

## DEPARTMENT OF REGULATORY AGENCIES

### Division of Banking

#### COMMERCIAL BANKS

#### 3 CCR 701-1

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

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#### **CB101.7      Messenger Service [Section 11-105-101(3) and 11-105-304(7), C.R.S.]**

A.      Definition.

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

B.      Pickup and delivery of items relating to nonbranching activities.

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

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

1.      An institution and its customers may use a messenger service to pick up from, and deliver to, customers items that relate to branching functions within the meaning of Section 11-101-401(10), C.R.S. without regard to the limitations set forth in Title 11, Article 105, C.R.S., provided the messenger service is established and operated by a third party. In using such a facility, an institution may establish terms, conditions, and limitations, consistent with this Rule, as it deems appropriate to assure compliance with safe and sound banking practices.
2.      The Division of Banking reviews whether a messenger service is established by a third party on a case-by-case basis considering all of the circumstances. However, a messenger service is established by a third party if:
  - a.      A party other than the institution owns or rents the messenger service and its facilities and employs the persons who provide the service; and
  - b.      The messenger service:
    - (1)      Makes its services available to the public, including other depository institutions;

- (2) Retains the discretion to determine in its own business judgement which customers and geographical areas it will serve;
  - (3) Maintains ultimate responsibility for scheduling, movement, and routing;
  - (4) Does not operate under the name of the institution, and the institution and the messenger service do not advertise, or otherwise represent, that the institution itself is providing the service, although the institution may advertise that its customers may use one or more third party messenger services to transact business with the institution;
  - (5) Assumes responsibility for the items during transit and maintains adequate insurance covering thefts, employee fidelity, and other in-transit losses; and
  - (6) Enters into contracts with customers that provide that the messenger service acts as the agent for the customer when the items are in transit. The institution deems items intended for deposit to be deposited when credited to the customer's account at an established institution office. The institution deems items representing withdrawals to be paid when the items are given to the messenger service.
3. An institution is permitted to defray all or a part of the costs incurred by a customer in transporting items through a messenger service. Payment of such expenses may only cover costs associated with each transaction involving the customer and the messenger service. The institution may impose such terms, conditions, and limitations as it deems appropriate with respect to the payment of such costs.
- D. Pickup and delivery of items pertaining to branching activities where the messenger service is established by the institution.

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

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

- A. Unless authorized by applicable law, a state bank may not invest funds of a fiduciary account for which a bank has investment discretion in the stock or obligations of, or assets acquired from: the bank or its directors, officers or employees or affiliates of the bank or any of their directors, officers, or employees; or individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the bank. If the retention of stock or obligations of the bank or its affiliates in a fiduciary account is consistent with applicable law, a state bank may exercise rights to purchase its own stock or securities convertible into its own stock when offered pro rata to stockholders. When the exercise of rights or receipt of the stock dividend results in fractional share holding, additional fractional shares may be purchased to compliment the fractional shares acquired.
- B. A state bank may sell assets between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law.

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

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

- A. The Colorado State Banking Board (Banking Board) authorizes, pursuant to its authority in Section 11-105-304(7) C.R.S., state-chartered commercial banks to invest in an agricultural credit corporation as outlined in Code of Federal Regulations Title 12 - Banks and Banking Chapter I - Comptroller of the Currency, Department of the Treasury Part 5 Rules, Policies, and Procedures for Corporate Activities Subpart C Expansion of Activities § 5.36 Other equity investments by a national bank (d) Procedure (1) (i) An agricultural credit corporation.
- B. The regulation titled "Code of Federal Regulations Title 12 - Banks and Banking Chapter I - Comptroller of the Currency, Department of the Treasury Part 5 Rules, Policies, and Procedures for Corporate Activities Subpart C Expansion of Activities § 5.36 Other equity investments by a national bank (d) Procedure (1) (i) An agricultural credit corporation" as effective on November 29, 2024, is hereby incorporated by reference. No later amendment or edition of the above is incorporated into this Section CB101.24. All referenced laws and regulation shall be available for copying or public inspection during regular business hours from the Division of Banking (Division), Department of Regulatory Agencies, 1560 Broadway, Suite 975, Denver, CO 80202. The Division will provide a certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy. The incorporated material is also available at <https://banking.colorado.gov/banking-home/rules-statutes>.
- C. All notifications required under this rule, must be submitted to the Division. Additionally, any references to "National Bank" in the incorporated federal regulations shall be interpreted to mean "Colorado State-Chartered Commercial Bank."

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

- A. Any bankers' blanket bond procured by a state bank to satisfy the requirements of Section 11-103-601, C.R.S., shall provide that the bonding company providing the bond shall give at least ninety (90) days notice of cancellation or non-renewal of such bond to the bank and to the Commissioner.
- B. Any state bank that experiences difficulty in obtaining and maintaining blanket bond coverage shall notify the Commissioner:
1. When there is a lapse in fidelity coverage; and
  2. Monthly thereafter concerning actions and progress in obtaining coverage.

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

- A. General Authority

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

**B. Limitations**

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

**C. Restrictions on Transactions with Affiliates**

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

1. The terms and circumstances of the transaction, including credit standards, must be substantially the same, or at least as favorable to the bank or its subsidiary as those prevailing at the time for comparable transactions with or involving other non affiliated companies;
2. In the case of any affiliate, the aggregate amount of lease transactions of the bank and its subsidiaries does not exceed 10 percent of the total capital of the bank; and
3. In the case of all affiliates, the aggregate amount of lease transactions of the bank and its subsidiaries does not exceed 20 percent of the total capital of the bank.

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

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

**E. Reference**

1. Banking Board Rule CB101.64 is a Rule enacted by the Banking Board and is administered by the Division of Banking.
2. For more detailed information pertaining to these provisions, please contact the Banking Board Administrator to the Banking Board at 1560 Broadway, Suite 975, Denver, Colorado 80202, (303) 894-7575.

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

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

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

2. No state bank that has a regulatory composite examination rating (CAMELS) of "3" from any regulator and that is subject to a memorandum of understanding, cease and desist order, written agreement imposed by or entered into with any regulator of the state bank shall make total investments pursuant to Section 11-105-304(9)(a), C.R.S., in excess of five percent of its total assets.
3. A state bank that intends to initiate a program of investments under the authority of this statute and rule shall give sixty calendar days' advance notice to the Division of Banking (Division) of such intent; except that such notice may be waived in the Colorado State Banking Board's (Banking Board) discretion where such notice is impracticable or unnecessary. The state bank shall also notify the Division within ten calendar days after the commencement of the investment program.

**CB101.36 Assessments and Fees**

(Repealed and recodified within 701-10, AR16)

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

- A. The Colorado State Banking Board (Banking Board) authorizes, pursuant to its authority in Section 11-105-304(7) C.R.S., state-chartered commercial banks to adhere to requirements pertaining to transactions with affiliates and loans to executive officers, directors, and principal shareholders as outlined in Code of Federal Regulations Title 12 - Banks and Banking Chapter II - Federal Reserve System - Subchapter A - Board of Governors of the Federal Reserve System - Part 223 Transactions Between Member Banks and Their Affiliates ("Regulation W") and Code of Federal Regulations Title 12 - Banks and Banking Chapter II - Federal Reserve System - Subchapter A - Board of Governors of the Federal Reserve System - Part 215 - Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks ("Regulation O").
- B. The regulations titled "Code of Federal Regulations Title 12 - Banks and Banking Chapter II - Federal Reserve System - Subchapter A - Board of Governors of the Federal Reserve System - Part 223 Transactions Between Member Banks and Their Affiliates ("Regulation W")" and "Code of Federal Regulations Title 12 - Banks and Banking Chapter II - Federal Reserve System - Subchapter A - Board of Governors of the Federal Reserve System - Part 215 - Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks ("Regulation O")" as effective on December 20, 2024, are hereby incorporated by reference. No later amendment or edition of the above are incorporated into this Section CB101.37. All referenced laws and regulations shall be available for copying or public inspection during regular business hours from the Division of Banking (Division), Department of Regulatory Agencies, 1560 Broadway, Suite 975, Denver, CO 80202. The Division will provide a certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy. The incorporated material is also available at <https://banking.colorado.gov/banking-home/rules-statutes>.
- C. All notifications required under this rule, must be submitted to the Division. Additionally, any references to "Member Bank" in the incorporated federal regulations shall be interpreted to mean "Colorado State-Chartered Commercial Bank."

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

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

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

- A. Definition. "Sale of Federal funds" means, for purposes of this Rule, any transaction among depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at Federal Reserve banks or from credits to new or existing deposit balances due from a correspondent depository institution.
- B. Sales of Federal funds with a maturity of one business day, or under a continuing contract, are not "loans and extensions of credit" for purposes of lending limits. However, sales of Federal funds with a maturity of more than one business day are subject to the lending limits.
- C. A "continuing contract" refers to an agreement that remains in effect for more than one business day but has no specified maturity and requires no advance notice for termination.

**CB101.40      (Repealed and Reserved for Future Use.)**

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

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

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

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

- A. Real Estate Lending
1. General.
    - a. Any state bank may make, arrange, purchase, or sell loans or extensions of credit secured by liens on interests in real estate.
  2. Scope.
    - a. For the purposes of this Rule, loans secured by liens on interests in real estate include loans made upon the security of condominiums, leaseholds, cooperatives, forest tracts, construction project loans (except as specified in Paragraphs (B)(6) and (7) of this Rule), and land sales contracts.
- B. Other

1. Insured or Guaranteed Loans.
  - a. When the bank relies substantially on the insurance or guaranty of a governmental agency in making a loan. This includes loans that are:
    - (1) Insured under the provisions of the National Housing Act, 12 USC 1701 et seq., administered by the Secretary of Housing and Urban Development;
    - (2) Insured under the provisions of the Bankhead-Jones Farm Tenant Act, 7 USC 1000 et seq., administered by the Secretary of Agriculture, or under the Housing Act of August 28, 1937, 42 USC 1401 et seq., administered by the Department of Housing and Urban Development, or Title V of the Housing Act of 1949, 42 USC 1441 et seq., administered by the Department of Housing and Urban Development;
    - (3) Guaranteed by the Secretary of Housing and Urban Development, for the payment of obligations of which the full faith and credit of the United States is pledged;
    - (4) Fully guaranteed or insured by a state, any agency or instrumentality of a state, or by a state authority for the payment of obligations of which the full faith and credit of the state is pledged, if under the terms of the guaranty or insurance agreement the bank will be assured of repayment in accordance with the terms of the loan;
    - (5) At least 20 percent guaranteed or insured under the provisions of the Servicemen's Readjustment Act, 38 USC 1801 et seq., administered by the Administrator of Veterans Affairs;
    - (6) Guaranteed under section 802 of the Housing and Community Development Act, 42 USC 5301 et seq., administered by the Secretary of Housing and Urban Development;
    - (7) Subject to a firm commitment to insure by a Government insuring agency. A firm commitment is a commitment in which a specific mortgagor is named; and
    - (8) Loans in which the Small Business Administration cooperates through agreements to participate on an immediate or deferred or guaranteed basis under the Small Business Act, 15 USC 631 et seq., administered by the Small Business Administration.
  - b. When the bank relies substantially upon private company mortgage insurance or guaranty, but only to the extent of the insurance or guaranty.
2. Loans where the Bank looks for repayment by relying primarily on the borrower's general credit standing and forecast of income.
3. Loans secured by an assignment of rents under a lease.
4. Loans secured by the pledge or assignment of another real estate mortgage.
5. Loans secured by a valid lien on timber.

6. Loans having maturities not to exceed sixty (60) months made to finance the construction of a building or buildings, where there is a valid and binding agreement entered into by a financially responsible lender or other party to advance the full amount of the bank's loan upon completion of the building or buildings.
7. Loans having maturities not to exceed sixty (60) months made to finance the construction of residential or farm buildings.
8. Loans for which a security interest is taken in a mobile home.
9. Loans made previously where a security interest in real estate is taken subsequently in good faith.
10. Any type loan that a national bank has the authority to make pursuant to the provisions of Section 24 of the National Bank Act, 12 USC 1 et seq., administered by the Comptroller of the Currency.
11. Any type loan approved from time to time by the Banking Board.

**C. Reference**

This Rule does not include amendments to or editions of the referenced material later than the effective date of the rule, July 1, 1990. For more detailed information pertaining to these provisions, please contact the secretary to the Colorado State Banking Board at 1560 Broadway, Suite 975, Denver, Colorado 80202, 303-894-7575.

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

**A. Purpose**

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

**B. Definitions**

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

1. Capital surplus means the total of surplus as reported in the bank's Reports of Condition and Income (Call Report) and surplus on perpetual preferred stock.
2. Permanent capital means the total of perpetual preferred stock and related surplus, common stock and surplus, and minority interest in consolidated subsidiaries, as reported in the bank's Call Report.
3. Retained net income means the net income of a specified period less the total amount of all dividends declared in that period.
4. Undivided profits means retained earnings as reported in the bank's Call Report.



**C. Earnings Limitation on Payment of Dividends**

Subject to paragraph D(1) of this Rule, a state bank may declare and pay dividends of so much of the undivided profits as they judge to be expedient. However, unless the dividend is approved by the Colorado State Banking Board (Banking Board), a bank shall not declare a dividend if the total amount of all dividends, including the proposed dividend, declared by such state bank in any calendar year exceeds the total of the bank's net income of that year to date, combined with its retained net income of the preceding two years. The bank's net income during the current year and its retained net income from the prior two calendar years is reduced by any net losses incurred in the current or prior two years, and any required transfers to surplus or to a fund for the retirement of preferred stock.

**D. Capital Limitation on Payment of Dividends or Otherwise**

1. General Limitation. A state bank may not declare a dividend in excess of undivided profits, unless the bank has received the prior approval of the Banking Board and of at least two-thirds of the shareholders of each class of stock outstanding.
2. A state bank may not permit any portion of its permanent capital to be withdrawn unless the withdrawal has been approved by the Banking Board and by at least two-thirds of the shareholders of each class of stock outstanding.
3. If a state bank has capital surplus in excess of that required by law, the excess amount may be transferred to the bank's undivided profits account and be available for the payment of dividends if:
  - a. The amount transferred came from the earnings of prior periods, excluding earnings transferred as a result of stock dividends;
  - b. The bank's board of directors approves the transfer of funds; and
  - c. The transfer has been approved by the Banking Board.
4. Restrictions on undercapitalized institutions. Notwithstanding any other provision in this Rule, a bank may not declare or pay any dividend, if, after making the dividend, the bank would be "undercapitalized" as determined according to Code of Federal Regulations Title 12 – Banks and Banking Chapter III – Federal Deposit Insurance Corporation Subchapter B – Regulations and Statements of General Policy Part 324 Capital Adequacy of FDIC-Supervised Institutions - Subpart H Prompt Corrective Action ("12 CFR 324 FDIC, Subpart H"). 12 CFR 324 FDIC, Subpart H as effective on December 12, 2024, is hereby incorporated by reference. No later amendment or edition of 12 CFR 324 FDIC, Subpart H is incorporated into this Section of CB101.44. All referenced laws and regulation shall be available for copying or public inspection during regular business hours from the Division of Banking, Department of Regulatory Agencies, 1560 Broadway, Suite 975, Denver, CO 80202. The Division of Banking will provide a certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy. 12 CFR 324 FDIC, Subpart H is also available at: <https://banking.colorado.gov/banking-home/rules-statutes>.

**E. Date of Declaration of Dividend**

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

**CB101.45 Financial Reporting [Section 11-103-502(3)(a), C.R.S.]**

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

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

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

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

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

1. The bank has been chartered less than two (2) years;
2. Within the preceding two (2) years, the bank has undergone a change in control that required a notice to be filed pursuant to Section 11-102-303, C.R.S.;
3. Within the preceding two (2) years, the bank holding company became a registered bank holding company, unless the bank holding company is owned or controlled by a registered bank holding company, or the bank holding company was established in a reorganization in which substantially all of the shareholders of the bank holding company were shareholders of the bank prior to the bank holding company's formation; or
4. The bank or bank holding company is not in compliance with all minimum capital requirements applicable to the institution as determined on the basis of the institution's most recent report of condition, examination, or is otherwise in a troubled condition as indicated by a composite rating of 3, 4, or 5 at the institution's most recent examination by a state or federal banking regulator.

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

- C. For the purposes of this Rule, except as provided in Paragraph (D), the term "director" does not include an advisory director who:
1. Is not elected by the shareholders of the bank;
  2. Is not authorized to vote on any matters before the board of directors; and

3. Provides solely general policy advice to the board of directors.
- D. The Colorado State Banking Board (Banking Board) or the Division may otherwise determine that additional reporting is required of any person who becomes an executive officer, director, or person in control. Written notice will be provided by the Division to such person of any additional requirements.
- E. The Banking Board may assess a \$100.00 per day penalty for late filing of reports of new executive officers, directors, and persons in control that are required by Section 11-102-303(8) and (9), C.R.S., and this Rule. Said penalty may be waived by the Banking Board pursuant to statute. Filing of an incorrect report form is not grounds for the waiving of the penalty.

**CB101.48 (Repealed and Reserved for Future Use.)**

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

**A. Definitions**

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

**B. Examination Scope**

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

**C. Extent of Testing**

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

**D. Reports to be Filed with the Division of Banking**

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

1. Financial statements (balance sheet and statement of earnings as of the examination date);
2. The accounts or items on which the procedures were applied;

3. The sampling methods used;
4. The procedures and agreed-upon extent of testing performed;
5. The accounting basis, either generally accepted accounting principles (GAAP) or regulatory required accounting, on which the accounts or items being audited are reported;
6. The reviewer's findings; and
7. The date as of which the procedures were performed.

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

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

**E. References**

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

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

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

**Appendix A - CB101.49**

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

**A. Loans**

1. Determine that the institution has policies that address the lending and collection functions. Read the institution's loan policies to determine whether they address the following items:
  - a. General fields of lending in which the institution will engage and the types of loans within each field;
  - b. Descriptions of the institution's normal trade area and circumstances under which the institution may extend credit to borrowers outside of such area;

- c. Limitations on the maximum volume of each type of loan product in relation to total assets;
- d. Responsibility of the board of directors in reviewing, ratifying, or approving loans;
- e. Lending authority of the loan or executive committee (if such a committee exists);
- f. Adherence to legal limits;
- g. Types of secured and unsecured loans that will be granted;
- h. Circumstances under which extensions or renewals of loans are granted;
- i. Guidelines for rates of interest and terms of repayment for secured and unsecured loans;
- j. Documentation required by the institution for each type of secured and unsecured loan;
- k. Limitations on the amount advanced in relation to the value of various types of collateral;
- l. Limitations on the extension of credit through overdrafts;
- m. Level or amount of loans granted in specific industries or specific geography locations;
- n. Guidelines for participations purchased and/or sold;
- o. Guidelines for documentation of new loans prior to approval and updating loan files throughout the life of the loan;
- p. Guidelines for loan review procedures by institution personnel including:
  - (1) An identification or grouping of loans that warrant the special attention of management;
  - (2) For each loan identified, a statement or indication of the reason(s) why the particular loan merits special attention; and
  - (3) A mechanism for reporting periodically to the board on the status of each loan identified and the action(s) taken by management.
- q. Collection procedures, including, but not limited to, actions to be taken against borrowers who fail to make timely payments;
- r. Guidelines for nonaccrual loans (i.e., when an asset should be placed on nonaccrual, individuals responsible for identifying non-performing assets and placing them on nonaccrual, and circumstances under which an asset will be placed back on accrual.); and
- s. Guidelines for in-substance foreclosures.

2. Review the board of directors' minutes to determine that the loan policies have been reviewed and approved. Through review of the board of directors' minutes and through inquiry of executive officers, determine whether the board of directors revises the policies and procedures periodically as needed.
3. Obtain Loan Committee or, if applicable, board of directors' minutes and through a comparison of loans made throughout the period with lending policies, determine whether loans are being made within the loan authorization policy.
4. Select a sample of borrowers, including loans from each major category, and determine through examination of loan files and other institution reports whether lending and collection policies are being followed (e.g., type of loan is in accordance with loan policy, funds were not advanced until after loan approval was received from proper loan authorization level, loan is within collateral policies, insurance coverage is adequate, and institution is named as loss payee).
5. Select a sample of borrowers from each major category of secured loans and determine through examinations of files and other institution reports whether collateral policies are being followed (e.g., loan is adequately collateralized, documentation is present and properly prepared, assignments are perfected, and collateral is properly valued, marketable, and has not become susceptible to deterioration in realizable value).
6. Review policies for checking floor plan merchandise, warehouse inventory and accounts receivable by responsible institution personnel and test for compliance.
7. Determine whether participations purchased and participations sold transactions have been reported to and authorized by the board of directors or loan committee, if applicable, through review of appropriate minutes.
8. On a test basis, review participations purchased to confirm that the institution does its own independent credit analysis. Also, review participation documents and determine that terms and conditions between the lead institution and participants are specified, including:
  - a. Which party is paid first;
  - b. What happens in the event of default;
  - c. How set-offs received by either institution are to be treated;
  - d. How collection expenses are to be divided; and
  - e. Who is responsible to collect the note in the event of default
9. Confirm sample of participations purchased and participations sold with participating institutions to verify that they are legitimate transactions and that they are properly reflected as being with or without recourse in the institution's records.
10. Balance detail ledgers or reconcile computer generated trial balances with the general ledger control accounts for each major category of loans, including loans carried as past due or in a nonaccrual status.
11. Confirm a sample of all loans within each major category; include past due and nonaccrual loans in the verification process.

12. Review multiple loans to the same borrower with the same person as guarantor to determine if they were made on consecutive days to circumvent the loan authorization policy and to determine whether policies and procedures are designed to assure that all related credits are considered in loan granting and administration. Review these loans for relationships to institution insiders or their related interests.
13. From reports to the board on the status of loans identified as warranting special attention, review the disposition of a sample of loans no longer appearing on these reports.
14. Test loan interest income and accrued interest by:
  - a. Determining the institutions method of calculating and recording interest accruals;
  - b. Obtaining trial balances of accrued interest;
  - c. Testing the reconciliation of the trial balances to the general ledger;
  - d. Determining that interest accruals are not made on nonaccrual loans;
  - e. Selecting sample items from each major category of loans:
    - (1) Determining the stated interest rate and appropriate treatment of origination fees and costs;
    - (2) Testing receipt of payments and correctness of entries to applicable general ledger accounts;
    - (3) Calculating accrued interest and comparing it to the trial balance; and
    - (4) Reviewing recorded book value for appropriate accretion of discount (net origination fees) and amortization of premium (net origination costs); and
  - f. Performing an analytical review of yields on each major category of loans for reasonableness.

**B. Allowance for Credit Losses**

1. Test charge-offs and recoveries for proper authorization and/or reporting by reference to the board of directors' minutes. Review charged-off loans for any relationship with institution insiders or their related interests.
2. Review the institution's computation of the amount needed in the allowance for credit losses as of the end of the most recent quarter. Documentation should include consideration of the following matters:
  - a. General, local, national, and international (if applicable) economic conditions;
  - b. Trends in loan growth and depth of lending staff with expertise in these areas;
  - c. Concentrations of loans (e.g., by type, borrower, geographic area, and sector of the economy);
  - d. The extent of renewals and extensions to keep loans current;

- e. The collectibility of nonaccrual loans;
- f. Trends in the level of delinquent and classified loans compared with previous loan loss and recovery experience;
- g. Results of regulatory examinations; and
- h. The collectibility of specific loans on the "watch list" taking into account borrower financial status, collateral type and value, payment history, and potential permanent impairment.

**C. Securities**

1. Review the investment policies and procedures established by the institution's board of directors. Review the board of directors', or investment committee, minutes for evidence that the policies and procedures are periodically reviewed and approved. The policies and procedures should include, but not be limited to:
  - a. Investment objectives, including use of "held for sale" and trading activities;
  - b. Permissible types of investments;
  - c. Diversification guidelines to prevent undue concentration;
  - d. Maturity schedules;
  - e. Limitation on quality ratings;
  - f. Hedging activities and other uses of futures, forwards, options, and other financial instruments;
  - g. Handling exceptions to standard policies;
  - h. Valuation procedures and frequency;
  - i. Limitations on the investment authority of officers; and
  - j. Frequency of periodic reports to the board of directors on securities holdings.
2. Test the investment procedures and ascertain whether information reported to the board of directors, or investment committee, for securities transactions is in agreement with the supporting data by comparing the following information on such reports to the trade tickets for a sample of items, including futures, forwards, and options:
  - a. Descriptions;
  - b. Interest rate;
  - c. Maturity;
  - d. Par value, or number of shares;
  - e. Cost; and
  - f. Market value on date of transaction, if different than cost.



3. Using the same sample items, analyze the securities register for accuracy and confirm the existence of the sample items by examining securities physically held in the institution and confirming the safekeeping of those securities held by others.
4. Balance investment subledger(s) or reconcile computer-generated trial balances with the general ledger control accounts for each type of security.
5. Review policies and procedures for controls that are designed to ensure that unauthorized transactions do not occur. Ascertain through reading of policies, procedures, and board of directors' minutes whether investment officers and/or appropriate committee members have been properly authorized to purchase/sell investments and whether there are limitations or restrictions on delegated responsibilities.
6. Obtain a schedule of the book, par, and market values of securities, as well as the rating classifications. Test the accuracy of the market values of a sample of securities and compare the ratings listed to see that they correspond with those of the rating agencies. Review the institution's documentation on any permanent declines in value that have occurred among the sample of securities to determine that any recorded declines in market value are appropriately computed. Examine the institution's computation of the allowance account for securities, if any, for proper presentation and adequacy.
7. Test securities income and accrued interest by:
  - a. Determining the institution's method of calculating and recording interest accruals;
  - b. Obtaining trial balances of accrued interest;
  - c. Testing the reconciliation of the trial balances to the general ledger;
  - d. Determining that interest accruals are not made on defaulted issues;
  - e. Selecting items from each type of investment and money market holdings:
    - (1) Determining the stated interest rate and most recent interest payment date of coupon instruments by reference to sources of such information that are independent of the institution;
    - (2) Testing timely receipt of interest payments and correctness of entries to applicable general ledger accounts;
    - (3) Calculating accrued interest and comparing it to the trial balance; and
    - (4) Reviewing recorded book value for appropriate accretion of discount and amortization of premium; and
  - f. Performing an analytical review of yields on each type of investment and money market holdings for reasonableness.
8. Review investment accounts for volume of purchases, sales activity and length of time securities have been held. Inquire as to the institution's intent and ability to hold securities until maturity. If there is frequent trading in an investment account, such activity may be inconsistent with the notion that the institution has the intent and ability to hold securities to maturity. Test gains and losses on disposal of investment securities by sampling sales transactions and:

- a. Determining sales prices by examining invoices or brokers' advices;
- b. Checking for the use of trade date accounting and the computation of book value on trade date;
- c. Determining that the general ledger has been properly relieved on the investment, accrued interest, premium, discount and other related accounts;
- d. Recomputing the gain or loss and compare to the amount recorded in the general ledger; and
- e. Determining that the sales were approved by the board of directors or a designated committee or were in accordance with policies approved by the board of directors.

**D. Insider Transactions**

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

1. Review the institution's policies and procedures to ensure that extensions of credit to, and other transactions with, insiders are addressed. Ascertain that these policies include specific guidelines defining fair and reasonable transactions between the institution and insiders, and test insider transactions for compliance with these guidelines and statutory and regulatory requirements. Ascertain that the policies and procedures on extensions of credit comply with the requirements of Federal Reserve Regulation O.
2. Obtain an institution-prepared list of insiders, including any business relationships they may have other than as a nominal customer. Also obtain a list of extensions of credit to, and other transactions that the institution, its affiliates, and its subsidiaries have had with, insiders that are outstanding as of the audit date or that have occurred since the prior year's external auditing procedures were performed. Compare these lists to those prepared for the prior year's external auditing program to test for completeness.
3. Review the board of directors' minutes, loan trial balances, supporting loan documentation, and other appropriate institution records in conjunction with the list of insiders obtained from the institution to verify that a sample of extensions of credit to, and transactions with, insiders were:
  - a. In compliance with institution policy for similar transactions and were at prevailing rates and terms at that time;
  - b. Subjected to the institution's normal underwriting criteria and deemed by the institution to involve no more than a normal degree of risk, or present no other unfavorable features;
  - c. Approved by the board of directors in advance with the interested party abstaining from voting; and
  - d. Within the aggregate lending limits imposed by Regulation O or other legal limits.

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

**E. Internal Controls - General Accounting and Administrative Controls**

1. Review the board of directors' minutes to verify that account reconciliation policies have been established and approved and are reviewed periodically by the board of directors. Determine that management has implemented appropriate procedures to ensure the timely completion of reconciliations of accounting records and the timely resolution of reconciling items.
2. Determine whether the institution's policies regarding segregation of duties and required vacations for employees, including those involved in the EDP function, have been approved by the board of directors and verify that these policies and the implementing procedures established by management are periodically reviewed, are adequate, and are followed.
3. Confirm a sample of deposits in each of the various types of deposit accounts maintained by the institution. Inquire about controls over dormant deposit accounts.
4. Test to determine that reconciliations are prepared for all significant asset and liability accounts and their related accrued interest accounts, if any, such as "due from" accounts; demand deposits; NOW accounts; money market deposit accounts; other savings deposits; certificates of deposit; and other time deposits. Review reconciliations for:
  - a. Timeliness and frequency;
  - b. Accuracy and completeness; and
  - c. Review by appropriate personnel with no conflicting duties.
5. Compare a sample of balances per reconciliations to the general ledger and supporting trial balances.
6. Examine detail and aging of a sample of reconciling items from those accounts whose reconciliations have been tested and reviewed and a sample of items in suspense, clearing, and work-in-process accounts by:
  - a. Testing aging;
  - b. Determining whether items are followed up on and appropriately resolved on a timely basis; and
  - c. Discussing items remaining on reconciliations and in the suspense account with appropriate personnel to ascertain whether any should be written off.

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

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

**F. Internal Controls - Electronic Data Processing Controls**

1. Read the board of directors' minutes to determine whether the board of directors has reviewed and approved the institution's electronic data processing (EDP) policies, including those regarding outside servicers, if any, and the in-house use of individual personal computers (PCs) and personalized programs for official institution records, at least annually, confirm that management has established appropriate implementing procedures, and verify the institution's compliance with these policies and procedures.
  - a. The policies and procedures for either in-house processing or use of an outside service center should include:
    - (1) A contingency plan for continuation of operations and recovery when power outages, natural disasters, or other threats could cause disruption and/or major damage to the institution's data processing support, including compatibility of servicer's plan with that of the institution;
    - (2) Requirements for EDP-related insurance coverage that include the following provisions:
      - (a) Extended blanket bond fidelity coverage to employees of the institution or servicer;
      - (b) Insurance on documents in transit, including cash letters; and
      - (c) Verification of the insurance coverage of the institution or service bureau and the courier service;
    - (3) Review of exception reports and adjusting entries approved by supervisors and/or officers;
    - (4) Controls for input preparation and control and output verification and distribution;
    - (5) "Back-up" of all systems, including off-premises rotation of files and programs;
    - (6) Security to ensure integrity of data and system modifications; and
    - (7) Necessary detail to ensure an audit trail.
  - b. When an outside service center is employed, the policies and procedures should address the following additional items:
    - (1) The requirement for a written contract for each automated application detailing ownership and confidentiality of files and programs, fee structure, termination agreement, and liability for documents in transit;
    - (2) Review of each contract by legal counsel; and

- (3) Review of each third party review of the service bureau, if any.
  - 2. In the area of general EDP controls, determine through inquiry and observation that policies and procedures have been established for:
    - a. Management and user involvement and approval of new or modified application programs;
    - b. Authorization, approval and testing of system software modifications;
    - c. The controls surrounding computer operations processing;
    - d. Restricted access to computer operations facilities and resources including:
      - (1) Off-premises storage of master disks and PC disks;
      - (2) Security of the data center and the institution's PCs; and
      - (3) Use and periodic changing of passwords.
  - 3. With respect to EDP applications controls, inquire about and observe:
    - a. The controls over:
      - (1) Input submitted for processing;
      - (2) Processing transactions;
      - (3) Output;
      - (4) Applications on PCs; and
      - (5) Telecommunications both between and within institution offices.
    - b. The security over unissued or blank supplies of potentially negotiable items; and
    - c. The control procedures on wire transfers including:
      - (1) Authorizations and agreements with customers, including who may initiate transactions;
      - (2) Limits on transactions; and
      - (3) Call back procedures.
- G. Trust Function
  - 1. Supervisory Review
    - a. Determine the significant functions of the department, including areas of responsibility within the department and the financial institution.
    - b. Review the institution's written policies to determine that sufficient guidelines are established to meet fiduciary responsibilities and to comply with applicable laws. Policies should include:

- (1) Account acceptance;
  - (2) Closed account review;
  - (3) Investments;
  - (4) Account review;
  - (5) Discretionary distributions;
  - (6) Conflicts of interest; and
  - (7) Other as needed for scope of fiduciary activities.
- c. Ascertain the qualifications of the staff and of the board of directors giving consideration to the nature of the fiduciary responsibilities accepted.
- d. Determine if board policies are implemented and followed.
- 2. Accounting and Physical Controls
  - a. Verify account assets. Include a confirmation from holders of assets retained outside the department.
  - b. Determine that the assets are adequately safeguarded, and held separately from other assets of the institution.
  - c. Verify that a vault record of assets under joint custody is maintained.
  - d. Verify prompt ledger control of assets, including worthless assets, received as original and subsequent deposits of assets, including stock splits and dividends.
  - e. Verify that fiduciary cash accounts are regularly and appropriately reconciled to demand deposit or money market account statements.
  - f. Verify that internal balancing control procedures are performed each time account ledgers are posted.
  - g. Verify that suspense or operating accounts are reconciled at least monthly, contain only appropriate items, and are cleared in a timely manner.
  - h. Reconcile or verify the proper reconciliation of each of the following to the department's general ledger at least quarterly:
    - (1) Income cash;
    - (2) Principal cash;
    - (3) Invested income;
    - (4) Invested principal;
    - (5) Each type of investment, such as stock, bonds, real estate loans and real estate; and

- (6) Investments by issuer.
    - i. If applicable, verify reconcilements or reconcile outstanding bonds for bond trusteeships, or paying agent activities.
    - j. Verify the accurate payment of dividends.
- 3. Activity Control
  - a. Verify fees paid to the trust company.
  - b. Verify proceeds from sales of assets to brokers' invoices, sellers' receipts, or other evidence of sales price.
  - c. Verify payment for purchases of assets to brokers' invoices, sellers' receipts, or other evidence of purchase price.
  - d. Verify accuracy of amounts and receipt of income from investments.
- 4. Compliance
  - a. Verify that transactions between fiduciary accounts and directors, officers or employees of the institution, its holding company or other related entity do not constitute self-dealing. In general, self-dealing is considered to exist when the fiduciary uses or obtains the property held in a fiduciary capacity for his or her own benefit.
  - b. Review fiduciary account holdings of the following items in light of self-dealing issues.
    - (1) Stock, obligations, repurchase agreements, or deposit accounts with the institution, its affiliates or other related organizations in which there exists such an interest that might affect the best judgment of the institution.
    - (2) Obligations of directors, officers and employees of the institution, its holding company or affiliates or other entities with whom there exists a connection that might affect the exercise of the best judgment of the institution.
  - c. Verify that all accounts for which the institution has investment responsibilities are reviewed in accordance with Section 11-103-502(4), C.R.S.
  - d. Verify that cash receipts are promptly invested or distributed.
  - e. Verify and review the annual audit of each collective investment fund.
- 5. Administrative Review
  - a. Complete administrative reviews of all major account types, including but not limited to, personal trusts, estates, corporate trusts, collective investment funds, pension trusts and profit sharing trusts. An acceptable administrative review would perform the following practices:
    - (1) Determine that the original or authenticated copy of the governing instrument is on file;

- (2) Determine that synoptic and history records are current, reliable and comprehensive;
- (3) Determine that accounts are administered and invested in conformance with management policies, governing instruments, laws, regulations and sound fiduciary principles;
- (4) Determine that the minutes of the board of directors and committee meetings document the review of trust company activities; significant practices for the board of directors' review include the acceptance of new accounts, the closing of accounts and the review of discretionary payments of principal or income; and
- (5) Test the accuracy of account statements submitted to beneficiaries.

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

**A. Qualifications**

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

1. A Certified Public Accountant(s) who holds an active certificate under the laws of this state, or who may practice in this state under a reciprocal agreement between Colorado and the holder's state of certification.
2. A qualified independent person(s) or firm whose credentials have been submitted to and approved by the Colorado State Banking Board to conduct such examinations. The Banking Board will take into consideration such things as past proven work of the person or firm, professional reputation, training and education, and capacity to perform the examination in a timely manner.
3. The Banking Board reserves the right to revoke any previously approved qualification for due cause.

**B. Independence**

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

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

1. Had or was committed to acquire any direct or material indirect financial interest in the institution;
2. Was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the institution;
3. Had any joint closely-held business investment with the institution or any officer, director, or principal stockholder thereof that was material in relation to the net worth of either the institution or the person; or



4. Had any loan to or from the institution or any officer, director, or principal shareholder thereof other than loans of the following kinds made by a financial institution under normal lending procedures, terms, and requirements:
  - a. Loans obtained by the person that are not material in relation to the net worth of the borrower;
  - b. Home mortgages; and
  - c. Other secured loans, except those secured solely by a guarantee of the person.

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

1. Was connected with the institution as a promoter, underwriter, voting trustee, director or officer, or in any capacity equivalent to that of a member of management or of an employee;
2. Was a trustee for any pension or profit sharing trust of the institution;
3. Received or had a commitment to receive other compensation from the institution or a third party, for services or products of others to be procured by the institution; or
4. Received or had a commitment from the institution to receive a contingent fee. For this purpose, a contingent fee means compensation for the performance of services payment of which, or the amount of which, is contingent upon the findings or results of such services.

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

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

**A. Incorporation by Reference**

The terms "leverage ratio," "Total Capital," "Tier 1," and "Tier 2" are defined in the following federal regulations, which are incorporated by reference herein:

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

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

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

**B. Statute References to Capital**

1. As referenced in Colorado's revised statutes the following definitions will apply:
  - a. Sections 11-103-202(1) and (2), C.R.S., shall refer to the leverage ratio.
  - b. Sections 11-103-203(3) and (4), C.R.S., shall refer to the leverage ratio.
  - c. Section 11-103-303(1)(a), C.R.S., shall refer to Total Capital.
  - d. Section 11-103-304(1)(d), C.R.S., shall refer to the leverage ratio and Tier 1, Tier 2, and Total Capital.
  - e. Section 11-103-402(1), C.R.S., shall refer to Total Capital.
  - f. Section 11-103-502(2)(a), C.R.S., shall refer to Total Capital.
  - g. Section 11-103-405(2), C.R.S., shall refer to Total Capital.
  - h. Section 11-103-702(1)(b), C.R.S., shall refer to the leverage ratio and Tier 1, Tier 2, and Total Capital.
  - i. Section 11-103-703(3)(b), C.R.S., shall refer to the leverage ratio and Tier 1, Tier 2, and Total Capital.
  - j. Section 11-103-801(1), C.R.S., shall refer to Total Capital.
  - k. Section 11-103-802(1)(a), C.R.S., shall refer to the leverage ratio.
  - l. Section 11-103-803(1)(b), C.R.S., shall refer to the leverage ratio and Tier 1, Tier 2, and Total Capital.

- m. Section 11-103-806(1), C.R.S., shall refer to the leverage ratio.
- n. Sections 11-105-304(2), (5), (6), and (8), C.R.S., shall refer to Total Capital.
- o. Section 11-105-402(1), C.R.S., shall refer to Tier 1 Capital.
- p. Section 11-105-501(2), C.R.S., shall refer to Tier 1 Capital.

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

**A.      Definitions:**

- 1. A Loan Production Office (LPO) is any location in Colorado that is not a branch and where the only activities conducted are the solicitation, origination and approval of loans by employees or agents of a bank or a subsidiary
- 2. A Branch means any branch bank, branch office, branch agency, additional office, or branch place of business situated in Colorado or another state of a financial institution located in this or another state at which deposits are received, checks are paid, and money is lent and trust powers may be exercised, if approved by its chartering authority.

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

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

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

**D.      Application to Operate a LPO or Application to Change Location of a LPO. The completed application shall be filed at least thirty (30) days prior to the anticipated first day of operations or use of a new name.**

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

- a. The Division will review all existing names and DBAs of banks or LPOs operating within the State of Colorado and compare the proposed name with existing approved bank or LPO names. Division staff will evaluate the proposed name to ensure it's not identical to existing names. If the proposed name is not identical, staff will conduct the procedure outlined in subsection D(2)(b). If the proposed name is identical, then the applicant will be notified and asked to provide a new name.
  - b. The Division shall commence a fourteen (14) calendar day comment period by posting the proposed name on the Division's website and distributing the proposed name by email to its distribution mailing list;
    - (1) If no objections are received within the fourteen (14) calendar day period, the Division shall proceed with processing the application and submitting it to the Banking Board for approval;
    - (2) If an objection is received within the fourteen (14) calendar day period, the Division will notify the applicant. The applicant and the objector should provide a written response to the Division within thirty (30) calendar days, which the Division will provide to the Banking Board for its consideration.
    - (3) If the objector wishes to withdraw its objection, it may do so and provide express written consent to the LPO name.
  - c. The Banking Board will evaluate the objection and written response, if any, and approve or deny the LPO name.
  - d. In the event of the Banking Board's denial of a proposed name, with or without an objection, the Applicant must submit a new name, which will be evaluated and published by the Division as outlined in (D)(2)(a) and (D)(2)(b), to operate in Colorado so that the new name is not identical to or deceptively similar to the name of any existing Colorado financial institution, or likely to cause the public to be confused, deceived, or mistaken.
3. The applicant shall have one year from the date of approval in which to open the LPO and will notify the Division of its opening.

**CB101.54 Branch Establishment, Conversion, Acquisition, Relocation, Closure, and Hours of Operation [Section 11-105-601, C.R.S., et. seq.]**

**A. General Provisions for Branch Establishment, Conversion, and Acquisition**

1. De Novo Branch Establishment
  - a. Any bank, regardless of its principal place of business, may establish one or more de novo branches in this state or another state, upon thirty (30) days' prior written notice to the Colorado State Banking Board (Banking Board).
  - b. De novo branches include a mobile branch, which is a service, other than a messenger service, that does not have a single, permanent site and uses a vehicle that travels to various locations to enable the public to conduct banking business. The other provisions of this Rule, except for Paragraph (B), shall be applicable to mobile branches.

- c. Notification of intent to establish a branch shall be filed on a form provided by the Division of Banking (Division).
  - 2. Conversion of an Affiliate or an Acquisition of Financial Institution
    - a. Financial institutions, regardless of their principal location, may convert affiliate financial institutions into branches or acquire and convert other financial institutions into branches within this or any other state.
    - b. Notification for such conversions or acquisitions shall be filed on a form provided by the Division.
- B. Relocation of Branches
  - 1. The Banking Board may deny an application to relocate a branch based on:
    - a. Significant supervisory concerns with the applicant or its affiliates; or,
    - b. Less than satisfactory record in meeting community credit needs; or,
    - c. Favorable terms offered to insiders (directors, officers, employees, and shareholders owning or controlling, directly or indirectly, ten percent or more of the outstanding voting stock thereof) over comparable third-party transactions.
  - 2. Relocation Process:
    - a. Short-distance Relocation: A branch may relocate up to one-half (0.5) mile from its approved location without Banking Board approval, provided written notice is submitted to the Commissioner at least thirty (30) days prior to relocation. The notice shall include the new address of the branch and the effective date of the relocation.
    - b. Long-distance Relocation: For relocations beyond one-half (0.5) mile from the approved location, a formal application shall be submitted to the Banking Board for approval using a form provided by the Division.
- C. Closing a Branch
  - 1. Financial institutions shall notify the Banking Board in writing in a format approved by the Division at least ninety (90) days prior to the proposed closing of a branch.
  - 2. Branch closure may proceed unless the Banking Board provides written notification, within fifteen (15) days of receipt of such notification, or requests additional information. If the Banking Board requests additional information, the above ninety (90) day period shall commence running upon receipt of such additional information.
- D. Branch Hours of Operation
  - 1. Financial institutions shall notify the Commissioner of the operating hours of any branch and provide notice of any changes on or before the effective date.
  - 2. Federal Holidays on Saturdays

- a. The Friday before a federal holiday falling on a Saturday is considered a normal banking day.
- b. Banks wishing to close early on such Fridays shall notify the Division and inform customers of any changes to operating hours.

**CB101.56 (Repealed and Reserved for Future Use.)**

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

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

**A. General Limitations**

A state bank may invest in an operating subsidiary which includes a corporation, limited liability company (LLC), limited partnership, or similar entity that engages in activities in which the parent bank may engage, subject to the same limitations the parent bank would be subject to if it were engaged in the activity, provided that:

- 1. the parent bank owns and controls more than 50 percent of the voting (or similar type of controlling) interest of the operating subsidiary, or the parent bank otherwise controls the operating subsidiary and no other party controls a percentage of the voting (or similar type of controlling) interest of the operating subsidiary greater than the bank's interest;
- 2. the state bank has the ability to control the management and operations of the subsidiary, and no other person or entity has the ability to exercise effective control or influence over the management or operations of the subsidiary to an extent equal to or greater than that of the state bank or an operating subsidiary thereof;
  - a. The ability to control the management and operations means:
    - i. In the case of a subsidiary that is a corporation, the state bank or an operating subsidiary thereof holds voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management;
    - ii. In the case of a subsidiary that is a limited partnership, the state bank or an operating subsidiary thereof has the ability to control the management and operations of the subsidiary by controlling the selection and termination of senior management; or
    - iii. In the case of a subsidiary that is an LLC, the state bank or an operating subsidiary thereof has the ability to control the management and operations of the subsidiary by controlling the selection and termination of senior management.
- 3. and the operating subsidiary is consolidated with the state bank under generally accepted accounting principles.

**B. Additional Limitations**

The state bank through its operating subsidiary may invest in a corporation, LLC, partnership, or similar business entity at less than a 50 percent ownership level provided that each of the following conditions are met:

1. The activities of the corporation, LLC, partnership or similar business entity in which the investment is made are limited to activities that are part of, or incidental to, the business of banking;
2. The state bank is able to prevent the corporation, LLC, partnership or similar business entity from engaging in activities that do not meet the foregoing standard or has the ability to withdraw its investment;
3. The state bank's loss exposure is limited as a legal matter and the state bank does not have unlimited liability for the obligations of the corporation, LLC, partnership or similar business entity;
4. The investment is convenient and useful to the state bank in carrying out its business and not a mere passive investment unrelated to the state bank's business; and
5. The corporation, LLC, partnership or similar business entity the state bank is investing in agrees to be subject to Colorado Division of Banking supervision and examination.

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

- A. The Colorado State Banking Board (Banking Board) authorizes, pursuant to its authority in Section 11-105-304(7) C.R.S., state-chartered commercial banks' Investments Powers as outlined in Code of Federal Regulations Title 12 - Banks and Banking Chapter I - Comptroller of the Currency, Department of the Treasury Part 1 Investment Securities and 12 U.S.C.A. § 24. Corporate powers of associations - Seventh.
- B. The regulation titled "Code of Federal Regulations Title 12 - Banks and Banking Chapter I - Comptroller of the Currency, Department of the Treasury Part 1- Investment Securities as effective on November 29, 2024, and 12 U.S.C.A. § 24. Corporate powers of associations - Seventh" as effective on November 29, 2024, is hereby incorporated by reference. No later amendment or edition are incorporated into this Section CB101.59. All referenced laws and regulation shall be available for copying or public inspection during regular business hours from the Division of Banking (Division), Department of Regulatory Agencies, 1560 Broadway, Suite 975, Denver, CO 80202. The Division will provide a certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy is also available at <https://banking.colorado.gov/banking-home/rules-statutes>.

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

- A. The Colorado State Banking Board (Banking Board) authorizes, pursuant to its authority in Section 11-105-304(7) C.R.S., state-chartered commercial banks' Investments in Community Development Projects and Other Public Welfare Investments as outlined in Code of Federal Regulations Title 12 - Banks and Banking Chapter I - Comptroller of the Currency, Department of the Treasury Part 24 Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments.

- B. The regulation titled "Code of Federal Regulations Title 12 - Banks and Banking Chapter I - Comptroller of the Currency, Department of the Treasury Part 24 Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments ("12 CFR 24")" as effective on November 29, 2024, is hereby incorporated by reference. No later amendment or edition of 12 CFR 24 is incorporated into this Section CB101.60. All referenced laws and regulation shall be available for copying or public inspection during regular business hours from the Division of Banking (Division), Department of Regulatory Agencies, 1560 Broadway, Suite 975, Denver, CO 80202. The Division will provide a certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy of 12 CFR 24 is also available at <https://banking.colorado.gov/banking-home/rules-statutes>.
- C. All notifications required under this rule, including after-the-fact notices and requests for prior approval of investments, must be submitted to the Division. Any references to approval by the Office of the Comptroller of the Currency in incorporated federal regulations shall be understood to mean approval by the Commissioner. Additionally, any references to "National Bank" in the incorporated federal regulations shall be interpreted to mean "Colorado State-Chartered Commercial Bank." The Commissioner will be the responsible authority for granting or denying approval of such investments in accordance with state law.

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

- A. The initial appraisal, as defined in Section 12-10-602, C.R.S., of Other Real Estate (ORE) shall be performed by a registered, licensed, or certified appraiser as defined in Section 12-10-606, C.R.S. However, if the asset has a current book value of \$400,000 or less for a 1-4 family residential property or \$500,000 or less for all other real property at the time the asset is classified as ORE, an analysis, evaluation, opinion, conclusion, notation, or compilation of data may be performed by an officer, director, or regular salaried employee of a financial institution who has not, directly or indirectly, participated in the lending transaction or by an officer, director, or regular salaried employee of its affiliate who has not, directly or indirectly, participated in the lending transaction.
- B. Subsequent appraisals of an ORE asset with a book value of more than the values noted above in A shall be performed by a licensed or certified appraiser, according to the following schedule:
1. All financial institutions shall obtain subsequent appraisals of an ORE asset at intervals not to exceed twenty-four (24) months.
  2. If such an appraiser, as defined in Section 12-10-606, C.R.S., or other person approved by the Colorado State Banking Board (Banking Board) certifies in writing that the fair market value has not declined, such appraiser's or other person's opinion may be substituted for a subsequent appraisal.

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

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



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

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

A.      Applicability

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

B.      Purpose

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

C.      Definitions

For the purpose of this Rule:

1.      "Interest Only Mortgage Loan" means a nontraditional mortgage on which, for a specified number of years the borrower is required to pay only the interest due on the loan, during which time, the rate may fluctuate or may be fixed. After the interest-only period, the rate may be fixed or fluctuate, based on the prescribed index, and payments include both principal and interest.
2.      "Nontraditional Mortgage" means any residential mortgage loan product that allows the borrower to defer repayment of principal and/or interest. This includes, without limitation, all interest-only residential mortgage products, payment option adjustable rate mortgages, and negative amortization mortgages, with the exception of a reverse mortgage and home equity line of credit, other than a simultaneous second-lien loan. Nontraditional mortgages do not include temporary loans or construction loans.
3.      "Simultaneous Second-Lien Loan" means a lending arrangement where either a closed-end second-lien or a home equity line of credit is originated simultaneously with the first lien mortgage loan, typically in lieu of a higher down payment.

4. "Payment Option ARM" means a nontraditional adjustable rate mortgage that allows the borrower to choose from a number of different payment options. For example, Payment Option ARMs include, without limitation, loans whereby, each month, the borrower may choose a minimum payment option based on a "start" or introductory interest rate, an interest-only payment option based on the fully indexed interest rate, or a fully amortizing principal and interest payment option based on a 15-year or 30-year loan term, plus any required escrow payments. The minimum payment option can be less than the interest accruing on the loan, resulting in negative amortization. The interest-only option avoids negative amortization but does not provide for principal amortization. After a specified number of years, or if the loan reaches a certain negative amortization cap, the required monthly payment amount is recast to require payments that will fully amortize the outstanding balance over the remaining loan term.
5. "Reduced Documentation" means a loan feature that is commonly referred to as "low doc/no doc," "no income/no asset," "stated income," or "stated assets." For mortgage loans with this feature, however designated, an institution sets reduced or minimal documentation standards to substantiate the borrower's income and assets.

**D. Communications with Consumers**

1. Promotional materials and other product descriptions must include information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions, including, as applicable, information on the following:
  - a. Payment Shock - Banks should apprise consumers of potential increases in payment obligations for these products, including circumstances in which interest rates or negative amortization reach a contractual limit. For example, product descriptions shall, when appropriate, state the maximum monthly payment a consumer would be required to pay under a hypothetical loan example, after amortizing payments are required and the interest rate and negative amortization caps have been reached. Such information also should describe when structural payment changes will occur, and what the new payment amount would be, or how it would be calculated. If applicable, such descriptions shall indicate that a higher payment may be required at other points in time due to factors such as negative amortization or increases in the interest rate index.
  - b. Negative Amortization - When negative amortization is possible under the terms of a nontraditional mortgage product, consumers shall be informed of the potential for increasing principal balances and decreasing home equity, as well as other potential adverse consequences of negative amortization. For example, product descriptions shall disclose the effect of negative amortization on loan balances and home equity, and describe the potential consequences to the consumer of making minimum payments that cause the loan to negatively amortize. (One possible consequence is that it could be more difficult to refinance the loan or to obtain cash upon sale of the home).
  - c. Prepayment Penalties - If the loan documents allow a bank to impose a penalty in the event that the consumer prepays the mortgage, consumers shall be informed to this fact and that they may ask the lender about the amount of any such penalty.
  - d. Cost of Reduced Documentation Loans - If a bank offers both reduced and full documentation loan programs, and there is a pricing premium attached to the reduced documentation program, consumers should be advised of the cost differential.

2. Promotional materials and other product descriptions outlined under Paragraph (C)(1) of this Rule shall be designed to reasonably:
  - a. Focus on information important to consumer decision making;
  - b. Highlight key information so that it will be noticed;
  - c. Employ a user-friendly and readily navigable format for presenting the information;
  - d. Use plain language, with concrete and realistic examples.
3. Banks shall provide consumers with information at a time and in a manner that will help consumers select products and choose among payment options. For example, institutions should offer clear and balanced product descriptions when a consumer is shopping for a mortgage – such as when the consumer makes an inquiry to the institution about a mortgage product and receives information about nontraditional mortgage products, or when marketing relating to nontraditional mortgage products is provided by the institution to the consumer – not just upon the submission of an application or at consummation.
4. When advertising nontraditional mortgages through certain forms of media, such as radio, television, or billboards, banks shall provide clear and balanced information about the risks of these products, to the extent reasonably practical.

**E. Monthly Statements on Payment Option ARMs**

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

**F. Practices to Avoid**

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

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

**G. Control Systems**

1. Banks offering nontraditional mortgage products shall develop and use control systems reasonably designed to monitor whether actual practices are consistent with applicable policies and procedures. Such control systems shall address compliance and consumer information concerns as well as safety and soundness considerations. Lending personnel shall be trained so that they are able to convey information to consumers about product terms and risks in a timely, accurate, and balanced manner. As products evolve and new products are introduced, lending personnel shall receive additional training, as necessary, to continue to be able to convey information to consumers in this manner. Lending personnel shall be monitored to determine whether they are following these policies and procedures. Banks shall review consumer complaints to identify potential compliance, reputation, and other risks. Banks shall obtain legal review of nontraditional loan procedures as necessary. Banks shall not use compensation programs that compensate lending personnel for directing consumers to nontraditional mortgages.
2. If a bank utilizes a third party, such as a mortgage broker, correspondent, or other intermediary, to originate, purchase, or service nontraditional mortgage loans, or if a bank serves as an agent for a third party mortgage lender, the bank shall implement appropriate measures to mitigate risks relating to compliance with this regulation, and all other applicable state and federal laws and regulations. Such measures shall include, but are not limited to:
  - a. Conducting due diligence procedures for reviewing the knowledge and trustworthiness of the third party, and establishing criteria for entering into and maintaining relationships with such third parties;
  - b. Establishing criteria for third-party compensation, which may not include origination incentives that are inconsistent with this Rule;
  - c. Setting the terms for agreements with such third parties,
  - d. Establishing procedures and systems to monitor compliance with applicable agreements, bank policies, and laws, and
  - e. Implementing appropriate corrective actions in the event that the third party fails to comply with applicable agreements, bank policies, or laws.

**H. Illustrations**

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

**I. References**

1. "Interagency Guidance on Nontraditional Mortgage Products Risks" refers to guidance issued by the Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; and National Credit Union Administration. The interagency guidance was published in the Federal Register on October 4, 2006.
2. "Illustrations of Consumer Information for Nontraditional Mortgage Products" refers to guidance illustrations issued by the above referenced agencies. The guidance illustrations were published in the Federal Register on June 8, 2007.
3. Copies of the above referenced interagency guidance and illustrations may be examined at any State Publications Depository.
4. For more detailed information pertaining to these provisions, please contact the Secretary to the Colorado State Banking Board at [banking@dora.state.co.us](mailto:banking@dora.state.co.us) or (303) 894-7584.

**CB101.66 Board of Directors: Meeting Frequency, Attendance, Key Transaction Reviews, and Record Keeping [Section 11-103-502, C.R.S.]**

**A. Frequency of Board Meetings**

The board of directors (Board) of a state bank shall meet at least once each calendar quarter, unless the Colorado State Banking Board (Banking Board) directs the meetings be held on a more frequent basis or less frequent basis in case of a disaster or emergency. Any proposed changes to a Board meeting schedule must first consider the bank's bylaws regarding meeting frequency. If changes are needed, revised bylaws and the new meeting schedule shall be submitted to the Division of Banking (Division) within 30 days of receiving approval for the change.

**B. Director Attendance Requirements**

If the Board holds meetings on a basis other than monthly, any director who fails to attend two consecutive meetings will automatically cease to be a director unless the absence is satisfactorily explained to the Banking Board or Commissioner. If an explanation is accepted, the Banking Board or Commissioner shall notify the bank's president of their approval for the director's continuation.

If the Board holds monthly meetings, any director who fails to attend three consecutive monthly meetings will automatically cease to be a director unless the absence is satisfactorily explained to the Banking Board or Commissioner. If an explanation is accepted, the Banking Board or Commissioner shall notify the bank's president of their approval of the director's continuation.

**C. Review of Key Transactions**

The Board or an **executive committee of the Board** shall review, at least monthly, the following transactions occurring since the last review:

- a. Each loan, advance, discount, overdraft, and purchase or sale of a security that exceeds one percent of the capital of the corporation, in accordance with the rules promulgated by the Banking Board.
- b. Each loan, advance, discount, and overdraft that causes total obligations from a single obligor to exceed one percent of the bank's capital.
- c. Each purchase or sale of a security that, when combined with other purchases and sales of the same security over the preceding two months, exceeds one percent of the bank's capital.

The executive committee of the Board is a Board appointed committee, composed of key members of the Board and/or the bank's executive officers. This committee is authorized to act on behalf of the full Board for purposes of this rule.

**D. Record Keeping**

The Board or the Board's Executive Committee shall maintain a monthly record of the reviewed transactions listed in Section C. The reviewed transactions should be submitted to the full Board at its next scheduled meeting for ratification.

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**Editor's Notes**

**History**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rules CB101.7, CB101.10, CB101.24, CB101.31, CB101.32, CB101.37, CB101.41, CB101.42, CB101.44, CB101.45, CB101.47, CB101.52, CB101.53, CB101.54, CB101.58, CB101.59, CB101.60, CB101.61, CB101.66 eff. 06/14/2025.

Rules CB1.1, CB1.11, CB1.20, CB101.40, CB101.46, CB101.48, CB101.55, CB101.56, CB101.62 repealed eff. 06/14/2025.