



**COLORADO**

**Department of  
Regulatory Agencies**

Division of Banking

1560 Broadway, Suite 975  
Denver, CO 80202

**November 17, 2017**

**BEFORE THE  
COLORADO STATE BANKING BOARD**

**IN THE MATTER OF** )  
 )  
**RULE AMENDMENT** ) **NOTICE OF PROPOSED RULEMAKING**

**I. Notice of hearing**

PLEASE BE ADVISED THAT, as required by Section 24-4-103, C.R.S., of the State Administrative Procedures Act, the Colorado State Banking Board (Banking Board) hereby gives notice of proposed rulemaking. A hearing is scheduled for January 18, 2018, commencing at 10:00 a.m., at 1560 Broadway, Suite 975, Denver, Colorado, Division of Banking (Division) Conference Room, which facility is accessible in compliance with the Americans with Disabilities Act (ADA) guidelines.

**II. Purpose of the proposed rulemaking**

The purpose of the hearing is to hear comments concerning the proposed amendment of the following Banking Board Rules to update the rules to reflect changes made to the Prompt Corrective Action Guidelines, effective January 1, 2015. A Statement of Basis, Purpose, and Specific Statutory Authority for each rule follows this notice and is incorporated by reference.

- PDP1 Capital Standards for Eligible Public Depositories
- PDP3 List of Approved eligible Collateral Instruments and Obligations
- PDP4 Standards for Establishing Current Market Value of Eligible Collateral
- PDP5 Criteria and Procedures for Reducing/Removing Uninsured Public Deposits From a Bank, or Increasing Collateral Requirements, if the Eligible Public Depository Fails to Comply With Minimum Capital Standards or Safety and Soundness Standards
- PDP7 Reporting Requirements
- PDP8A Directors' Examination of Public Deposits
- PDP9 Assessments and Fees



### III. Statutory authority for proposed rulemaking

The proposed amendment of the rules is being held under the authority given the Banking Board by the Colorado Banking Code in accordance with Section 11-102-104(1), C.R.S., which states "the banking board is the policy-making and rule-making authority for the division of banking and has the power to: (a) make, modify, reverse, and vacate rules for the proper enforcement and administration of this code..."

### IV. Opportunity to testify and submit written comments

Any interested person(s) has the right to submit written comments or data, view, or argument. Written information should be filed with the Division no later than January 8, 2018. To submit written comments, please contact Diana Gutierrez, Banking Board Secretary, at [diana.gutierrez@state.co.us](mailto:diana.gutierrez@state.co.us). In addition, any interested person(s) has the right to make an oral presentation at the Hearing, unless the Banking Board deems any oral presentation unnecessary.

SUBMITTED ON BEHALF OF THE  
COLORADO STATE BANKING BOARD



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Chris R. Myklebust  
State Bank Commissioner



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**STATE BANKING BOARD  
RULE 3-CCR 701-4 PDP5  
PERTAINING TO TITLE 11, ARTICLE 10.5, SECTION 107(4)(a) and TITLE 11, ARTICLE 10.5,  
SECTION 107(4)(a) and 107(4)(b)  
COLORADO REVISED STATUTES**

**STATEMENT OF BASIS, PURPOSE AND SPECIFIC AUTHORITY**

Statutory Basis

The statutory basis for Banking Board Rule 3-CCR 701-4 PDP5 is found in section 11-10.5-107(4)(a) and 11-10.5-107(4)(b) of the Colorado Revised Statutes (C.R.S.). The purpose of this rule modification is to reflect changes made in the Division's practices and match the Prompt Corrective Action (PCA) Capital Guidelines which went into effect on January 1, 2015.

Purpose of this Rulemaking

Beginning January 1, 2015, PCA Capital Guidelines established new ratio percentages for a Well Capitalized institution and a Significantly Undercapitalized institution.

The purpose of the proposed rulemaking is to amend 3-CCR 701-4 PDP5(B) to reflect new verbiage per PCA Capital Guidelines. The changed percentages will reflect the revised definition of a Well Capitalized institution and a Significantly Undercapitalized institution per PCA Guidelines. The proposed amendment to the rule would define:

1. Well-capitalized: If the total capital to risk-weighted asset ratio of a depository is equal to or exceeds 10 percent, the depository shall pledge eligible collateral having a market value at all times in excess of 102 percent of the aggregate of uninsured public deposits held by it.
2. Adequately capitalized: If the total capital to risk-weighted asset ratio of a depository is less than **10 percent** but greater than, or equal to **8 percent**, the depository shall pledge eligible collateral having a market value at all times in excess of 120 percent of the aggregate of uninsured public deposits held by it.
3. Undercapitalized: If the total capital to risk-weighted asset ratio of a depository is less than **8 percent** but greater than 6 percent, the depository shall pledge eligible collateral having a market value at all times in excess of 140 percent of the aggregate of uninsured public deposits held by it.
4. Significantly Undercapitalized: If the total capital to risk-weighted asset ratio of a depository is less **or equal to** 6 percent, the depository shall pledge eligible collateral having a market value at all times in excess of 160 percent of the aggregate of uninsured public deposits held by it.



The purpose of the proposed rulemaking is to amend 3-CCR 701-4 PDP5(D) and 3-CCR 701-4 PDP5(E) to reflect new verbiage defining undercapitalized asset ratios. The proposed amendment to the rule would reflect change the risk-weighted asset ratio to less than 8 percent but greater than 6 percent in subpart D. The proposed amendment to subpart E would reflect language of risk-weighted asset ratio of being equal to or less than 6 percent; which would then equate to the depository eliminating all public deposits not fully insured by the FDIC in an orderly manner. The proposed language would read as follows:

1. (D)(1) shall read: If the depository's total capital to risk-weighted asset ratio is ~~below 6~~ **less than 8 percent but greater than 6 percent**; or
  - a. Note: If an institution reaches the 'undercapitalized' level of 6-8%, provision D will take place.

The purpose of the proposed rulemaking is to amend 3-CCR 701-4 PDP5(E) to reflect new verbiage defining undercapitalized asset ratios. The proposed amendment to subpart E would reflect language of risk-weighted asset ratio of being equal to or less than 6 percent; which would then equate to the depository eliminating all public deposits not fully insured by the FDIC in an orderly manner. The proposed language would read as follows:

1. (E)(1) shall read: If the depository's total capital to risk-weighted asset ratio is equal to or less than ~~5-percent~~ **6 percent**; or

The purpose of the proposed rulemaking is to amend 3-CCR 701-4 PDP5(F) to reflect new verbiage added to better define the current practice of the Division with troubled institutions. The addition of subpart (F) leaves the Division with enough power to exercise in extreme cases. The proposed language would read as follows:

1. Upon notice from the Banking Board, a depository may be required to eliminate all public deposits if the depository meets any of the conditions established in paragraph D and E above.

The purpose of the proposed rulemaking is to amend 3-CCR 701-4 PDP5(G) to reflect the addition of subpart (F) from above listed language. The addition of subpart (G) moves previous language to new subpart. The proposed language would read as follows (no change made to previous rule language):

1. Compliance with this rule shall be the responsibility of each depository regardless of the frequency or form of the reports required by the Banking Board.

#### Rulemaking Authority

- 11-101-102. Declaration of policy.
- 11-102-104. Powers and duties of the banking board.
- 11-10.5-106. Designation as eligible public depository.
- 11-10.5-107. Eligible collateral – uninsured public deposits.
- 11-10.5-112. Annual fees and assessments.