

May 27, 2020

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 July 16, 2020, 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 amendments of Banking Board Rule CB101.53, Loan Production Office. The proposed amendment would clarify that banks entering the Colorado market by opening Loan Production Offices must receive approval for the proposed name(s) from the Banking Board. The proposed rule also outlines changes in the Banking Board and Division's practices and outlines steps taken by the Division of Banking and the bank entering the Colorado market when a state-chartered bank that currently operates in Colorado objects to the proposed name(s).

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 July 5, 2020. To submit written comments, please contact Rebecca Laurie, Stakeholder & Innovations Strategist, at rebecca.laurie@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

A handwritten signature in black ink that reads "Ken Boldt". The signature is written in a cursive, slightly slanted style.

Kenneth G. Boldt
State Bank Commissioner

May 27, 2020

**STATE BANKING BOARD
3 CCR 701-1 CB 101.53 Loan Production Office
PERTAINING TO TITLE 11, 11-102-104(2)(b) and Section 11-105-101(1) of the
COLORADO REVISED STATUTES**

STATEMENT OF BASIS, PURPOSE AND SPECIFIC AUTHORITY

Statutory Basis

The statutory basis for Banking Board rule 3 CCR 701-1, CB 101.53 is found in Section 11-102-104(1)(a) and Section 11-105-101(1) of the Colorado Revised Statutes (C.R.S.). The purpose of this rule is to clarify Loan Production Office (LPO) establishment and practices pursuant to current law.

Purpose of this Rulemaking

The amendment to rule 3 CCR 701-1 CB 101.53 is to ensure the Colorado State Banking Board approves all names and DBAs for state-chartered banks entering the Colorado market by opening a loan production office (LPO). Under the current statutes the Banking Board only approves names when banks enter the Colorado market by opening a branch. The proposed amendment will establish the same criteria for banks entering the Colorado banking market by opening an LPO. The proposed rule also outlines changes in the Banking Board and Division's practices and outlines steps taken by the Division of Banking and the bank entering the Colorado market when a state-chartered bank that currently operates in Colorado objects to the proposed name(s).

Specific Proposed Changes

Amendment to 3 CCR 701-1 CB 101.53 (C) requires banks or bank holding companies entering the Colorado market by opening a loan production office (LPO) to provide the names or names under which they will do business. The section also describes the basic criteria used by the Banking Board to approve the name.

Amendment to 3 CCR 701-1 CB 101.53 (E) updates the processes conducted by Division staff.

Amendment to 3 CCR 701-1 CB 101.53 (E)(2)(a) clarifies that the name or names will be submitted to the Banking Board for approval.

Amendment to 3 CCR 701-1 CB 101.53 (E)(2)(b) clarifies the process that all objections to a proposed name received by the Division will be provided to the Banking Board.

Amendment to 3 CCR 701-1 CB 101.53 (E)(2)(c) clarifies that an objector may withdraw its objection in writing.

Amendment to 3 CCR 701-1 CB 101.53 (E)(3) clarifies that the Banking Board will evaluate both the name submitted and the objection(s), if any, during its approval process. The amendment also clarifies that the Board will either approve or deny the submitted names or names.

Amendment to 3 CCR 701-1 CB 101.53 (E)(4) clarifies that in the event that the Banking Board denies the use of the submitted name, the applicant must submit alternate name(s) which the Division and the Banking will review under the established process in the rule.

The proposed rule changes also removes language regarding credit approvals that is the responsibility of the home state bank supervisor and includes technical wording updates.

Rulemaking Authority

11-101-102.	Declaration of policy.
11-102-104 (2)(b).	Powers and duties of the banking board.
11-105-101(1).	Branch banks and practices prohibited.

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.

~~C.A. Approval of loans at the main office or branch is not intended to be perfunctory, i.e. merely final execution of the loan documents. Approval shall be in accordance with safe and sound banking practice, including a review of the credit quality of the loan and a determination that it meets the bank's credit standards.~~

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.

D.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.
- 1.2. 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.
 - b. _____
- ~~2. The Division will not process the disputed LPO application unless the objector provides express written consent to the applicant regarding the disputed name.~~
- ~~1. 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; 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~~
 - ~~1. Likely to cause the public to be confused, deceived, or mistaken.~~
- ~~The Division will not process the disputed LPO application unless the objector provides express written consent to the applicant regarding the disputed name.~~
3. The Board will evaluate the objection and written response, if any, and approve or deny the LPO name.
 - ~~3.4. Without express written consent 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. Without express written consent, the Applicant must submit a new name, which will be published by the Division as outlined in (E)(1), 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. Approval of loans at the main office or branch is not intended to be perfunctory, i.e. merely final execution of the loan documents. Approval shall be in accordance with safe and sound banking practice, including a review of the credit quality of the loan and a determination that it meets the bank's credit standards.~~
- E.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.