), shall be applicable to mobile branches.

2. A financial institution authorized to operate a mobile branch shall comply with the following limitations:

   a. A financial institution may equip and utilize interchangeable vehicles in the operation of a single mobile branch, provided such vehicles are not operated simultaneously.

b. A monthly log shall be maintained for each mobile branch operated. Such log shall identify the routes traveled and the locations of stops made during the month. This information shall be made available to Division of Banking staff in the same manner as required by Paragraph (F) of this Rule.

c. Physical security devices reasonably designed to provide for the protection of assets and the physical safety of the mobile branch personnel and customers shall be developed and implemented.

d. Surety bond coverage appropriate to the activities of the mobile branch shall be maintained.

e. A mobile branch shall only be operated at locations within the service area approved by the Banking Board.

f. A mobile branch shall not be operated in such a manner as to limit or exclude services to any class of customer within the approved service area.

D. Closing a Branch [Section 11-105-606, C.R.S.]

Any financial institution that seeks to close a branch previously in operation shall notify the Banking Board in writing of its intention and its reasons for such action, and shall include with such notice a copy of "The Notice of Branch Closing" required to be filed with the appropriate federal regulatory agency. Such notice shall be received by the Banking Board ninety (90) days prior to the proposed closing. Such branch may be closed, unless the Banking Board or Bank Commissioner, within fifteen (15) days of receipt of such notification, gives written notification of objections and the grounds therefore to the financial institution, or requests additional information. If the Banking Board or Bank Commissioner requests additional information, the above ninety (90) day period shall commence running upon receipt of such additional information.

E. Branch Hours of Operation

A financial institution shall notify the Bank Commissioner of the hours during which a branch will be open for business and any changes thereto on or before the effective date of the hours of operation.

F. Branch Records

Records of loans and deposits originating at a branch shall be made available to the Division of Banking staff at the principal office of the financial institution or such other central location as may be mutually agreed upon by the financial institution's management and the Bank Commissioner. A principal office is that office in this state that is designated as the principal office of the financial institution in its articles of incorporation and may also be known as a main office or a head office.

G. Notification of Conversion of an Affiliate or an Acquisition to a Branch

Notice of intent to convert an affiliate or an acquisition to a branch shall be filed on the form provided by the Division of Banking.

H. Meaning of Control and Controlling

For the purpose of Section 11-101-401, C.R.S., a financial institution shall be deemed to control an affiliate institution if the financial institution:

1. Directly or indirectly owns, controls, holds with power to vote, or holds proxies representing twenty-five percent or more of the outstanding voting stock thereof;

2. Controls in any manner the election of a majority of the directors thereof; or

3. Exercises a controlling influence over the management or policies thereof.

CB101.55 Contractual Acceptance of Deposits [Section 11-105-604, C.R.S.]

A. Board of Directors' Review and Approval

The board of directors of a financial institution shall fully review all relevant issues involved in a contract pursuant to Section 11-105-604, C.R.S. (deposit contract). Review and approval shall be noted in the minutes.

B. Filing of Deposit Contract

A financial institution that enters into a deposit contract must file with the State Bank Commissioner a copy of the deposit contract within thirty (30) days after its effective date.

C. Contents of Deposit Contract

In addition to the terms that would be found in any contract, including, but not limited to, the names of the parties, purpose of the contract, place of performance, consideration, and term, the following provisions are required in a deposit contract:

1. Extension or amendment. The contract shall provide that notice be given to the State Bank Commissioner within thirty (30) days after any extension or amendment to the contract.

2. Termination. The contract shall provide that notice be given to the State Bank Commissioner within thirty (30) days after the termination of the agreement and shall provide for reasonable disclosure to the customer prior to termination.

D. Any deposit contract entered into pursuant to the provisions of Section 11-105-604, C.R.S., shall not constitute a branch.

CB101.56 Investment in Tax Lien Sale Certificates of Purchase [Section 11-105-302, C.R.S.]

A. General Matters

1. Any institution desiring to invest in Tax Lien Sale Certificates of Purchase (TLSCP) must receive approval of the Banking Board prior to the commencement of the activity. The institution must file an application with the Banking Board on the form provided by the Division of Banking.

2. No institution that has a regulatory composite examination rating (CAMELS) of “4” or “5” from any regulator shall purchase TLSCPs. No institution that has a regulatory composite examination rating CAMELS of “3” from any regulator and that is subject to a memorandum of understanding, cease and desist order, or written agreement imposed by or entered into with any regulator of the institution shall purchase TLSCPs. In the event that a institution's CAMELS rating is reduced to a “4” or “5” or to a “3” subject to regulatory action, that institution shall make no additional purchases of TLSCPs except such endorsements to previously purchased TLSCPs as may be necessary to protect the institution's investment in TLSCP purchases made prior to the reduction in its CAMELS rating, or until such time as its CAMELS rating has been restored to “3” or better, and it otherwise qualifies to purchase TLSCPs.

3. Institutions that are approved to purchase TLSCPs shall be restricted to purchases of TLSCPs on property situated in the county in which that institution has its principal place of business, or situated in a contiguous county.

4. The purchase of TLSCPs shall be restricted to certificates arising from delinquent ad valorem taxes representing liens on 1-4 single family occupied residences, or undeveloped residential lots in established subdivisions the improvements of which are maintained by the county in which they are situated.

5 The purchase of a TLSCP and related endorsements shall not be considered an investment in real estate for purposes of Section 11-105-304(9)(a), C.R.S. until such time as a treasurer's deed to the underlying property is issued to the institution.

B. Capital Restrictions

1. The aggregate value of TLSCPs and endorsements owned by an institution shall not exceed 15 percent of the institution's Tier 1 Capital plus its loan loss reserves.

2. The face value of TLSCPs, not including endorsements, purchased in any one year shall not exceed 6 percent of Tier 1 Capital plus loan loss reserves. This restriction will provide a cushion for endorsements of certificates in future periods.

3. At no time shall the face value of any TLSCP for a single property exceed one percent of the institution's Tier 1 Capital plus loan loss reserves.

4. The value of a TLSCP shall mean the redemption price of the original certificate and subsequent endorsements.

C. Due Diligence Must Be Exercised By The Purchasing Institution:

1. Prior to acquiring a TLSCP, institutions shall:

a. Obtain a written owners and encumbrances report;

b. Make a physical inspection of the property;

c. Obtain photographs of the property; and

d. Obtain a copy of the assessment card for the property as prepared by the county assessor's office.

2. Prior to making an endorsement of a TLSCP, the institution shall update and review the property, including:

a. A written updated owners and encumbrances report;

b. Make a physical inspection of the property;

c. Obtain photographs of the property; and

d. Obtain an updated copy of the assessment card for the property as prepared by the county tax assessor's office.

3. Prior to making an application for a treasurer's deed on a TLSCP, the institution shall update and review the property, including:

a. A written updated owners and encumbrances report;

b. Make a physical inspection of the property;

c. Obtain photographs of the property;

d. Obtain an updated copy of the assessment card for the property as prepared by the county tax assessor's office; and

e. Evaluate any and all risks attendant with property ownership at the time, including any potential environmental or hazardous material issues.

4. If at any stage of the above due diligence any unsafe or unsound risk is revealed, the institution shall not purchase, endorse, or apply for the deed.

5. The institution shall maintain records documenting its due diligence efforts for each TLSCP until such time as the underlying property is redeemed.

D. Regulatory Reporting

1. TLSCPs shall be included in the Report of Condition as “Other Assets” until such time as the treasurer's deed to the underlying property is issued to the institution.

2. TLSCPs shall be assigned to the 100 percent risk-weighted category for the calculation of risk-based capital pursuant to Banking Board Rule CB101.52.

CB101.57 [Repealed eff. 07/30/2015]

CB101.58 Investment in a Subsidiary [Section 11-105-304(7), C.R.S.]

A. General Limitations

A state bank may invest in a subsidiary corporation or limited liability company (LLC) that engages in activities in which the parent bank may engage, subject to the same limitations the parent bank would be subject to if it were engaged in the activity, provided that the parent bank holds at least an 80 percent ownership interest in the subsidiary corporation or LLC.

B. Additional Limitations

The subsidiary of a state bank may invest in a subsidiary corporation or LLC at less than an 80 percent ownership level provided that each of the following conditions are met:

1. The activities of the subsidiary corporation or LLC in which the investment is made are limited to activities that are part of, or incidental to, the business of banking;

2. The bank is able to prevent the subsidiary corporation or LLC from engaging in activities that do not meet the foregoing standard;

3. The bank's loss exposure is limited, as both a legal and accounting matter, and the bank does not have open-ended liability for the obligations of the subsidiary corporation or LLC; and

4. The investment is convenient or useful to the bank in carrying out its business and not a mere passive investment unrelated to the bank's business.

CB101.59 Investment Powers [Section 11-105-304(7), C.R.S.]

A. A state bank may make such investments, subject to such limitations, as a national bank can make pursuant to paragraph Seventh of 12 USC 24 and Part 1 of 12 CFR, Sections 1.3, 1.4, 1.5, 1.7, 1.8, 1.9, 1.10, and 1.11. These investment powers do not relate to underwriting or dealing in securities.

B. Reference:

1. 12 USC 24 was enacted by the United States Congress and is administered by the Comptroller of the Currency. 12 CFR 1 is issued and administered by the Comptroller of the Currency under the general authority of the national banking laws, 12 USC 1 et seq. and under specific authority contained in paragraph Seventh of 12 USC 24.

2. This Rule does not include amendments to or editions of the referenced material later than the effective date of the Rule, March 2, 2006. A copy of 12 USC 24 may be examined at any State Publications Depository.

3. For more detailed information pertaining to these provisions, please contact the Secretary to the Colorado State Banking Board at 1560 Broadway, Suite 1175, Denver, Colorado 80202, 303-894-7584.

CB101.60 Investments in Community Development Projects and Other Public Welfare Investments [Sections 11-103-101(4) and 11-105-304(7), C.R.S.]

A. A state bank may make investments as described in Paragraph (C), consistent with safety and soundness. This Rule provides the standards and procedures that apply to these investments.

B. Definitions.

For the purposes of this Rule:

1. “Adequately capitalized” has the same meaning as 12 CFR § § 325.103(b)(2) and 208.43(b)(2).

2. “Capital and surplus” means:

a. A bank’s Tier 1 and Tier 2 capital calculated under the risk-based capital standards under CB101.52, as reported in the bank’s Consolidated Report of Condition and Income; plus

b. The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital under CB101.52, as reported in the bank's Consolidated Report of Condition and Income.

3. "Community and economic development entity" (CEDE) means an entity that makes investments or conducts activities that primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment, or would receive consideration as "qualified investments" under the investment test of the Community Reinvestment Act. The following is a non-exclusive list of examples of the types of entities that may be CEDEs:

a. Community development corporation subsidiaries;

b. Private or nonbank community development corporations;

c. CDFI Fund-certified Community Development Financial Institutions or Community Development Entities;

d. Limited liability companies or limited partnerships;

e. Community development loan funds or lending consortia;

f. Community development real estate investment trusts;

g. Business development companies;

h. Community development closed-end mutual funds;

i. Non-diversified closed-end investment companies; and

j. Community development venture or equity capital funds.

4. "Community development project" (CD Project): means a project to make an investment that meets the requirements of Paragraph (C) of this Rule.

5. "Eligible bank" means, for purposes of Paragraph (E) of this Rule, a state-chartered bank that:

a. Is well capitalized;

b. Has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System;

c. Has a Community Reinvestment Act (CRA) rating of "Outstanding" or Satisfactory;" and

d. Is not subject to a cease and desist order, consent order, formal written agreement or Prompt Corrective Action directive (see Section 38 of the Federal Deposit Insurance Act) or, if subject to any such order, agreement or directive, is informed in writing by the Division of Banking that the bank may be treated as an "eligible bank" for purposes of this Rule.

6. "Low-income" means an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent, in the case of a geography.

7. "Moderate-income" means an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 and less than 80 percent, in the case of a geography.

8. "Small business" means a business, including a small farm or minority-owned small business, that meets the qualifications for Small Business Administration Development Company or Small Business Investment Company loan programs in 13 CFR 121.301.

9. "Well capitalized" has the same meaning as in 12 CFR § § 325.103(b)(1) and 208.43(b)(1).

C. Public Welfare Investments. A bank or bank subsidiary may make an investment directly or indirectly under this Rule if the investment primarily benefits low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment, or the investment would receive consideration under the investment test of the Community Reinvestment Act as a "qualified investment."

D. Investment Limits

1. A bank's aggregate outstanding investments under this Rule may not exceed 5 percent of its capital and surplus, unless the bank is at least adequately capitalized and the Division of Banking determines, by written approval of a written request by the bank to exceed the 5 percent limit, that a higher amount of investments will not pose a significant risk to the deposit insurance fund. In no case may a bank's aggregate outstanding investments under this part exceed 15 percent of its capital and surplus.

2. A bank may not make an investment under this part that would expose the bank to unlimited liability.

E. After-the-Fact Notice and Prior Approval Procedures

1. After-the-Fact Notice. Subject to Paragraph (D)(1) of this Rule, an eligible bank may make an investment authorized by this Rule without prior notification to, or approval by, the Commissioner if the bank follows the after-the-fact notice procedures described in this Paragraph.

a. An eligible bank shall provide an after-the-fact notification of an investment, within 10 business days after it makes the investment. The after-the-fact notice must include:

(1) A description of the bank's investment;

(2) The amount of the investment;

(3) The percentage of the bank's capital and surplus represented by the investment that is the subject of the notice and by the bank's aggregate outstanding public welfare investments and commitments, including the investment that is the subject of the notice; and

(4) A statement certifying that the investment complies with the requirements of Paragraphs (C) and (D) of this Rule.

b. A bank that is not an eligible bank but that is at least adequately capitalized, and has a composite rating of at least 3 with improving trends under the Uniform Financial Institutions Rating System, may submit a letter to the Division of Banking requesting authority to submit after-the-fact notices of its investments. The Commissioner considers these requests on a case-by-case basis.

c. Notwithstanding the provisions of this Paragraph, a bank may not submit an after-the-fact notice of an investment if:

(1) The investment involves properties carried on the bank's books as "other real estate owned," or

(2) The Division of Banking determines that the investment is inappropriate for after-the-fact notice.

2. Investments Requiring Prior Approval. If a bank does not meet the requirements for after-the-fact investment notification set forth in this Paragraph, the bank must submit an investment proposal to the Division of Banking.

a. The bank's investment proposal must include:

(1) A description of the bank's investment;

(2) The amount of the investment;

(3) The percentage of the bank's capital and surplus represented by the proposed investment and by the bank's aggregate outstanding public welfare investments and commitments, including the proposed investment; and

(4) A statement certifying that the investment complies with the requirements of Paragraphs (C) and (D) of this Rule.

b. In reviewing a proposal, the Division of Banking considers the following factors and other available information:

(1) Whether the investment satisfies the requirements of Paragraphs (C) and (D) of this Rule;

(2) Whether the investment is consistent with the safe and sound operation of the bank; and

(3) Whether in investment is consistent with the requirements of this Rule and Division of Banking policies.

c. Unless otherwise notified in writing by the Commissioner, and subject to Paragraph (D)(1), the proposed investment is deemed approved after 30 calendar days from the date on which the Division of Banking receives the bank's investment proposal.

d. The Division of Banking, by notifying the bank, may extend its period for reviewing the investment proposal. If so notified, the bank may make the investment only with the Commissioner's written approval.

e. The Commissioner may impose one or more conditions in connection with its approval of an investment under this Rule.

F. Examples of Qualifying Public Welfare Investments

1. Investments that primarily support the following types of activities are examples of investments that meet the requirements of Paragraph (C):

a. Affordable housing activities, including:

(1) Investments in an entity that finances, acquires, develops, rehabilitates, manages, sells, or rents housing primarily for low- and moderate-income individuals;

(2) Investments in a project that develops or operates transitional housing for the homeless;

(3) Investments in a project that develops or operates special needs housing for disabled or elderly low- and moderate-income individuals; and

(4) Investments in a project that qualifies for the Federal low-income housing tax credit;

b. Economic development and job creation investments, including:

(1) Investments that finance small businesses (including equity or debt financing and investments in an entity that provides loan guarantees) that are located in low- and moderate-income areas or other targeted redevelopment areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals; and

(2) Investments that finance small businesses or small farms, including minority- and women-owned small business or small farms, that , although not located in low- and moderate-income areas or targeted redevelopment areas, create a significant number of permanent jobs for low- and moderate-income individuals;

(3) Investments in an entity that acquires, develops, rehabilitates, manages, sells, or rents commercial or industrial property that is located in a low- and moderate-income area or targeted redevelopment area and occupied primarily by small business, or that is occupied primarily by small businesses that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals; and

(4) Investments in low- and moderate-income areas or targeted redevelopment areas that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

c. Investments in CEDEs, including:

(1) Investments in a community development financial institution as defined in 12 U.S.C. 4742(5); and

(2) Investments in a CEDE that is eligible to receive New Markets tax credits under 26 U.S.C. 45D.

d. Other public welfare investments, including:

(1) Investments that provide credit counseling, financial literacy, job training, community development research, and similar technical assistance for non-profit community development organizations, low- and moderate-income individuals or areas or targeted redevelopment areas, or small businesses, including minority- and women-owned small businesses, located in low- and moderate-income areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(2) Investments of a type approved by the Federal Reserve Board under 12 CFR 208.22 that are consistent with the requirements of Paragraph (C) of this Rule;

(3) Investments of a type determined by the Division of Banking to be permissible under this Rule; and

(4) Investments in minority- and women-owned depository institutions that serve primarily low- and moderate-income individuals or low- and moderate-income areas or targeted redevelopment areas.

G. Records and Remedial Action

1. Records. Each bank shall maintain in its files information adequate to demonstrate that its investments meet the standards set out in Paragraph (C) of this Rule, and that the bank is otherwise in compliance with the requirements of this Rule.

2. Remedial Action. If the Division of Banking finds that an investment under this part is in violation of law or regulation, is inconsistent with the safe and sound operation of the bank, or poses a significant risk to a Federal deposit insurance fund, the bank shall take appropriate remedial action as determined by the Commissioner.

H. Materials Incorporated by Reference

1. Code of Federal Regulations, (1-1-09 Edition)

a. 12 CFR Ch. II, §208.22 – Community development and public welfare investments, pages 195-197, Federal Reserve System;

b. 12 CFR Ch. II, §208.43 – Capital measures and capital category definitions, (b) (1) and (2), page 216, Federal Reserve System;

c. 12 CFR Ch. III, §325.103 – Capital measures and capital category definitions, (b) (1) and (2), page 193, Federal Deposit Insurance Corporation; and,

d. 13 CFR Ch. I, §121.301 – What size standards are applicable to financial assistance programs, pages 363-364, Small Business Administration.

2. United States Code, (1-8-08 Version)

a. Title 12 – Banks and Banking, Section 4702 - Definitions, pages 1567-1569; and,

b. Title 26 – Internal Revenue Code, Section 45D – New Markets Tax Credit, pages 196-199.

I. This Rule does not include any later amendments to or editions of the referenced material.

J. Copies of the above referenced information may be examined at the Division of Banking, 1560 Broadway, Denver, Colorado, 80202, by contacting the Secretary to the Colorado State Banking Board at banking@dora.state.co.us or (303) 894-7575.

K. This information is also available for examination at any State Publications Depository Library.

CB101.61 Appraisal of Other Real Estate [Section 11-105-401(1)(d), C.R.S.]

A. The initial appraisal of Other Real Estate (ORE) shall be performed by a registered, licensed, or certified appraiser as defined in Section 12-61-706, C.R.S. However, if the asset has a current book value of $400,000 or less for a 1-4 family residential property or $500,000 or less for all other real property at the time the asset is classified as ORE. an analysis, evaluation, opinion, conclusion, notation, or compilation of data may be performed by an officer, director, or regular salaried employee of a financial institution who has not, directly or indirectly, participated in the lending transaction or by an officer, director, or regular salaried employee of its affiliate who has not, directly or indirectly, participated in the lending transaction.

B. Subsequent appraisals of an ORE asset with a book value of more than the values noted above in A shall be performed by a licensed or certified appraiser as defined in Section 12-61-706, C.R.S., according to the following schedule:

1. All financial institutions shall obtain subsequent appraisals of an ORE asset at intervals not to exceed twenty-four (24) months.

2. If such an appraiser, as defined in Section 12-61-706, C.R.S., or other person approved by the Banking Board certifies in writing that the fair market value has not declined, such appraiser's or other person's opinion may be substituted for a subsequent appraisal.

C. Reference: Sections 12-61-706 and 718(2), C.R.S., are laws enacted by the Legislature of the State of Colorado and administered by the Board of Real Estate Appraisers of the Colorado Department of Regulatory Agencies. This Rule does not include amendments to or editions of the referenced material later than July 30, 1993. For more detailed information pertaining to these provisions, please contact the Secretary to the Colorado State Banking Board at 1560 Broadway, Suite 975, Denver, Colorado 80202, (303) 894-7575.

CB101.62 Pledging Assets [Section 11-102-104(5), C.R.S.]

A. A state bank may, upon the deposit with it of any funds by a federally-recognized Indian Tribe, or any officer, employee or agent thereof in his or her official capacity, give security for the safekeeping and prompt payment of the funds so deposited by the deposit of United States bonds and other collateral eligible under Banking Board Rule PDP3 for pledging to protect public deposits.

B. A pledge of eligible collateral shall be evidenced by a security agreement that:

1. Is in writing;

2. Was executed by the bank and the Indian tribe contemporaneously with acquisition of the collateral;

3. Was approved by the bank’s board of directors or loan committee, which approval is reflected in the official minutes of a meeting of the board or committee;

4. Has been an official record of the bank continuously from the time of execution.

CB101.64 Lending Limits [Sections 11-102-104(5), 11-105-302, 11-105-303, 11-105-304, and 11-105-305, C.R.S.]

A. The Colorado State Banking Board authorizes, pursuant to its authority in section 11-102-104(5), C.R.S., state-chartered commercial banks' lending limits as outlined in Code of Federal Regulations Title 12 - Banks and Banking Chapter I - Comptroller of the Currency, Department of the Treasury Part 32 Lending Limits.

B. Code of Federal Regulations Title 12 - Banks and Banking Chapter I - Comptroller of the Currency, Department of the Treasury Part 32 Lending Limits as effective on April 10, 2023 is hereby incorporated by reference. No later amendment or edition of 12 CFR 32 is incorporated into this Section CB101.64. All referenced laws and regulation shall be available for copying or public inspection during regular business hours from the Division of Banking, Department of Regulatory Agencies, 1560 Broadway, Suite 975, Denver, CO 80202. The Division of Banking will provide a certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy. 12 CFR 32 is also available at https://banking.colorado.gov/banking-home/rules-statutes.

C. All Special Lending Authority approvals granted prior to the effective date of this Rule remain in effect unless and until terminated.

CB101.65 Marketing Nontraditional Mortgage Loans [Section 11-102-106, C.R.S.]

A. Applicability

This rule applies only to nontraditional mortgage loans, as defined in Section C.2 below, made to individual borrowers for the purchase or refinancing of residential property.

B. Purpose

The Colorado State Banking Board finds that when promoting or describing nontraditional mortgage products, banks should provide consumers with information that is designed to help them make informed decisions when selecting and using these products.

C. Definitions

For the purpose of this Rule:

1. "Interest Only Mortgage Loan" means a nontraditional mortgage on which, for a specified number of years the borrower is required to pay only the interest due on the loan, during which time, the rate may fluctuate or may be fixed. After the interest-only period, the rate may be fixed or fluctuate, based on the prescribed index, and payments include both principal and interest.

2. "Nontraditional Mortgage" means any residential mortgage loan product that allows the borrower to defer repayment of principal and/or interest. This includes, without limitation, all interest-only residential mortgage products, payment option adjustable rate mortgages, and negative amortization mortgages, with the exception of a reverse mortgage and home equity line of credit, other than a simultaneous second-lien loan. Nontraditional mortgages do not include temporary loans or construction loans.

3. "Simultaneous Second-Lien Loan" means a lending arrangement where either a closed-end second-lien or a home equity line of credit is originated simultaneously with the first lien mortgage loan, typically in lieu of a higher down payment.

4. "Payment Option ARM" means a nontraditional adjustable rate mortgage that allows the borrower to choose from a number of different payment options. For example, Payment Option ARMs include, without limitation, loans whereby, each month, the borrower may choose a minimum payment option based on a "start" or introductory interest rate, an interest-only payment option based on the fully indexed interest rate, or a fully amortizing principal and interest payment option based on a 15-year or 30-year loan term, plus any required escrow payments. The minimum payment option can be less than the interest accruing on the loan, resulting in negative amortization. The interest-only option avoids negative amortization but does not provide for principal amortization. After a specified number of years, or if the loan reaches a certain negative amortization cap, the required monthly payment amount is recast to require payments that will fully amortize the outstanding balance over the remaining loan term.

5. "Reduced Documentation" means a loan feature that is commonly referred to as "low doc/no doc," "no income/no asset," "stated income," or "stated assets." For mortgage loans with this feature, however designated, an institution sets reduced or minimal documentation standards to substantiate the borrower's income and assets.

D. Communications with Consumers

1. Promotional materials and other product descriptions must include information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions, including, as applicable, information on the following:

   a. Payment Shock - Banks should apprise consumers of potential increases in payment obligations for these products, including circumstances in which interest rates or negative amortization reach a contractual limit. For example, product descriptions shall, when appropriate, state the maximum monthly payment a consumer would be required to pay under a hypothetical loan example, after amortizing payments are required and the interest rate and negative amortization caps have been reached. Such information also should describe when structural payment changes will occur, and what the new payment amount would be, or how it would be calculated. If applicable, such descriptions shall indicate that a higher payment may be required at other points in time due to factors such as negative amortization or increases in the interest rate index.

   b. Negative Amortization - When negative amortization is possible under the terms of a nontraditional mortgage product, consumers shall be informed of the potential for increasing principal balances and decreasing home equity, as well as other potential adverse consequences of negative amortization. For example, product descriptions shall disclose the effect of negative amortization on loan balances and home equity, and describe the potential consequences to the consumer of making minimum payments that cause the loan to negatively amortize. (One possible consequence is that it could be more difficult to refinance the loan or to obtain cash upon sale of the home).

   c. Prepayment Penalties - If the loan documents allow a bank to impose a penalty in the event that the consumer prepays the mortgage, consumers shall be informed to this fact and that they may ask the lender about the amount of any such penalty.

d. Cost of Reduced Documentation Loans - If a bank offers both reduced and full documentation loan programs, and there is a pricing premium attached to the reduced documentation program, consumers should be advised of the cost differential.

2. Promotional materials and other product descriptions outlined under Paragraph (C)(1) of this Rule shall be designed to reasonably:

a. Focus on information important to consumer decision making;

b. Highlight key information so that it will be noticed;

c. Employ a user-friendly and readily navigable format for presenting the information;

d. Use plain language, with concrete and realistic examples.

3. Banks shall provide consumers with information at a time and in a manner that will help consumers select products and choose among payment options. For example, institutions should offer clear and balanced product descriptions when a consumer is shopping for a mortgage – such as when the consumer makes an inquiry to the institution about a mortgage product and receives information about nontraditional mortgage products, or when marketing relating to nontraditional mortgage products is provided by the institution to the consumer – not just upon the submission of an application or at consummation.

4. When advertising nontraditional mortgages through certain forms of media, such as radio, television, or billboards, banks shall provide clear and balanced information about the risks of these products, to the extent reasonably practical.

E. Monthly Statements on Payment Option ARMs

Monthly statements that are provided to consumers on payment option ARMs shall provide sufficient information to allow consumers to make informed payment choices, including an explanation of each payment option available and the impact of that choice on loan balances. For example, the monthly payment statement shall contain an explanation, as applicable, next to the minimum payment amount, that making this payment would result in an increase to the consumer's outstanding loan balance. Payment statements also shall provide the consumer's current loan balance, what portion of the consumer's previous payment was allocated to principal and to interest, and, if applicable, the amount by which the principal balance increased.

F. Practices to Avoid

1. Banks shall not present information regarding nontraditional loans in a manner that obscures significant risks to the consumer. For example, if a bank advertises or promotes a nontraditional mortgage by emphasizing the comparatively lower initial payments permitted for these loans, the institution must also provide clear and equally prominent information alerting the consumer to the risks. Such information should explain, as relevant, that these payment amounts will increase, that a balloon payment may be due, and that the loan balance will not decrease and may even increase due to the deferral of interest and/or principal payments.

2. Banks shall not advertise payment patterns that are structurally unlikely under the terms of a loan and shall avoid such practices as: giving consumers unwarranted assurances or predictions about the future direction of interest rates (and, consequently, the borrower's future obligations); making representations about the cash savings or expanded buying power to be realized from nontraditional mortgage products without stating the risks associated with nontraditional mortgages; suggesting that initial minimum payments in a payment option ARM will cover accrued interest (or principal and interest) charges; and making misleading claims that interest rates or payment obligations for these products are "fixed."

3. Banks shall not recommend that ARM borrowers select a nonamortizing or negatively-amortizing payment (for example, through the format or content of monthly statements).

G. Control Systems

1. Banks offering nontraditional mortgage products shall develop and use control systems reasonably designed to monitor whether actual practices are consistent with applicable policies and procedures. Such control systems shall address compliance and consumer information concerns as well as safety and soundness considerations. Lending personnel shall be trained so that they are able to convey information to consumers about product terms and risks in a timely, accurate, and balanced manner. As products evolve and new products are introduced, lending personnel shall receive additional training, as necessary, to continue to be able to convey information to consumers in this manner. Lending personnel shall be monitored to determine whether they are following these policies and procedures. Banks shall review consumer complaints to identify potential compliance, reputation, and other risks. Banks shall obtain legal review of nontraditional loan procedures as necessary. Banks shall not use compensation programs that compensate lending personnel for directing consumers to nontraditional mortgages.

2. If a bank utilizes a third party, such as a mortgage broker, correspondent, or other intermediary, to originate, purchase, or service nontraditional mortgage loans, or if a bank serves as an agent for a third party mortgage lender, the bank shall implement appropriate measures to mitigate risks relating to compliance with this regulation, and all other applicable state and federal laws and regulations. Such measures shall include, but are not limited to:

   a. Conducting due diligence procedures for reviewing the knowledge and trustworthiness of the third party, and establishing criteria for entering into and maintaining relationships with such third parties;

   b. Establishing criteria for third-party compensation, which may not include origination incentives that are inconsistent with this Rule;

   c. Setting the terms for agreements with such third parties,

   d. Establishing procedures and systems to monitor compliance with applicable agreements, bank policies, and laws, and

   e. Implementing appropriate corrective actions in the event that the third party fails to comply with applicable agreements, bank policies, or laws.

H. Illustrations

In complying with the provisions of this Rule, banks may utilize the sample illustrations included in the "Illustrations of Consumer Information for Nontraditional Mortgage Products" issued by the Office of the Controller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; and National Credit Union Administration on June 8, 2007, as such publication may be amended. Banks may provide information included in the sample illustrations, and expand, abbreviate, or otherwise tailor the material to the specific products offered by the bank, or provide the information required by this Rule in a format developed by the bank, or utilize other disclosures developed or published by the federal banking agencies for consumer use that contains similar information.

I. References

1. "Interagency Guidance on Nontraditional Mortgage Products Risks" refers to guidance issued by the Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; and National Credit Union Administration. The interagency guidance was published in the Federal Register on October 4, 2006.

2. "Illustrations of Consumer Information for Nontraditional Mortgage Products" refers to guidance illustrations issued by the above referenced agencies. The guidance illustrations were published in the Federal Register on June 8, 2007.

3. Copies of the above referenced interagency guidance and illustrations may be examined at any State Publications Depository.

4. For more detailed information pertaining to these provisions, please contact the Secretary to the Colorado State Banking Board at *banking@dora.state.co.us* or (303) 894-7584.

CB101.66 Frequency of Board Meetings [Section 11-103-502, C.R.S.]

A. The board of directors (Board) of a state bank shall meet at least once each calendar quarter, unless the Colorado State Banking Board directs the meetings be held on a more frequent basis or less frequent basis in case of a disaster or emergency. If the Board of a state bank plans to change its current meeting schedule, the bylaws should be reviewed with regard to meeting frequency and updated, if necessary. A revised Board of Directors meeting schedule and a copy of the revised bylaws, if necessary, shall be provided to the Division no less than 30 days following receipt of approval of the change.

B. If other than monthly meetings are held, a director who fails to attend two consecutive meetings shall automatically cease to be a director unless the absence is satisfactorily explained to the banking board or commissioner, who shall, in that event, notify the president of such bank the approval of the continuation of the director.

C. If monthly meetings are held, a director who fails to attend three consecutive monthly meetings shall automatically cease to be a director unless the absence is satisfactorily explained to the banking board or commissioner, who shall, in that event, notify the president of such bank the approval of the continuation of the director.

D. Should a state bank's Board decide to again change its meeting schedule, the bank shall follow the process outlined in Section A.

Editor's Notes

History

Rule CB101.65 eff. 12/30/2007.

Rule CB101.60 eff. 08/30/2009.

Rules CB101.64 A-C, CB101.64 D.2, CB101.64.D 11-12, CB101.64 I.1, CB101.64 L-M emer. rules eff. 01/17/2013.

Rule CB101.64 eff. 05/15/2013.

Rule CB101.64 emer. rule eff. 02/20/2014.

Rule CB101.64 eff. 06/14/2014.

Rule CB101.57 repealed eff. 07/30/2015.

Rule CB101.53 eff. 03/16/2016.

Rule CB101.66 emer. rule eff. 08/18/2016.

Rules CB101.53 A.2, CB101.66 eff. 12/15/2016.

Rule CB101.54 A.1 eff. 08/14/2017.

Rules CB101.53 A.1, CB101.53 B eff. 04/14/2018.

Rule CB101.49 D.7 emer. rule eff. 04/02/2020; expired 07/29/2020.

Rule CB101.53 eff. 08/31/2020.

Rules CB101.49 D-E, CB101.61 eff. 04/14/2022.

Rules Appendix A - CB101.49 B, CB101.52, CB101.64 eff. 09/14/2023. Rule CB101.51 repealed eff. 09/14/2023.