Revised on March 31, 2016

STATE OF NEBRASKA
DEPARTMENT OF BANKING AND FINANCE

FINANCIAL INSTITUTION DIVISION

STATEMENTS OF POLICY

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STATEMENT OF POLICY #1

POWERS OF A STATE BANK

The Nebraska Department of Banking and Finance ("Department") sets forth Statement of Policy #1 regarding the inherent powers of a state bank. A bank chartered by the Department and incorporated under the Nebraska Business Corporation Act is defined by Neb. Rev. Stat. § 8-101(5) of the Nebraska Banking Act to mean ". . . any such banking institution which is, in addition to the exercise of other powers, following the practice of repaying deposits upon check, draft, or order and of making loans." The Department interprets Section 8-101(5) to give state banks, in addition to the normal banking powers of making and servicing loans and receiving deposits, the power to offer all financial services and products of a full service financial intermediary and all incidental powers thereof.

The environment in which financial intermediaries operate is often in a state of flux, and accordingly, the products and services offered by financial intermediaries change with the environment in which they operate. The "other powers" section of the Nebraska Banking Act envisions such a changing environment and gives Nebraska state banks the powers to offer all financial services and products in the environment in which they operate, unless prohibited by state or federal law.

In offering such services and products, a state bank must obtain the necessary licenses, if any, and cannot condition a loan from the bank on the purchase of any such service or product by its customer. If a bank employee conditions such a loan upon the purchase of a service or product, such employee may be subject to criminal prosecution and removal from employment with the bank. If a bank employee offers such services or products personally, instead of for the bank, then the employee may not use the bank's name and his/her offices must be in quarters separate from the bank.

The following is a list of services and products which a state-chartered bank may offer to its customers either through the bank or a subsidiary. This list is not designed to be all-inclusive. If a bank intends to offer additional product and services and a national bank is required to notify or get prior approval from the Office of the Comptroller of the Currency, such notices/requests must be obtained from the Department. Bank or bank employees may need to obtain licensure to conduct some of the listed activities.

1. Act as agent for any fire, life, health, casualty, or other insurance company in any community.

2. Originate loans or business by employees or agents of a state-chartered bank at locations other than the main office or a branch of the bank.

3. Act as a "finder" and bring together a buyer and seller. The bank's activity is limited to the introduction of buyer and seller, and it may take no further part in negotiations. For this service, the bank may accept a fee.

4. Assist the bank's customers in preparing tax returns, either gratuitously or for a reasonable fee.

5. Disburse to employees of its customers payroll funds deposited with it by such customers. Disbursement may be made by direct payment to any employees or crediting accounts standing in the employee's name at the disbursing bank.

6. Act as an investment or financial adviser to the extent of i) serving as the advisory company for a mortgage or real estate investment trust; ii) serving as an investment adviser, as defined in Section 2(a)(20) of the Investment Company Act of 1940, to an investment company registered under that act; iii) providing portfolio investment advice to any other person; iv) furnishing general economic information and advice, consumer oriented financial management courses and instructional material, general economic statistical forecasting services and industry studies; and v) providing financial advice to state and local governments, such as with respect to the issuance of securities.

7. Lease property to its customers pursuant to the rules and regulations of the Department.

8. Provide data processing to the extent of: i) providing data processing and data transmission services, data base or facilities (including data processing and data transmission hardware, software, documentation and operating personnel) for the internal operations of the bank or its affiliates; and ii) providing to others data processing and transmission services, facilities, data bases or access to such services, facilities, or data bases by any technologically feasible means, where: a) data to be processed or furnished are financial, banking or economic, and their services are provided pursuant to written agreements so describing and limiting the services; b) the facilities are designed, marketed, and operated for the processing and transmission of financial, banking, or economic data; and c) hardware in connection therewith is offered only in conjunction with software design and marketed for the processing and transmission of financial, banking, or economic data.

9. Provide courier services for i) the internal operation of the bank and its affiliates; ii) checks, commercial papers, documents and written instruments (excluding currency or bearer type negotiable instruments) as are exchanged among banks and bank institutions; and iii) audit and accounting media of a banking or financial nature and other business records and documents used in processing such media.

10. Provide management consulting advice to non-affiliated bank and non-bank deposit institutions, including commercial banks, savings and loans, savings

banks, credit unions, and industrial loan and investment companies; provided that i) neither the bank nor its affiliates own or control directly or indirectly any equity securities of the client institution; ii) no management official of the bank or its affiliates serves as a management official of the client institution except where such interlocking relationships are permitted as an exception under 12 CFR 212.4(b); iii) the advice is rendered on an explicit fee basis without regard to correspondent balances maintained by the client institution at any depository institution affiliated with the bank itself; and iv) disclosures are made to each potential client institution of (a) the names of all depository institutions which are affiliates of the consulting bank; and (b) the names of all existing client institutions located in the same county as a client institution.

11. Perform real estate advisory services, appraisal of real estate, real estate sales, and real estate management.

12. Operate a full service travel agency.

13. Operate a securities brokerage, through a broker dealer licensed with the appropriate state and federal regulatory authorities, if the securities activities are limited to the buying and selling of securities solely as agent for the account of customers and do not include the underwriting of securities, except obligations issued by the United States government or general obligations of the state or political subdivision thereof.

14. Act as a loan broker for which the bank may accept a fee from the lender or borrower upon consummation of a loan.

15. Establish a depository drop box or boxes.

Original Issue Date: May 9, 1983

Revision Date: March 31, 2016

STATEMENT OF POLICY #2

LOAN PRODUCTION OFFICES IN NEBRASKA

The Nebraska Department of Banking and Finance ("Department") sets forth Statement of Policy #2 regarding the operation of a loan production office ("LPO") in Nebraska. Statement of Policy #2 is organized alphabetically, by areas of LPO interest. All statutory citations are to the Nebraska Banking Act.

LPO Areas of Interest

Automated Teller Machines ("ATM"): A LPO may have an ATM or cash dispensing machine or Remote Service Unit ("RSU") on site. ATMs or RSUs may be established and maintained only by a financial institution which has a charter or an approved branch in Nebraska, a National charter, or an ATM can be established and maintained by a group of two or more financial institutions, or by a combination of financial institution or institutions and a third party (see Neb. Rev. Stat. § 8-157.01).

Deposit transactions and loan payments may be made through such a machine, or by United States mail. LPO employees cannot mail deposits or loan payments for a customer, nor may employees assist a customer with an ATM or RSU transaction (see Deposits).

Bank Services: A LPO employee can provide brochures on bank services and rates. These services may include information on the bank's trust services, letters of credit, and similar items.

Cash Management: Traditionally, cash management services have included the cash collections and disbursements for a business firm, in conjunction with the short term investing of surplus cash into an interest bearing securities account. An employee of the LPO cannot receive cash for deposits, nor can a LPO employee make cash disbursements, or assist in the electronic debiting of customers' accounts. A LPO employee can inform customers of bank services, including merchant processing services (see Bank Services).

Cashing Checks: The LPO can cash checks drawn on entities other than the institution operating the LPO.

Commercial Loans: When making commercial loans, the LPO must comply with restrictions listed in Loans below.

Currency Exchange: A LPO can exchange currency for coin and vice/versa. The exchanged currency can be American or foreign.

Deposits: Deposits, in any form, may be made through an on-site ATM or RSU. Credit for a deposit must be given directly to the customer's account.

The LPO employee may not accept, transmit, or carry deposits to the bank from the LPO or any other location. The LPO may not provide information about a customer's deposit account. Information about a specific deposit account may be provided through an on-site ATM or RSU only; however, again note that LPO employees are not allowed to assist individuals with ATM or RSU transactions. LPO employees may service the ATM or RSU, including couriering deposits and loan payments made through the ATM or RSU to the main office or an approved branch.

The LPO may distribute and receive deposit account applications, certificate of deposit applications, and signature agreements, but it cannot take any funds, of any nature, for deposit in a new account or existing account. LPO staff may direct a customer requesting to open a deposit account to a staffed or unstaffed customer service desk or kiosk within the LPO to call the main office or an approved branch to establish an account.

Funds transfers to or from deposit accounts may be initiated only through the on-site ATM or RSU. LPO personnel may not transfer available funds from a master operating note to the customer's checking or other deposit accounts. While deposits and loan payments must be made either through the ATM or RSU or by mail, the LPO may not mail the item for the customer. The bank may provide a stamped, self-addressed envelope to the customer. Customers may apply for ATM or RSU cards and order checks at the LPO.

Deposit Production Office: The Department has received various inquiries regarding use of the terminology "deposit production office" ("DPO"). The Department is not opposed to the use of "DPO" to describe some of the activities conducted at a LPO. All requirements and restrictions applicable to a LPO designation/signage location apply equally to an office designated as a DPO. The bank may not imply, in any way, that deposits are accepted at a LPO or DPO.

Drop Box: A LPO may have a drop box on site. The drop box can not be serviced by LPO staff. Customers of the box should be told that deposited funds are not insured until the bank issues a receipt for the funds. The LPO should ensure the drop box has adequate security features.

Foreign Drafts**:** See Money Orders.

International Banking: See Bank Services.

Investments: LPO staff may direct a customer requesting assistance with investments to an investment representative, customer service desk, or kiosk in the LPO. It is understood that the investment representative is soliciting securities sales and providing investment advice.

Letters of Credits: See Bank Services and Loans.

Loans: The bank may originate loans at the LPO. Origination includes soliciting loan business, providing information on loan rates and terms, interviewing and counseling applicants regarding loans, aiding customers in completion of loan applications, making credit checks, and receiving and reviewing loan applications.

Under Neb. Rev. Stat. § 8-157(7) state-chartered banks located in Nebraska may close loans at LPOs. Notes and security agreements may be drafted and closed at the LPO provided that these and any other required documents are approved by an executive officer licensed pursuant to Neb. Rev. Stat. § 8-139 prior to loan closing. The LPO may call up, print, and provide loan status information through the LPO's computer connection with the main bank.

A LPO may receive a check payment on a bank loan and may convert that payment to an electronic image and forward such images to the bank for processing.

An out-of-state LPO may not close loans at the location of the LPO (see Neb. Rev. Stat. § 8-157(7)).

Merchant Processing: See Bank Services and Cash Management.

Mobile Device Application: A LPO employee can give a customer brochures or other information that describes how the bank's electronic banking/mobile application device(s) work. A LPO employee cannot set up or otherwise establish a mobile device application for a bank customer.

Money Orders: Money orders can be sold at a LPO. However, customers who purchase money orders or foreign drafts may not make their purchase using a Bank depository account.

Notification: Bank must notify the Department of its intention to open a LPO. It is recommended that Bank use the Interagency LPO Notice form found on the Department's website at http://www.ndbf.ne.gov.

Out-of-State Bank: The Department would not object to an out-of-state bank locating an LPO in Nebraska if the out-of-state bank's regulator approves and if the LPO otherwise complies with requirements of Nebraska state branching laws. The out-of-state bank should contact the Nebraska Secretary of State at (402) 471-2554 and the Nebraska Department of Revenue (402) 471-2974, to determine if they have any requirements for an out-of-state bank's LPO.

An out-of-state bank, that does not have a branch office location in Nebraska, may not close loans at a LPO in Nebraska, unless its home state regulator permits such activity.

See also ATM and Loans.

Personal Loans: When making personal loans, the LPO must comply with restrictions listed in Loans above.

Remote Service Unit ("RSU"): An automated facility operated by a customer of a bank, that conducts banking functions such as receiving deposits, paying withdrawals, or lending money.

Signage/Advertising: All advertising must clearly designate the facility as a LPO. In order to clearly designate the facility as a LPO, the words "loan production office" must appear on all signage and all forms of advertising. The words "loan production office" must be completely spelled out; i.e., the abbreviation "LPO" is unacceptable. The words "loan production office" must, at a minimum, be as large as any other words on the signage or advertising. The name of the affiliated bank must be included in all advertising.

Trust Services: LPO staff may direct a customer requesting trust services to a trust office representative, trust service desk, or kiosk in the LPO. Bank, depending on the activities conducted at the proposed location, may be operating a representative trust office or branch trust office for which the appropriate regulatory approval/charter needs to be obtained.

Wire Transfer: A wire transfer can be originated at a LPO kiosk or at a telephone at the LPO. LPO personnel can not assist a customer with wire transfer instructions or transfer.

Issue Date: March 31, 2016

STATEMENT OF POLICY #3

CREDIT CARD BANKS IN NEBRASKA

The Nebraska Department of Banking and Finance ("Department") sets forth Statement of Policy #3 regarding credit card banks in Nebraska. This Statement of Policy uses a question and answer format due to the variety of issues addressed.

Question 1: What fees and charges are permissible for a credit card bank?

Answer: Neb. Rev. Stat. § 8‑820 provides that the interest rate on any loan initiated by a credit card or other transaction card is any rate agreed to by the parties.

A registered bank or credit card bank may charge commercially reasonable fees for the service and use of a credit card or other transaction card on a per transaction and monthly or annual basis (see Section 8‑820). Neb. Rev. Stat. § 8‑821 sets forth permissible fees. Those fees include fees allowed in Sections 8-820 – 8-822. Those fees include, but are not limited to, fees in an amount agreed to by the parties for loan service costs for exceeding authorized limits, replacing lost cards, returning checks, or delinquency on the account.

Charges such as delinquency charges, returned check charges, fees for exceeding a credit limit, and other costs associated with credit card transactions affect the return received by a lender are material to Nebraska's regulation of this area.

Question 2: What constitutes a "commercially reasonable" fee?

Answer: Section 8‑820 provides that credit card issuers may charge "commercially reasonable" fees for service and use of a credit card or other transaction card.

A "commercially reasonable" fee can be determined through what is prevailing in the credit card industry nationally. If a contemplated fee is not currently prevailing in the market place, a credit card bank may ask the Department for an Opinion Letter regarding the commercially reasonableness of a contemplated fee.

Question 3: What is an "other type of transaction card"?

Answer: Section 8‑820 permits a registered bank or bank acquired pursuant to Neb. Rev. Stat. §§ 8-1512 and 8-1513 to engage in operations involving credit cards or "other type of transaction card." Transaction card is defined in Section 8-815(6) as "a device or means used to access a prearranged revolving credit plan account." The legislative history on Section 8-820 indicates the definition of transaction card is not meant to be limited to a plastic credit card but could encompass various other forms of transfers, whether electronic, telephonic, or a pad of "checks" which could be written against a line

of credit. Smart phone communications tied to a credit card for the purposes of enabling purchases would also be included.

Question 4: Do credit card banks which have been acquired pursuant to Neb. Rev. Stat. § 8-1511, et seq., or chartered pursuant to Neb. Rev. Stat. § 8-2401, et seq., also have to register pursuant to Neb. Rev. Stat. § 8-816?

Answer: Yes. Section 8-816 contemplates the necessity of certain financial institutions registering with the Department when they provide loans pursuant to credit cards. There is no relief in the registration requirement for credit card banks if they also desire to extend credit card services to Nebraskans. There is no registration requirement if credit card services are not provided to Nebraskans.

Question 5: For purposes of Neb. Rev. Stat. § 8-1511(4) and Neb. Rev. Stat. § 8-2401, to what extent may a bank outside the state of Nebraska retain some operations and comply with the statute by contracting for other services?

Answer: Section 8-1511(4) contemplates the possibility of a bank contracting for services in credit card operations with a "qualifying association," which can provide a number of services. The statute provides that the "qualifying association" will offer at least the following services: 1) distribution of credit cards; 2) preparation of statements of amounts due; 3) receipt of amounts on payment; and 4) maintenance of financial records of accounts.

A bank may have its cards prepared outside the state of Nebraska and sent to the "qualifying association" for distribution. In addition, as long as debiting and crediting of accounts is done in Nebraska, it is not necessary that the "qualifying association" actually receive the money on payment. In other words, as long as a Nebraska credit card bank has contracted with a qualifying association to provide for processing credit card operations, there is no requirement that the bank contract for embossing, authorization, or other services.

Question 6: If a cardholder has a credit balance on his or her card and the cardholder agreement provides for the payment of interest on the balance, would the payment of interest be deemed to be a "deposit" in violation of the law?

Answer: Yes. The payment of interest on a deposit in a credit card account represents an effort to secure deposits in direct competition with Nebraska banks. Consequently, such a practice would be competition prohibited by the credit card bank law. A credit balance may be maintained by a cardholder if no interest or other financial reward is earned by the account holder.

Question 7: For purposes of the credit card industry and its unique practices, what is the "date of commencement?"

Answer: The "date of commencement" is deemed to be that date, as determined by the credit card bank's records, when a customer first uses the credit card services. Transferring credit card operations to Nebraska involves a series of steps, which may or may not involve contractual relationships with other entities. Such steps include creation of the cards, marketing, employment of personnel, utilization of data processing, application processing, and correspondence. All of these matters could be done and not one card would have been mailed or used by a customer.

Question 8: May the capital injections be made through installment payments?

Answer: No. The statute is not sufficiently broad to permit the Department to authorize capital injections through installment payments. The injection must be made in a single payment.

Original Issue Date: September 1, 1987

Revision Date: December 19, 1990
March 31, 2016

STATEMENT OF POLICY #4

BANK AND BANK BRANCH NAMING POLICY

The Nebraska Department of Banking and Finance ("Department") sets forth Statement of Policy #4 regarding the use and approval of the chartered name of a bank and the names of all bank offices used within the State of Nebraska and the laws prohibiting the use of confusingly similar names by bank offices in the same community or county. (See, Neb. Rev. Stat. § 8-157 and Neb. Rev. Stat. §§ 8-1901 to 8-1903).

The Department recognizes the potential for confusion on the part of depositors in a Nebraska bank regarding the level of Federal Deposit Insurance Corporation ("FDIC") insurance coverage of their deposits when one of the following occurs:

1. A bank establishes a branch facility, but identifies the branch with a name other than the chartered name of the bank.

2. A bank identifies its main office and/or branch offices with a name other than the chartered name of the bank.

3. A bank provides internet banking services using a URL, web address, logo, or web name other than the name of the chartered name of the bank.

This policy is in line with certain of the methods suggested in the Interagency Statement on Branch Names issued May 1, 1998, by the FDIC and other federal financial regulators. That Statement is attached.

A Nebraska state-chartered bank must disclose to individuals and representatives of legal entities who are applying to open an insured deposit account at a bank or a branch of a bank identified by a name other than the chartered name of the bank that, for purposes of FDIC deposit insurance coverage, any deposits of the applicant in the bank and any of its branches, regardless of the name or names by which the bank or its branches are identified, must be aggregated. Disclosures, when a bank or any of its branches are identified by a name other than the chartered name of the bank, must include:

1. A statement in brochures and other materials available to the public, and, if applicable, on the bank's web site, describing the deposit accounts offered by the bank or any of its branches that deposit account balances will be aggregated with an account holder's deposit balances with the insured bank and any other branches of the insured bank**,** regardless of the name or names used to identify the bank or its branches to the public for purposes of determining FDIC deposit insurance coverage for the account holder.

Following is a model statement acceptable to the Department for use in brochures and other material available to the public describing the deposit accounts offered by a bank or any of its branches:

> For Federal Deposit Insurance Corporation (FDIC) purposes, a depositor's account balances in [the charter name of the bank] will be aggregated with any account balances of the depositor in the following offices, branches, or internet sites of [chartered name of the bank].
>
> -
> -
> -
>
> The total account balances of a depositor with [chartered name of the bank] and its offices and branches will have the benefit of the deposit insurance coverage that the FDIC provides to a depositor's accounts in a single bank. To determine the level of FDIC deposit insurance coverage available on accounts in a single bank, please ask for the FDIC brochure "Your Insured Deposit" or visit www.fdic.gov and, in the "Deposit Insurance" section, click on "EDIE OnLine Calculator."

2. A signed statement from the individual or representative of a legal entity ("Applicant"), who is applying to open any type of account eligible for FDIC deposit insurance coverage, that Applicant understands:

   (a) The bank at which Applicant intends to open the account has a chartered name other than the name used to identify the bank; or

   (b) The branch at which Applicant is applying to open a deposit account is identified by a name other than the chartered name of the bank which operates the branch, and that the balance at any point in time of the deposit account which Applicant intends to open will be combined with deposit balances of Applicant with the bank and any of its other branches, regardless of the names of those other branches, for purposes of determining FDIC deposit insurance coverage for the Applicant. The statement will identify the chartered name of the bank and all offices of the bank which currently operate under a name other than the chartered name of the bank.

The chartered name of the bank shall be used for legal documents, certificates of deposit, signature cards, account statements, on bank checks and drafts, 1099 statements of interest earned, loan documents, and other similar documents which detail an account relationship with the bank.

If a bank changes the name of the bank's main office/charter location, or adds a branch office and identifies the branch with a name other than the chartered name of the bank, or changes the name of an existing branch office to a name other than the chartered name of the bank, the bank must, after receiving approval from the Department of the new name, and prior to opening the new branch or changing the name of the bank's main office/charter location or an existing branch, notify all depositors of the bank as to the addition or change. Communication may be made by first class mail or by use of a statement stuffer or email statements included with periodic account statements.

Existing signage, both inside and outside the home office of a bank or a branch facility, identifying offices with names other than the chartered name of the bank may be retained or redesigned at the option of the bank. The bank may, at its option, identify the chartered name of the bank on any branch signage.

A bank may use its trade name without reference to its chartered name when 1) answering the telephone, 2) on bank employees' voice mail messages, 3) business cards, and 4) in social media.

This Statement of Policy #4 is a revision of Statement of Policy #32 issued on November 1, 2008.

Attachment: *Interagency Statement on Branch Names, May 1, 1998*.

Original Issue Date: November 1, 2008

Revision Date: March 31, 2016

FDIC
Federal Deposit Insurance Corporation
Washington, DC 20429

Office of the Director
Division of Supervision

FIL-46-98
May 1, 1998

GUIDANCE ON THE USE OF TRADE NAMES

TO: CHIEF EXECUTIVE OFFICER

SUBJECT: Interagency Statement on Branch Names

The Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision have jointly issued the attached Interagency Statement on Branch Names. The Interagency Statement was developed to help prevent customer confusion when a bank or thrift operates its offices, branches or other outlets for delivering services under a trade name.

In recent years, several banks have used names that differ from their corporate names for branches or for the delivery of services over the Internet. Although there may be valid business reasons for this practice, the agencies are concerned that it has the potential for confusing depositors about their deposit insurance coverage. The Interagency Statement urges banks and thrifts that intend to use a different name for a branch or other outlet to take reasonable steps to ensure that customers will not incorrectly assume that the branch or outlet is a separate institution from the bank or thrift, or that deposits in the different facilities are separately insured. The Interagency Statement specifies the procedures that a financial institution should use to minimize customer confusion.

For more information about the Interagency Statement, please contact Marc J. Goldstrom, Counsel in the FDIC's Legal Division, at (202) 898-8807.

Nicholas J. Ketcha Jr.
Director

Attachment

Distribution: All Insured Banks and Savings Associations

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
FEDERAL DEPOSIT INSURANCE CORPORATION
OFFICE OF THE COMPTROLLER OF THE CURRENCY
OFFICE OF THRIFT SUPERVISION

INTERAGENCY STATEMENT

BRANCH NAMES

May 1, 1998

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Office of Thrift Supervision (the "Agencies") are issuing this Interagency Statement regarding the practice of insured depository institutions operating branches under different trade names in response to requests for guidance to some of the Agencies. While there are no federal laws or regulations that specifically require that all branches of an insured depository institution operate under a single name,[1] the Agencies are concerned that if customers believe they are dealing with two different institutions, they may inadvertently exceed FDIC insurance limits by depositing excess amounts in different branches of the same institution. The Agencies believe it is important that customers understand the scope of FDIC insurance in these circumstances.[2] Accordingly, an insured depository institution that intends to use a different name for a branch or other facility should take reasonable steps to ensure that customers will not become confused and believe that its facilities are separate institutions or that deposits in the different facilities are separately insured.[3] Such measures may include, but are not limited to:

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[1] There may be state laws that need to be considered with respect to operating under a trade name. In addition, regulations applicable to insured institutions that may be promulgated by the Board of Governors of the Federal Reserve System or the Office of Thrift Supervision (as applicable) under the Federal Trade Commission Act, 15 U.S.C. § 57a(f) et. seq., regarding the prevention of unfair or deceptive acts or practices, could apply to the use of branch names.

[2] Generally, each depositor at an insured depository institution is insured up to $100,000. See 12 U.S.C. §§ 1813(m), 1817(i), and 1821(a). Insured deposit limits are determined in accordance with regulations prescribed by the FDIC at 12 C.F.R. Part 330.

[3] The practice of insured depository institutions using different trade names over a computer network such as the Internet raises the same concern discussed herein. Accordingly,

1) Disclosing, clearly and conspicuously, in signs, advertising, and similar materials that the facility is a branch, division, or other unit of the insured institution. The institution should exercise care that the signs and advertising do not create a deceptive and/or misleading impression.

2) Using the legal name[4] of the insured institution for legal documents, certificates of deposit, signature cards, loan agreements, account statements, checks, drafts, and other similar documents.

3) Educating the staff of the insured depository institution regarding the possibility of customer confusion with respect to deposit insurance. The Agencies recommend that the insured depository institution instruct staff at the branch and any other facilities operating under trade names to inquire of customers, prior to opening new accounts, whether they have deposits at the depository institution's other facilities or branches. In addition, during the time period soon after one institution acquires or combines with another, staff should be reminded to call customers' attention to disclosures that identify a particular branch or facility as part of an institution.

4) Obtaining from depositors opening new accounts at the branch a signed statement acknowledging that they are aware that the branch and other facilities are in fact parts of the same insured institution and that deposits held at each facility are not separately insured.

EFFECTIVE DATE: July 1, 1998

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institutions intending to use different trade names over a computer network should take reasonable steps to ensure that customers will not be confused about either the identity of the insured depository institution or the extent of FDIC insurance coverage.

[4] The legal name of an insured institution is its full name as reflected in its charter, except that an insured institution may abbreviate terms that are indicators of corporate status (e.g., N.A., F.S.B., Inc., Corp.).

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Board of Governors of the Federal Reserve System

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Office of Thrift Supervision

STATEMENT OF POLICY #5

PAYMENT OF FEES TO AN INSIDER OF A BANK

The Nebraska Department of Banking and Finance ("Department") sets forth Statement of Policy #5 regarding the payment of fees to a bank insider. For purposes of this policy, a bank insider includes an officer licensed by the Department pursuant to Neb. Rev. Stat. § 8-139, a director of the bank, and anyone who owns or controls twenty-five percent (25%) or more of the stock of the bank or the bank's holding company, affiliates and subsidiaries of the bank's holding company.

The payment of fees includes, but is not limited to, fees paid for loan review, audit expenses, legal expenses, investment advice, computer processing, office rental, and other items or services. Fees, when paid for such items or services, should be based on actual costs and hours expended. Should a financial institution disburse funds for such an item or service, the financial institution needs to document the expense in such a manner that Department examiners can determine that such fees are reasonably based upon cost, cost plus a reasonable profit, or current fair market value. Other expenses, not identifiable with any certain specific activities, are incurred by bank holding companies and banking groups in areas such as staff management, supervisory, general overhead, or policy functions. The practice of billing such costs, which cannot be explicitly priced by the parent/shareholder, is acceptable on a pro rata basis, to the extent they represent a legitimate and integral part of the overall services provided to the financial institution.

The financial institution should periodically obtain independent cost comparisons to determine whether or not the services being provided by the insider are at a current market rate or value. The financial institution must require the provider of service to submit detailed invoices itemizing the services being provided and the hours expended in providing those services in support for payments to the provider. The payment for services should be on a services-rendered basis not payment in advance of the services being provided.

If not shared by all shareholders in direct proportion to the amount of stock held by each shareholder, debt service requirements of shareholders or insider related organizations do not represent a legitimate overhead expense which may be imposed upon or allocated to a financial institution.

The attached list represents areas where cost allocation would normally be billed for specific services provided. Those services are charged on a pro rata basis or billed to a subsidiary. The listed classifications serve as a starting point for determining the proper allocation of expenses. This list is not all−inclusive.

CLASSIFICATION OF EXPENSES	EXPENSE CLASSIFICATION
Advertising Programs:	
Development/General	Pro Rata
Development/Specific	Individual Subsidiary Billing
Branches (including site planning)	Individual Subsidiary Billing
Computer Processing	Pro Rata
Corporate Audit	Individual Subsidiary Billing
Corporate Tax Plan	Individual Subsidiary Billing
Directors' Examinations	Individual Subsidiary Billing
Holding Company Executive	Pro Rata
Holding Company Occupancy Costs	Pro Rata
Investment Advice	Pro Rata
Legal Services:	
General Legal Services	Pro Rata
Specific Legal Services (lawsuit, briefs)	Individual Subsidiary Billing
Loan Review	Individual Subsidiary Billing
Management and Staff Salaries and Wages	Pro Rata
Marketing:	
Development/General	Pro Rata
Development/Specific (individual bank)	Individual Subsidiary Billing
Mergers	Individual Subsidiary Billing
Money Desk Operations	Individual Subsidiary Billing
Personnel Operations	Pro Rata
Regulatory Relations and Planning	Pro Rata
Research	Pro Rata
Security Measures and Procedures	Pro Rata
Tax Preparation	Individual Subsidiary Billing
Training Evaluation and Compensation	Pro Rata
Web Services (including social media)	Pro Rata

Original Issue Date: February 8, 1979

Revision Date: March 31, 2016

STATEMENT OF POLICY #6

FORMAL AND INFORMAL ADMINISTRATIVE ACTIONS

The Nebraska Department of Banking and Finance ("Department") sets forth Statement of Policy #6 regarding formal and informal administrative actions.

When evaluating a bank in an examination, the Department uses a "CAMELS Ratings." The CAMELS ratings focus on a bank's: Capital, Assets, Management, Earnings, Liquidity, and Sensitivity to Market Risk. The ratings that examiners ascribe to a bank are listed within the Report of Examination ("Report"). In order to assure uniformity in bank regulations with federal regulatory agencies, the Department has adopted similar regulatory policies as those of the federal agencies. The CAMELS ratings determine the assignment of the composite or over-all rating for a bank.

A composite rating of "3" may subject the bank to an informal administrative action, such as a "Memorandum of Understanding." A "4" or "5" rating will often result in a formal action. Exceptions to this policy may be appropriate in certain circumstances and will be considered on an individual bank basis. This policy does not preclude taking more serious action against any bank, regardless of its rating, if the circumstances warrant such action.

The examiner-in-charge who assigns a composite rating of "3" to the bank under examination will detail the specific problems of the bank in the Report. The principal requirements that should be incorporated by the Department into the Memorandum of Understanding should be listed in the confidential section of the Report or a separate confidential memorandum. The composite "3" rating implies that a bank has weaknesses which, if not corrected, could deteriorate into a more severe situation. Remedial action is therefore appropriate. Accordingly, unless exceptions are present which are considered appropriate to warrant not commencing action, or to commence more severe action, when a state-chartered bank is rated "3," the Director may take action through use of a Memorandum of Understanding.

The examiner-in-charge should discuss with the board those topics which she/he is recommending to be included in the Memorandum of Understanding and report the board's intention regarding the signing of the draft agreement. These comments should be included in the confidential section of the examination report. Reasons for any exception to this policy should also be documented and discussed in the confidential section of the Report.

Any Memorandum of Understanding will be drafted by the Department to be signed jointly by the Director of the Department and the bank's Board of Directors. The Regional Director of the FDIC, his or her designee, or the Federal Reserve Board's designee, may also be parties to the Memorandum of Understanding. The contents of a Memorandum of Understanding will be uniquely fashioned to address the specific

problems of the bank. Use of a Memorandum of Understanding, as opposed to a formal action, is particularly appropriate where the Department believes the problems discussed with management and the Board of Directors of the bank have been adequately detailed, and the bank, in good faith, will move to eliminate the problem(s).

A CAMELS composite rating of "4" or "5" will generally initiate formal corrective action in accordance with Neb. Rev. Stat. § 8-1,134, unless exceptions are present which would warrant less severe action. Banks rated "4" or "5" will, by definition, have problems of sufficient severity to warrant formal action which may include a Cease and Desist Order. If the examiner-in-charge believes that a bank rated "4" or "5" should not be subject to formal corrective action, she/he should document the reasons for recommending no formal action in the confidential section of the Report.

If the Department decides that corrective action should be initiated, the Report should be prepared in a manner to provide documented information in support of such action without the necessity of another visit to the bank. Examiners should contact the designated Review Examiner and discuss the condition of the bank before the exit of the examination. In the case of banks rated "4" or "5," the examiner-in-charge should discuss the Department's policy with the Board of Directors and inform them that formal corrective action may be considered under Section 8-1,134.

A Memorandum of Understanding or other similar informal written agreement is not considered an Order of the Department. Any formal action, including a Consent Order, is a formal Order of the Department.

Original Issue Date: October 12, 1979

Revision Date: May 23, 1986
March 31, 2016

STATEMENT OF POLICY #7

CAPITAL COMPUTATION

The Nebraska Department of Banking and Finance (“Department”) hereby sets forth Statement of Policy #7 to be used in computing capital at a state-chartered bank.

For purposes of computing capital, "primary capital" is defined as common and perpetual preferred stock; capital surplus; undivided profits; capital reserves; minority interests in consolidated subsidiaries; allowances for possible loan and lease losses; and certain mandatory convertible debt (to the extent of twenty percent (20%) of primary capital exclusive of such debt). "Primary capital" does not include assets classified as loss, deferred tax asset, or intangible assets other than mortgage servicing rights. "Secondary capital" may consist only of subordinated notes and debentures, and limited life preferred stock. It also does not include intangibles. Secondary capital is preferred capital and long term debt.

Original Issue Date: April 16, 1985

Revision Date: March 31, 2016

STATEMENT OF POLICY #8

VIOLATIONS OF BANKING STATUTES

The Nebraska Department of Banking and Finance ("Department") sets forth Statement of Policy #8 regarding violations of the Nebraska Banking Act. A bank examination report made by the Department will include a list of any apparent violation(s) of state statute(s) by the bank and/or representatives of the bank, including apparent violations which were remedied prior to or during the examination.

Neb. Rev. Stat. § 8-109 of the Nebraska Banking Act provides for criminal sanctions and automatic forfeiture of a bank examiner's job if the examiner fails to report violations by bank officers or employees to the Department. Furthermore, the Department is required to report willful violations of the banking statutes by officers, directors or employees of banks to the Attorney General for criminal prosecution. In many cases, the banking statutes provide for criminal penalties for such violations. The Department considers statutory violations a serious matter.

Bank management should review this policy statement with its Board of Directors and adopt procedures to assure compliance with the banking statutes. The Board of Directors must review and correct any statutory violations listed in examination reports issued by the Department of Banking and Finance, the Federal Deposit Insurance Corporation, the Federal Reserve Board, or the Consumer Financial Protection Bureau.

Original Issue Date: February 8, 1984

Revision Date: March 31, 2016

STATEMENT OF POLICY #9

LOAN LIMITS

The Nebraska Department of Banking and Finance ("Department") sets forth Statement of Policy #9 regarding the maximum amount a bank may loan to a customer.

The purpose of the loan limit is to prevent undue concentration of credit by a bank to a customer. A loan includes all proceeds lent to a customer. In addition, lent money would include any loan that is guaranteed, should the loan be in default and/or the borrower does not have the ability or financial capacity to repay the loan and reliance to pay is placed on the guarantor. The general state statute for lending limits is Neb. Rev. Stat. § 8-141. For purposes of the state lending limit, both ledger and nonledger assets of an individual, firm, corporation, or partnership will be combined to determine the total amount which has been loaned.

A loan made to a bank insider is governed by Neb. Rev. Stat. § 8-143.01 and Regulation O (12 CFR Part 215). A bank insider is a statutorily defined term. Management and the Board of Directors are ultimately responsible for ensuring compliance with all applicable state and federal laws, rules, and regulations.

A loan is generally defined as the furnishing or delivery of anything of value under the condition that the thing of value loaned will be repaid, or a position is offered in a derivative contract. The requirements are 1) the actual advancement of something of value to the borrower, and 2) the promise to repay that advancement.

COMMITMENTS TO ADVANCE FUNDS ARE COMBINED WITH A BORROWER'S LOANS

Any time a bank makes a commitment to advance funds to a customer, which funds can be drawn upon at any time by the borrower, the total amount of that commitment is combined with the borrower's loans for the purposes of the lending limit. Examples of such commitments are listed below.

Bank Credit Cards. Bank credit cards are preapproved lines of credit made by the bank to a borrower. For this reason, all credit card limits will be combined with any other loan made to a cardholder when determining whether loans made to a borrower are within the bank's lending limit. If cards are issued to bank executive officers, care must be taken that such card limit, when combined with personal borrowings do not exceed the limits for executive officers contained in Neb. Rev. Stat. § 8-143.01.

Checking Plus Agreements. In checking plus agreements, the bank is committed to extend funds to cover insufficient fund checks written by customers. These agreements are a type of loan, and must be combined with all other types of debt for the purposes of determining the bank's loan limit to a borrower. As with credit cards, the key is the

amount of funds the bank is committed to extend, not whether funds have actually been advanced.

Overdrafts. All overdrafts are loans for the purposes of the lending limits. If a borrower's line of credit is at the maximum, any overdraft will create a lending limit violation.

Master Notes. For Master Notes that unconditionally obligate the bank to extend a line of credit to a borrower, the amount considered advanced for lending limit purposes is the total amount which may be drawn, whether or not actually advanced. Therefore, it will be considered a violation of the bank's lending limit if the bank writes such a master note in excess of its lending limit on that date, even though the funds are not actually advanced. In order to avoid such a violation, the bank would need an irrevocable participation agreement from another financial institution effective the same date as the master note. A line of credit that gives the bank total discretion in making advances against the line of credit is not considered the lending of funds until the bank actually advances the funds.

Letters of Credit. Letters of credit are commitments by the bank to advance funds on behalf of the borrower, and as such, must be combined with any outstanding loans to the borrower.

Addressing an Apparent Violation

On occasion, a state-chartered bank may inadvertently make a loan, a loan commitment, or an advance that is in apparent violation of the applicable legal lending limit. Apparent violations which have been addressed by the bank will be noted in the Report of Examination. The bank may use any of the following methods to address an apparent lending limit violation:

1. The bank may reduce the loan through the sale of the loan (or the nonconforming portion, at a minimum) in a nonrecourse participation agreement. A reduction resulting from the transfer of a portion of the outstanding credit to another borrower, considered a "nominee" relationship, is not acceptable.

2. The bank may reduce the loan through the receipt of payments. Charging off a portion of the loan to a level within the applicable legal lending limit does not correct the apparent violation.

3. For a legally binding line of credit in which the maximum amount to be funded when combined with the borrower's other loans exceeds the bank's legal lending limit, the bank may be able to renegotiate the maximum amount of the line of credit or provide in its line of credit agreements that the bank is not obligated to fund the line of credit if this would cause the bank to exceed applicable statutory maximum lending limits.

4. The bank may obtain additional collateral that qualifies the loan for a higher legal lending limit.

5. The bank may increase its legal lending limit by increasing its capital stock or surplus accounts through transfers from its undivided profits or retained earnings account.

Apparent Violation Caused by a Merger

If a bank merges with another, both banks may have direct or indirect debt to the same borrower(s). Consequently, the merged or surviving bank may have combined debt which exceeds its legal lending limit even though the borrower(s) was within the legal lending limit at both banks individually.

Following a merger, the surviving bank will be expected to use reasonable judgment in determining how to bring the combined debt into compliance with its legal lending limit consistent with sound banking practices. The bank should consider using one of the methods noted above in addressing the situation. The bank would also be expected to document its efforts to address the situation for review by the examination staff at future examinations. No additional loans, commitments, or legally binding lines of credit may be extended to the borrowers(s) while the apparent violation exists.

Original Issue Date: March 3, 1981

Revision Date: March 31, 2016

STATEMENT OF POLICY #10

LIVESTOCK LOANS

The Nebraska Department of Banking and Finance ("Department") sets forth Statement of Policy #10 regarding loans secured by livestock. Neb. Rev. Stat. § 8-141(1) of the Nebraska Banking Act prohibits a bank from making a loan to a single borrower in excess of twenty-five percent (25%) of the paid-up capital, surplus, and capital notes and debentures or fifteen percent (15%) of the unimpaired capital and unimpaired surplus of the bank, whichever is greater.

Section 8-141(1)(a) provides an exception to the lending limit when the loan is secured by livestock. Under the Section 8-141(1)(a) livestock loan exception, a bank may lend up to an additional ten percent (10%) of its paid-up capital, surplus and capital notes or unimpaired capital and unimpaired surplus of the bank to a single borrower when the loan is secured by livestock.

Where livestock is used to secure a loan, the market value of the livestock only needs to be sufficient to secure the additional (10%) over the bank's Section 8-141(1)(a) lending authority. The livestock does not need to secure the entire loan. The loan file must clearly reflect the valuations on any livestock and their relation to loans over the bank's lending limit.

The market value of the livestock cannot be less than one hundred fifteen percent (115%) of the face amount of the notes or documents that cover title or liens on the livestock in question.

Livestock inspection reports are required by the Department's rules and regulations to be completed at least annually. However, if there is, or suspected to be, a significant change in the content of the herd, a new inspection report must be completed, even if the report follows the original report by less than a year. This is due to the underlying purpose of the statute which is to insure there is adequate value to justify extension of the loan.

"Significant change" can only be determined on a case-by-case basis. A new livestock report must also be filed at the time of the extension or renewal of the note.

45 NAC 19, "Livestock Loans," states in part, "The inspection is to be made within thirty days of the origination of the loan and additional inspections made at least annually thereafter, or more often as prescribed by the Department of Banking."

In the case of livestock feeding operations, the Department's position is that the inspections should be performed every ninety (90) days or more frequently depending on the turnover of the inventory.

This policy statement does not replace any of the Department's rules and regulations concerning the contents of inspection and appraisal reports on livestock.

Original Issue Date: August 28, 1984

Revision Date: March 31, 2016

STATEMENT OF POLICY #11

INCLUSION OF NONLEDGER ASSETS IN TOTAL AMOUNT LOANED UNDER STATE LENDING LIMITS

The Nebraska Department of Banking and Finance ("Department") sets forth Statement of Policy #11 regarding the treatment of ledger and nonledger assets in the same line of credit. For the purposes of the state lending limit (see Neb. Rev. Stat. § 8-141), both ledger and nonledger assets of an individual, firm, corporation or partnership will be combined to determine the total amount which has been borrowed.

This means that even though the ledger assets may be less than 25% of paid-up capital, surplus, and capital notes and debentures of the bank, or 15% of the bank's unimpaired capital and unimpaired surplus, the loan will be in violation of the lending limit if the nonledger portion when combined with the ledger portion causes the line of credit to exceed the statutory limitation.

A line of credit in excess of the bank's lending limit cannot be corrected by charging off the excess portion. To do otherwise would encourage lending limit abuses.

In the event the bank has exhausted all avenues of collection, and there is no possibility that any further recovery will be made, the Board of Directors of the bank may formally declare a debt to be worthless. This action, however, should not be used to circumvent the lending limits. If, in the examiner's opinion, the Board of Directors has declared a debt worthless only to circumvent the lending limit, then the examiner will cite the loan as being in violation. Each case will be determined on an individual basis.

Original Issue Date: September 1, 1987

Revision Date: March 31, 2016

STATEMENT OF POLICY #12

PARTICIPATION LOANS

The Nebraska Department of Banking and Finance ("Department") sets forth Statement of Policy #12 regarding participation loans. A state-chartered bank is prohibited from purchasing a loan subject to adverse classification by federal or state regulatory agencies unless the borrower's credit file contains a clear and definitive written program for the orderly liquidation of the entire line of credit.

The Department permits the renewal of adversely classified loans in non-affiliated banks. However, the Department is concerned about the placement of overlines. This policy permits renewals of adversely classified overline loans in non-affiliated banks only if the customer's credit file contains a written program providing for the orderly liquidation of the entire line of credit.

When a loan is participated because it is over the bank's legal lending limit, a state-chartered bank may not place the participation with recourse or otherwise agree to buy back the notes if the borrower defaults or otherwise does not make payment. State-chartered banks should be cautious that they do not make any representations that they will be liable for such placed paper.

Section 23A of the Federal Reserve Act prohibits the purchase of a credit subject to adverse classification by regulatory agencies from an affiliated bank, and allows for renewal of those credits on the books of the purchasing bank at the time of classification only under certain conditions.

Original Issue Date: May 23, 1984

Revision Date: May 22, 1986
March 31, 2016

STATEMENT OF POLICY #13

LENDING LIMITS WHERE BANK'S CAPITAL DECLINES

The Nebraska Department of Banking and Finance ("Department") sets forth Statement of Policy #13 regarding the lending limit for a bank that experiences a decline in bank capital, thereby lowering its lending limit.

A loan made within a bank's lending limits at the time the loan was made may be renewed, extended, or serviced without regard to changes in the lending limit of a bank following the initial extension of the loan if:

(a) the renewal, extension, or servicing of the loan does not result in the extension of funds beyond the initial amount of the loan; or

(b) the accrued interest on the loan is not added to the original amount of the loan in the process of renewal, extension, or servicing.

When a note matures or a demand clause is exercised, assuming the note was within the bank's lending limit on the date it originated, the bank may renew or extend the note as long as the amount of the renewal or extension does not exceed the initial amount of the note.

When the bank has established a master note for a customer, this master note may be serviced during the original term without regard to a bank's lending limit if, on the date the line of credit originated, it was within the bank's lending limit. The funds advanced may not exceed the original amount of the commitment. The advancement of funds must be directly related to the purpose for which the original commitment was made. In cases where the initial amount on a customer's note(s), combined with any unfunded commitments, is less than the current lending limit, any renewals, extension or new loans are subject to the bank's current (new) lending limit.

Any renewal or extension should be in keeping with sound banking principles. A decline in capital must be due to factors other than the payment of dividends.

Examples

Example 1: Bank A's lending limit on January 2, 2015 was $150,000 when it extended an operating master note, with a maturity of January l, 2016, to customer X for $120,000 for his hog operation. Bank A's lending limit on November 1, 2015, is $90,000. On November 1, 2015, Customer X's master note stands at $80,000, and he comes in for the additional $40,000 available on the master note for use in his hog operation.

The bank may honor the original $120,000 commitment even though it now exceeds the bank's lending limit. It makes no difference whether the loan was ever at the $120,000 limit during the year, since a master note is a commitment by the bank to extend up to that amount, and it is anticipated the amount will fluctuate over the operating cycle. The bank would be in violation of the statute for: (1) advancing money beyond the master note originally drawn by the parties (in the example, the limit would be $120,000); or, (2) for advancing funds for another area of his farm operation. When the master note comes up for renewal on January 1, 2016, the bank may renew or extend the initial amount, even though it exceeds the bank's lending limit.

Example 2: Bank A's lending limit on March 1, 2015, was $150,000 when it made a one-year loan to customer X for $120,000. On March 1, 2016, Bank A's lending limit is $90,000. Customer X has made payments of interest and principal and paid the loan down to $95,000. Bank A may renew or extend the loan at $120,000, even though it exceeds the lending limit.

Example 3: Customer X has a single advance note for $40,000 for livestock, a master note for $100,000 for operating expenses, and a $20,000 single advance note for equipment. These notes were all made within the bank's lending limits on January 2, 2015. Customer X pays off the $20,000 equipment note. On January 2, 2016, when the other two notes come up for renewal, he owes $36,000 on the livestock loan and $64,000 on the master note for operating expenses. The bank's lending limit on that date is $80,000. The bank may renew the livestock and operating loans in the respective amount of $40,000 and $100,000, even though they exceed the bank's current lending limit of $80,000. (For the purposes of this example, we will assume there is not a current livestock appraisal entitling the customer to borrow an extra 10%).

Original Issue Date: September 1, 1987

Revision Date: March 31, 2016

STATEMENT OF POLICY #14

OTHER REAL ESTATE

The Nebraska Department of Banking and Finance ("Department") sets forth Statement of Policy #14 regarding a bank's acquisition of other real estate ("ORE"). ORE is real estate acquired due to loan collection efforts. ORE is also known as OREO (Other Real Estate Owned).

Neb. Rev. Stat. § 8-150 provides, with regard to real estate conveyed to the bank for previously existing debts and real estate purchased to secure debts, that the amount entered on the records of the bank shall not be greater than:

(a) The unpaid balance of the debts due the bank plus the bank's out-of-pocket expenses incurred in acquiring clear title to the real estate;

(b) Its judgments or decrees with costs; or

(c) The appraised value of such real estate, whichever is less, except that a bank may expend funds as necessary for repairs or to complete a project in order to market such property.

APPRAISAL

Section 8-150(3)(a – c) requires that an appraisal be available on the date that the ORE is booked. In recognition of the fact that it may not always be possible to have an appraisal performed by an independent, licensed appraiser on hand at the time a parcel of property is deeded to the bank, and that such appraisals on property of nominal value may constitute a burdensome expense to the bank in relationship to the value that the bank is likely to receive, the Department hereby establishes the following procedures to be used at the time the bank receives ORE for previously contracted debts.

INITIAL APPRAISAL TO BE MADE WHEN BANK RECEIVES ORE

An appraisal is required at the time a parcel of ORE is booked. This appraisal may be done by any person who is familiar with real estate values in the area where the property is located. That person could be a realtor or lending officer of the bank, regardless of whether such person is licensed as an appraiser.

Such appraisal cannot be performed by the same officer who originated any loan related to the ORE.

PROCEDURE WHERE INITIAL APPRAISAL IS UNDER $100,000 OR 5% OF BANK'S EQUITY CAPITAL, WHICHEVER IS LESS

If the initial appraisal made at the time the ORE is booked is under $100,000 or 5% of the bank's equity capital, whichever is less, no further appraisal is necessary.

PROCEDURE WHERE INITIAL APPRAISAL IS OVER $100,000 OR 5% OF BANK'S EQUITY CAPITAL, WHICHEVER IS LESS

If the initial appraisal made at the time the ORE is booked is over $100,000, or 5% of the bank's equity capital, whichever is less, and such appraisal was not performed by an independent, licensed real estate appraiser, the bank will be required to obtain an appraisal performed by an independent, licensed real estate appraiser within 60 days of the time the property is initially booked.

If the bank chooses to book the property in an amount less than $100,000, or 5% of the bank's equity capital, whichever is less, even though the initial appraisal would suggest a greater value, no further appraisal is necessary.

ANNUAL APPRAISALS ON PROPERTY IN EXCESS OF $100,000 OR 5% OF BANK'S EQUITY CAPITAL AND RESERVES, WHICHEVER IS LESS

Banks will be required to maintain an annual appraisal by an independent, licensed appraiser on each parcel of ORE booked in excess of $100,000 or 5% of the bank's equity capital and reserves, whichever is less. Updates which are made by the same appraiser who performed the original appraisal, if independent and licensed, will be considered to meet the requirements of the annual appraisal.

If at any time the appraisal value is less than the value currently carried on the bank’s books, then the book value must be reduced to the appraisal value. If subsequent appraisals show the property has increased in value, a bank may not increase the value of the ORE on its books. The only time a financial gain will be realized is when the property is sold.

DEFINITION OF INDEPENDENT, LICENSED APPRAISER

An appraiser who is licensed through the Nebraska Real Property Appraiser Board will be considered independent if all of the following tests are met:

1. The appraiser is not connected with the bank or any of its affiliates as an officer, director, attorney, or employee. Neither the appraiser, nor his/her spouse, member of his or her firm, should be a member of the immediate family of any officer, director, attorney or employee of the bank or its affiliates.

2. The appraiser does not own, either directly or indirectly, any of the shares of stock of the bank or its affiliates.

3. The appraiser does not have any proprietary interest in any partnership, firm, corporation, syndicate, or other business or legal entity which, directly or indirectly, controls the bank or any of its affiliates.

4. Neither the appraiser nor any member of his/her immediate family is a borrower of the bank.

5. The appraiser does not have any conflict of interest, or the appearance thereof, by reason of business or personal relationships with management or its decisions or functions.

The foregoing points are not to be construed as all-inclusive criteria in judging the independence of a licensed appraiser, but rather set forth the most common conditions which contribute to a lack of independence. It is the responsibility of the bank to ensure that the appraisers which it uses are independent, and to resolve any question as to independence before engaging the appraiser. Department examiners will determine where it is appropriate, that real estate appraisers are both independent and licensed with the Nebraska Real Property Appraiser Board where the property is located in Nebraska, or by the comparable state agency in the respective state in which the property is located.

SALE OF ORE TO BANK INSIDER

Any sale of ORE to bank insiders must be fully documented, and must show that such sale is in the best interests of the bank. The bank must have an appraisal by a licensed, independent appraiser in the file prior to such sale, regardless of the appraised value or book value of such property.

For the purposes of this policy statement, insiders will be considered to include stockholders, directors, officers, and employees of the bank or the bank's holding company, and any related interests of the foregoing entities. Related interests include: 1) all affiliates of the bank or the bank holding company; and 2) corporations and business entities in which any shareholder or director of the bank or bank holding company has an interest.

APPRAISAL VALUES

It is imperative that the basis for such appraisals be specified, so that the "fair value" is accurately determined. "Fair value" will generally be defined as the amount which can reasonably be expected to be received in a current sale, under current economic conditions, between a willing buyer and a willing seller. This further implies that the buyer and seller are prudent and knowledgeable, neither selling nor purchasing of necessity. The appraiser should also be specifically instructed to consider the value of a given property in light of the anticipated exposure to the market for a "reasonable" length of time, taking into consideration both the property type and local market conditions.

ALL ORE TO BE DISPOSED OF WITHIN FIVE YEARS

Section 8-150 requires that real estate acquired in satisfaction of debts or at sale shall be disposed of within five years unless authority is given in writing by the Department to hold the property for a longer period. This extension is by no means automatic. The Department expects the investment to be disposed of within five years, and will only consider exceptions if it can be clearly demonstrated that good faith efforts have been made to dispose of the property and that such efforts have not been successful. A request for extension should be submitted to the Department at least ninety (90) days prior to expiration of the five-year holding period.

Original Issue Date: January 1, 1985

Revision Date: November 30, 1989
September 15, 2007
March 31, 2016

STATEMENT OF POLICY #15

FINANCIAL INSTITUTION BOND COVERAGE

The Nebraska Department of Banking and Finance ("Department") sets forth Statement of Policy #15 regarding financial institution bond coverage required by Neb. Rev. Stat. § 8-110 of the Nebraska Banking Act.

Neb. Rev. Stat. § 8-110 states in part:

> The department shall require each state bank to obtain a fidelity bond, naming the bank as obligee, in an amount to be fixed by the department. The bond shall be issued by an authorized insurer and shall be conditioned to protect and indemnify the bank from loss which it may sustain, of money or other personal property, including that for which the bank is responsible through or by reason of the fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, misapplication, misappropriation, or any other dishonest or criminal act of or by any of its officers or employees. Such bond may contain a deductible clause in an amount to be approved by the director. An executed copy of the bond shall be filed with and approved by the director and shall remain a part of the records of the department.

Setting the amount of bond coverage is a task for the bank's board of directors. Department Examiners will review bond coverage to determine that the bond is sufficient.

Section 8-110 clearly establishes that the Department shall require each state bank to obtain a fidelity bond. The Nebraska Attorney General's office has previously advised that this statutory language cannot be interpreted to allow a multiple bank/entity bond unless each bank individually has the full protection of the bond. In those instances, where more than one bank/entity is to be covered under the bond, a rider is necessary that clearly states that each bank is separately covered up to the full amount of the coverages under the bond and that payments for losses involving a Nebraska state-chartered bank are to be made to the Nebraska state-chartered bank (party) incurring the loss.

A fidelity bond's joint insured language often does not comply because it will state losses will be paid to the first named insured. In these cases, a rider is necessary stating that checks/payments made for losses incurred by the state-chartered bank are made payable to the insured state-chartered bank and not to another party/insured on the bond.

The Department requires that the state bank being insured be identified by the address of the bank's charter; i.e., the street, city, state where typically the main office of the bank is located.

Detailed below are coverages typically provided in Standard Form No. 24 Financial Institution Bond.

Clause (A) – Fidelity

Coverage (A) covers losses as a result of dishonest or fraudulent acts of officers and employees, attorneys retained by the bank, and non-employee data processors while they are performing services for the insured.

Clause (B) – On Premises

Loss of property (as defined in the bond) resulting directly from (1) robbery, burglary, misplacement, mysterious unexplained disappearance and damage or destruction, or (2) theft, false pretense, common law or statutory larceny committed by a person on the premises of the insured, while the property is located at the bank.

Clause (C) – In Transit

The loss of property in Clause (C) is identical to Clause (B) above, except the property is covered while it is in transit. The property must be in the custody of a person acting as a messenger of the bank while the property is in transit.

Clause (D) – Forgery or Alteration

Clause (D) provides coverage for any loss due to forgery or alteration of, on, or in any checks, drafts, acceptances, withdrawal orders and other instruments received over the counter or through clearings.

Clause (E) – Securities

Clause (E) provides coverage for any (1) loss due to forgery, loss, or alteration of certain named securities; (2) loss due to such bank having guaranteed or witnessed signatures on certain named instruments and securities; and (3) loss due to such bank having acquired, sold or delivered, or given value, extended credit or assumed liability on certain named securities or other instruments.

Clause (F) – Counterfeit Currency

Clause (F) covers loss resulting from the receipt by the insured in good faith, of any counterfeit or altered money of the United States or Canada or any foreign country in which the insured maintains a branch office.

Clause (G) – Fraudulent Mortgages

Clause (G) coverage is provided for loss resulting directly from having accepted or acted upon the faith of any real property mortgage which proves defective by reason of a fraudulent signature.

Coverage Available by Rider

The following are additional areas of coverage that are often available by rider or insuring agreement that the Board of Directors may want to consider:

Computer Systems Fraud

The rider covers loss resulting directly from a fraudulent entry of electronic data or computer program info, or change of electronic data or computer program with a computer system covered under terms of the rider.

Extortion – Threats to Persons

The rider covers loss of property surrendered away from an office of the insured as a result of a threat communicated to the insured to do bodily harm to a director, trustee, employee or partner of the insured or a relative of theirs who was, or allegedly was, kidnapped anywhere.

Extortion – Threats to Property

The rider covers loss of property surrendered away from an office of the insured as a result of a threat communicated to the insured to do damage to the premises or property of the insured located anywhere.

Servicing Contractors Insuring Agreement

The rider covers loss through any dishonest or fraudulent act committed by any servicing contractor as defined in the rider.

Transit Cash Letter Insuring Agreement

The rider covers loss resulting directly from the physical destruction or other loss of an item enclosed in a transit cash letter provided such item is still missing 21 days after the insured learns that the item has not arrived at the destination.

Unattended Automated Teller Machine Coverage

The rider covers loss or damage to an ATM machine through burglary and other perils.

Fraudulent Transfer Instructions Insuring Agreement

The rider covers loss directly from the transfer of money on deposit in a customer's account or of a customer's certificated or uncertificated securities upon a fraudulent instruction transmitted to the insured via telephone, telefacsimile or electronic mail.

Other Rider Coverage May Include: Stop Payment, Computer Programmer, Electronic Intruder Theft, and Remote Deposit Capture Duplicate Deposit & Forgery.

Amount of Coverage

Determining the amount of coverage under Clause (A) is a challenging task. The risk exposure under Clause (A) is influenced by many factors. The Board of Directors should include the cash and securities normally on hand, fields of business it is engaged in, the number, experience level, turnover and level of authority of the employees, the scope of data processing activities, internal controls, and related items in the factors it considers in determining the Clause A coverage and in determining additional coverage obtained. The amount of coverage may be influenced by schedules developed by banking associations or the insurance industry that focuses on an institution’s deposit size.

The Department examiners will review Clauses (A) through (G) of the insurance coverage. A bank is only required to maintain Clause (A) through (C), and (F). However, a bank should consider Clauses (D), (E), and (G) if the coverage will benefit the bank.

The Board of Directors must determine the bank’s bond coverage and document the discussion in the minutes of the Board. The Board should formally review bond coverage no less frequently than every two years and when the bank is considering/entering into a new field of business or initiating significant changes in its operations.

Original Issue Date: December 31, 1987

Revision Date: March 31, 2016

STATEMENT OF POLICY #16

DISCLOSURE OF INFORMATION TO BONDING COMPANIES

The Nebraska Department of Banking and Finance ("Department") sets forth Statement of Policy #16 regarding the allowable disclosure of information to bonding companies. In the process of obtaining and/or renewing fidelity and officers and directors liability insurance coverage, financial institutions may disclose to the insuring company certain information contained in examination reports, along with information relating to formal or informal regulatory action to which the institution is subject. The following list may be provided to insurers:

1. By number and dollar amount only, assets subject to adverse classification and listed for Special Mention.

2. A copy of any outstanding or proposed Cease & Desist Order, Consent Order, Memorandum of Understanding, or other written informal action or agreement.

3. Correspondence between the financial institution and the Department, which is not specifically marked "confidential."

The Department is not mandating the above information be released to bonding companies, as that decision rests with the financial institution's Board of Directors. Any other information beyond the above is to remain confidential and is not to be disclosed. When any information from an examination report or formal or informal action is released to an insurer, the institution's Board of Directors should specifically authorize release of that information by appropriate board resolution, and provide instructions as to copying, use, and return of the information.

Numerical ratings assigned to each institution by the Department are not to be disclosed.

Disclosure of information not authorized by the Department may result in administrative action, including the revocation of executive officers' licenses and/or the approval to act as a member of the Board of Directors. The financial institution should ensure that its primary federal regulator approves of the release of the information.

Original Issue Date: February 3, 1987

Revision Date: March 31, 2016

STATEMENT OF POLICY #17

EXTERNAL AUDITORS AND CONFIDENTIALITY OF EXAMINATIONS AND OTHER MATERIALS

The Nebraska Department of Banking and Finance ("Department") hereby sets forth Statement of Policy #17 to assist external auditors of a financial institution. Included as part of this Statement of Policy #17, and attached, is the Interagency Policy Statement On Coordination And Communication Between External Auditors And Examiners, last updated April 20, 2014, and the Consumer Financial Protection Bureau's Compliance Bulletin 2015-01, issued January 27, 2015. The external auditor and the financial institutions must enter into a comprehensive confidentiality agreement.

A Department examination report may be reviewed by the financial institution's external auditor. If a copy of the Department's examination report is removed from the financial institution, the auditor must sign a confidentiality statement, agreeing to be bound by the same confidentiality restrictions to which the institution is subject. The Department will not prescribe the exact format of a confidentiality agreement.

Copies of the examination report may only be shared on paper. Providing a copy of an examination report electronically, by e-mail, a disc, thumb drive or any other media is not allowed.

Accountants are also being encouraged by the American Institute of Certified Public Accountants to attend board exit reviews conducted by examiners. The Department has no objection to this practice; however, the Board of Directors must pass a specific resolution at the beginning of the meeting allowing the accountant to attend, and such attendance must be noted in the minutes.

Original Issue Date: March 15, 1990

Revision Date: March 31, 2016

FDIC Law, Regulations, Related Acts

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5000 - Statements of Policy

INTERAGENCY POLICY STATEMENT ON COORDINATION AND COMMUNICATION BETWEEN EXTERNAL AUDITORS AND EXAMINERS

1

The federal bank and thrift regulatory agencies are issuing this policy statement to improve the coordination and communication between external auditors and examiners. This policy statement provides guidelines regarding information that should be provided by depository institutions to their external auditors and meetings between external auditors and examiners in connection with safety and soundness examinations.

Coordination of External Audits and Examinations

In most cases, the federal bank and thrift regulatory agencies provide institutions with advance notice of the starting date(s) of full-scope or other examinations. When notified, institutions are encouraged to promptly advise their external auditors of the date(s) and scope of supervisory examinations in order to facilitate the auditors' planning and scheduling of audit work. The external auditors may also advise the appropriate regulatory agency regarding the planned dates for the auditing work on the institution's premises in order to facilitate coordination with the examiners.

Some institutions prefer that audit work be completed at different times from examination work in order to reduce demands upon their staff members and facilities. On the other hand, some institutions prefer to have audit work and examination work performed during similar periods in order to limit the impact of these efforts on the institutions' operations to certain times during the year. By knowing in advance when examinations are planned, institutions have the flexibility to work with their external auditors to schedule audit work concurrent with examinations or at separate times.

Other Information Provided By the Institution

Consistent with prior practice, a depository institution should provide its external auditors with a copy of certain reports and supervisory documents, including:

- The most recent regulatory Report of Condition (i.e., "Call Reports" for banks, and "Thrift Financial Reports" for savings institutions);
- The most recent examination report and pertinent correspondence received from its regulator(s);
- Any supervisory memorandum of understanding with the institution that has been put into effect since the beginning of the period covered by the audit;
- Any written agreement between a federal or state banking agency and the institution that has been put into effect since the beginning of the period covered by the audit; and
- A report of:

-- Any actions initiated or undertaken by a federal banking agency since the beginning of the period covered by the audit under certain subsections of section 8 of the Federal Deposit Insurance Act (1000-900.html#fdic1000sec.8a),[2] or any similar action taken by an appropriate state bank supervisor under state law; and

-- Any civil money penalty assessed under any other provision of law with respect to the depository institution or any institution-affiliated party, since the beginning of the period covered by the audit.

External Auditor Attendance at Meetings Between Management and Examiners

Generally, the federal bank and thrift regulatory agencies encourage auditors to attend examination exit conferences upon completion of field work or other meetings between supervisory examiners and an institution's management or Board of Directors (or a committee thereof) at which examination findings are discussed that are relevant to the scope of the audit. When other conferences between examiners and management are scheduled (i.e., that do not involve examination findings that are relevant to the scope of the external auditor's work), the institution shall first obtain the approval of the appropriate federal bank or thrift regulatory agency in order for the auditor to attend the meetings. This policy does not preclude the federal bank and thrift regulatory agencies from holding meetings with the management of depository institutions without auditor attendance or from requiring that the auditor attend only certain portions of the meetings.

Depository institutions should ensure that their external auditors are informed in a timely manner of scheduled exit conferences and other relevant meetings with examiners and of the agencies' policies regarding auditor attendance at such meetings.

Meetings and Discussions Between External Auditors and Examiners

An auditor may request a meeting with any or all of the appropriate federal bank and thrift regulatory agencies that are involved in the supervision of the institution or its holding company during, or after completion of, examinations in order to inquire about supervisory matters relevant to the institution under audit. External auditors should provide an agenda in advance to the agencies that will attend these meetings. The federal bank and thrift regulatory agencies will generally request that management of the institution under audit be represented at the meeting. In this regard, examiners generally will only discuss with an auditor examination findings that have been presented to the depository institution's management.

In certain cases, external auditors may wish to discuss with regulators matters relevant to the institution under audit at meetings without the representation from the institution's management. External auditors may request such confidential meetings with any or all of the federal bank and thrift regulatory agencies, and the agencies may also request such meetings with the external auditor.

Confidentiality of Supervisory Information

While the policies of the federal bank and thrift regulatory agencies permit external auditors to have access to the previously mentioned information on depository institutions under audit, institutions and their auditors are reminded that information contained in examination reports, inspection reports, and supervisory discussions--including any summaries or quotations--is confidential supervisory information and must not be disclosed to any party without the written permission of the appropriate federal or thrift regulatory agency. Unauthorized disclosure of confidential supervisory information may subject the auditor to civil and criminal actions and fines and other penalties.

[Source: FDIC Financial Institutions Letter (FIL-57-92), *dated July 24, 1992]*

[1]The agencies issuing this policy statement are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision. Go back to Text

[2]Section 112 of the Federal Deposit Insurance Corporation Improvement Act of 1991 includes a requirement that the institution provide its external auditors with a report of any action initiated or taken by a federal banking agency during the period under audit under subsection (a), (b), (c), (e), (g), (i), (s) or (t) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1817 (1000-800.html#fdic1000sec.7a)). Go back to Text

cfpb Consumer Financia Protection Bureau

1700 G Street, N.W., Washington, DC 20552

CFPB Compliance Bulletin 2015-01

Date: January 27, 2015

Subject: Treatment of Confidential Supervisory Information

The Consumer Financial Protection Bureau (CFPB) issues this compliance bulletin as a reminder that, with limited exceptions, persons in possession of confidential information, including confidential supervisory information (CSI), may not disclose such information to third parties.[1] More particularly, this bulletin:

1. Sets forth the definition of CSI;
2. Provides examples of CSI;
3. Highlights certain legal restrictions on the disclosure of CSI; and
4. Explains that private confidentiality and non-disclosure agreements (NDAs) neither alter the legal restrictions on the disclosure of CSI nor impact the CFPB's authority to obtain information from covered persons[2] and service providers[3] in the exercise of its supervisory authority.

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[1] "Confidential information" means "confidential consumer complaint information, confidential investigative information, and confidential supervisory information, as well as any other CFPB information that may be exempt from disclosure under the Freedom of Information Act pursuant to 5 U.S.C. 552(b). Confidential information does not include information contained in records that have been made publicly available by the CFPB or information that has otherwise been publicly disclosed by an employee with the authority to do so." 12 CFR 1070.2(f). CSI, the focus of this bulletin, is but one type of confidential information. *See* 12 CFR 1070.2(i) (defining "confidential supervisory information").

[2] "Covered person[s]" include "(A) any person that engages in offering or providing a consumer financial product or service; and (B) any affiliate of a person described [in (A)] if such affiliate acts as a service provider to such person." 12 U.S.C. § 5481(6).

[3] "Service provider" means "any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service, including a person that—(i) participates in designing, operating, or maintaining the consumer financial product or service; or (ii) processes transactions relating to the consumer financial product or service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of data of the same form as the person transmits or processes) . . . . The term 'service provider' does not include a person solely by virtue of such person offering or providing to a covered person—(i) a support service of a type provided to businesses generally or a similar ministerial service; or (ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media." 12 U.S.C. § 5481(26).

Background

The CFPB has supervisory authority over certain covered persons, including very large depository institutions, credit unions and their affiliates;[4] certain nonbanks;[5] and service providers[6] (collectively, supervised financial institutions).[7] Many supervised financial institutions became subject to federal supervision for the first time under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[8]

Pursuant to authority granted under the Dodd-Frank Act,[9] the CFPB has issued regulations that govern the use and disclosure of CSI.[10] The CFPB expects all supervised financial institutions to know and comply with the regulations governing CSI, and provides the following guidance to assist with such compliance.

Definition of CSI

Under the CFPB's regulations, "confidential supervisory information" means:

- Reports of examination, inspection and visitation, non-public operating, condition, and compliance reports, and any information contained in, derived from, or related to such reports;

- Any documents, including reports of examination, prepared by, or on behalf of, or for the use of the CFPB or any other Federal, State, or foreign government agency in the exercise of supervisory authority over a financial institution, and any supervision information derived from such documents;

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[4] 12 U.S.C. § 5515(a).

[5] Under 12 U.S.C. § 5514, the CFPB has supervisory authority over all nonbank covered persons offering or providing three enumerated types of consumer financial products or services: (1) origination, brokerage, or servicing of consumer loans secured by real estate, and related mortgage loan modification or foreclosure relief services; (2) private education loans; and (3) payday loans. 12 U.S.C. § 5514(a)(1)(A), (D), (E). The CFPB also has supervisory authority over "larger participant[s] of a market for other consumer financial products or services," as the CFPB defines by rule. 12 U.S.C. § 5514(a)(1)(B), (a)(2). Additionally, the CFPB has the authority to supervise any nonbank covered person that it "has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity . . . to respond[,] . . . is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services." 12 U.S.C. § 5514(a)(1)(C).

[6] 12 U.S.C. §§ 5514(e), 5515(d).

[7] "Financial institution" means "any person involved in the offering or provision of a 'financial product or service,' including a 'covered person' or 'service provider,' as those terms are defined by 12 U.S.C. § 5481." 12 CFR 1070.2(l). "Supervised financial institution" means "a financial institution that is or that may become subject to the CFPB's supervisory authority." 12 CFR 1070.2(q).

[8] Public Law No. 111-203 (codified at 12 U.S.C. § 5301 *et seq.*).

[9] 12 U.S.C. § 5512(c)(6)(A).

[10] *See* 12 CFR Part 1070. In addition to the confidentiality protections afforded by the CFPB's regulation, CSI may also be subject to other laws regarding disclosure, including the bank examination or other privileges, privacy laws, and other restrictions.

- Any communications between the CFPB and a supervised financial institution or a Federal, State, or foreign government agency related to the CFPB's supervision of the institution;

- Any information provided to the CFPB by a financial institution to enable the CFPB to monitor for risks to consumers in the offering or provision of consumer financial products or services, or to assess whether an institution should be considered a covered person, as that term is defined by 12 § U.S.C. 5481, or is subject to the CFPB's supervisory authority; and/or

- Information that is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(8).[11]

CSI does not include documents prepared by a financial institution for its own business purposes and that the CFPB does not possess.[12]

Examples of CSI

Supervised financial institutions and other persons that may come into possession of CSI should understand what constitutes CSI in order to comply with the applicable rules.[13] Examples of CSI include, but are not limited to:

- CFPB examination reports and supervisory letters;

- All information contained in, derived from, or related to those documents, including an institution's supervisory Compliance rating;

- Communications between the CFPB and the supervised financial institution related to the CFPB's examination of the institution or other supervisory activities; and

- Other information created by the CFPB in the exercise of its supervisory authority.

Thus, CSI includes any workpapers or other documentation that CFPB examiners have prepared in the course of an examination. CSI also includes supervisory information requests from the CFPB to a supervised financial institution, along with the institution's responses. In addition, any CFPB supervisory actions, such as memoranda of understanding between the CFPB and an institution, and related submissions and correspondence, are CSI.

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[11] 12 CFR 1070.2(i).
[12] 12 CFR 1070.2(i)(2).
[13] *See generally* 12 CFR Part 1070.

Disclosure of Confidential Information Generally Prohibited

Subject to limited exceptions, supervised financial institutions and other persons in possession of CSI of the CFPB may not disclose such information.[14]

Exceptions to General Prohibition on Disclosure of CSI

There are certain exceptions to the general prohibition against disclosing CSI to third parties. A supervised financial institution may disclose CSI of the CFPB lawfully in its possession to:

- Its affiliates;
- Its directors, officers, trustees, members, general partners, or employees, to the extent that the disclosure of such CSI is relevant to the performance of such individuals' assigned duties;
- The directors, officers, trustees, members, general partners, or employees of its affiliates, to the extent that the disclosure of such CSI is relevant to the performance of such individuals' assigned duties;
- Its certified public accountant, legal counsel, contractor, consultant, or service provider.[15]

Supervised financial institutions may also in certain instances disclose CSI to others with the prior written approval of the Associate Director for Supervision, Enforcement, and Fair Lending, or his or her delegee (Associate Director).[16] The recipient of CSI shall not, without the prior written approval of the Associate Director, utilize, make, or retain copies of, or disclose CSI for any purpose, except as is necessary to provide advice or services to the supervised financial institution or its affiliate.[17] Moreover, any supervised financial institution or affiliate disclosing CSI shall take reasonable steps as specified in the regulations to ensure that the recipient complies with the rules governing CSI.[18]

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[14] *See* 12 CFR 1070.41(a) (providing that "[e]xcept as required by law or as provided in this part, no . . . person in possession of confidential information[] shall disclose such confidential information by any means (including written or oral communications) or in any format (including paper and electronic formats), to: (1) [a]ny person who is not an employee, contractor, or consultant of the CFPB; or (2) [a]ny CFPB employee, contractor, or consultant when the disclosure of such confidential information . . . is not relevant to the performance of the employee's, contractor's, or consultant's assigned duties"); *see also* 12 CFR 1070.42(b) (setting forth exceptions relating to the disclosure of "confidential supervisory information of the CFPB" which is "lawfully in [the] possession" of any "supervised financial institution").

[15] 12 CFR 1070.42(b).

[16] 12 CFR 1070.42(b)(2)(ii).

[17] 12 CFR 1070.42(b)(3)(i).

[18] 12 CFR 1070.42(b)(3)(ii).

Confidential information made available by the CFPB pursuant to 12 CFR Part 1070 remains the property of the CFPB. There are other important requirements relating to the disclosure of confidential information, including disclosure pursuant to third-party legally enforceable demands, such as subpoenas or Freedom of Information Act requests. Among a number of other requirements, a recipient of a demand for confidential information must inform the CFPB's General Counsel of the demand.[19]

NDAs Do Not Supersede Federal Legal Requirements

The CFPB recognizes that some supervised financial institutions may have entered into third-party NDAs that, in part, purport to: (1) restrict the supervised financial institution from sharing certain information with a supervisory agency; and/or (2) require the supervised financial institution to advise the third party when the institution shares with a supervisory agency information subject to the NDA. However, such provisions in NDAs between supervised financial institutions and third parties do not alter or limit the CFPB's supervisory authority or the supervised financial institution's obligations relating to CSI.

A supervised financial institution should not attempt to use an NDA as the basis for failing to provide information sought pursuant to supervisory authority. The CFPB has the authority to require supervised financial institutions and certain other persons to provide it with reports and other information to conduct supervisory activities, pursuant to the Dodd-Frank Act.[20] Failure to provide information required by the CFPB is a violation of law for which the CFPB will pursue all available remedies.[21]

In addition, a supervised financial institution may risk violating the law if it relies upon provisions of an NDA to justify disclosing CSI in a manner not otherwise permitted. As noted above, any disclosure of CSI outside of the applicable exceptions would require the prior written approval of the Associate Director for Supervision, Enforcement, and Fair Lending (or his or her delegee).[22]

Supervised financial institutions should contact appropriate CFPB supervisory personnel with any questions regarding this Bulletin.

Regulatory Requirements

This compliance bulletin provides nonbinding guidance on matters including limitations on disclosure of CSI under applicable law. It is therefore exempt from the notice and comment rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. § 553(b). Because no notice of proposed

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[19] 12 CFR 1070.47.
[20] 12 U.S.C. §§ 5514, 5515.
[21] *See* 12 U.S.C. § 5536(a)(2) (making it unlawful for a supervised financial institution "to fail or refuse, as required by Federal consumer financial law, or any rule or order issued by the CFPB thereunder -- (A) to permit access to or copying of records; . . . or (C) to make reports or provide information to the Bureau.").
[22] *See* 12 CFR 1070.42(b)(2)(ii).

rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[23] In addition, the CFPB has determined that this bulletin summarizes existing requirements and does not establish any new nor revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act.[24]

[23] 5 U.S.C. §§ 603(a), 604(a).
[24] 44 U.S.C. § 3501 *et seq.*

STATEMENT OF POLICY #18

RESPONSE PROGRAM/NOTIFICATION
UNAUTHORIZED ACCESS TO CUSTOMER INFORMATION

The Nebraska Department of Banking and Finance ("Department") sets forth Statement of Policy #18 regarding a Financial Institution's Response Program to a data security breach and the notification to the Department of a data security breach.

All Financial Institutions shall have in place a written Response Program detailing the institution's prescribed method of handling an unauthorized access to customer information. The Response Program will be reviewed by Department Examiners as a part of a Financial Institution's regular examination.

At such time as a Financial Institution becomes aware of an incident involving unauthorized access to, or use of, sensitive customer information, the institution shall immediately notify the Department of the apparent security breach and the Financial Institution shall review Neb. Rev. Stat. §§ 87-801 – 87-807 (the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006). If an incident requires customer notification, the Department shall be provided one sample copy of the customer(s) notice or other documentation. This notice shall be provided to the Department prior to, or simultaneously with, the customer(s) receiving the notice.

If an incident requires a filing of a Suspicious Activity Report ("SAR"), a copy of the SAR must be timely delivered to the Department.

Original Issue Date: June 1, 2005

Revision Date: March 31, 2016