

TITLE 45 - DEPARTMENT OF BANKING AND FINANCE

Chapter 9 - ACTIVE EXECUTIVE OFFICERS

001 SCOPE AND APPLICATION.

001.01 Neb. Rev. Stat. § 8-139 provides requirements for persons serving as active executive officers of banks.

001.02 Except as specifically provided herein, this Rule applies to all banks and all persons who act or seek to act as an executive officer of a bank.

002 DEFINITIONS.

002.01 For purposes of this Rule:

002.01A "Active Executive Officer" is as defined in Neb. Rev. Stat. § 8-139.

002.01B "Class I Executive Officer's License" means a license granted prior to the effective date of this Rule to any person who performed any functions of an active executive officer with the exception of making loans or investments.

002.01C "Class II Executive Officer's License" means a license granted prior to the effective date of this Rule to any person who directly or indirectly made loans or investments for a bank.

002.01D "Investment" means an outlay or expenditure of institutional funds requiring individual judgment as to the appropriateness of the expenditure, but does not include routine outlays or expenditures requiring little or no judgment, such as investment of excess funds in overnight federal funds.

002.01E "Loan" means any extension of credit.

002.01F "Opt-In Bank" means a bank which utilizes the Department's licensing process for active executive officers.

002.01G "Opt-Out Bank" means a bank which has elected for its active executive officers to be exempt from the requirement to apply for and obtain a license from the Department.

003 GENERAL QUALIFICATIONS.

003.01 Active executive officers must be persons of good moral character, known integrity, business experience and responsibility, and be capable of conducting the affairs of a bank institution on sound financial principles.

003.02 To determine whether a person meets the requirements of Subsection 003.01 of this Rule, all banks, prior to employing a person who will, or may be expected to, serve as an active executive officer, must verify

employment history, check references, obtain a credit report, and obtain a criminal history of such person.

003.03 In the event a bank promotes, or changes the job duties of, a person who was not employed, or not expected, to serve as an active executive officer, the bank must obtain a credit report and obtain a criminal history of such person if such person has been employed by the bank for more than one year prior to the promotion or change in job duties.

003.04 The items obtained in accordance with Subsections 003.02 and 003.03 of this Rule are deemed to be personnel records and are to be retained as provided in 45 NAC 3.

004 LICENSED EXECUTIVE OFFICERS.

004.01 The provisions of Subsection 004 do not apply to active executive officers employed by, or under contract to perform services for, Opt-Out Banks.

004.02 No person employed by, or under contract to perform services for, an Opt-In Bank shall exercise any of the functions of an active executive officer without having first acquired an executive officer's license from the Department.

004.03 An application shall be submitted by the bank on forms prescribed by the Department along with the fee required by Neb. Rev. Stat. § 8-602.

004.04 As part of the application, the applicant must include a:

004.04A Personal financial statement,

004.04B Current résumé,

004.04C Completed Citizenship Attestation Form,

004.04D Copy of all Criminal History Reports from each state in which the applicant has resided during the past ten years, and

004.04E Letter from the president, chief executive officer, or a member of the Board of Directors of the bank stating:

004.04E1 Reasons why the institution desires an executive officer's license for the applicant,

004.04E2 The applicant's qualifications for the license,

004.04E3 The applicant's familiarity with the statutes and rules or regulations of the Department applicable to banks, and

004.04E4 For applicants covered by Subsection 004.04F of this Rule, that the bank has written loan and investment policies.

004.04F An applicant who will be making loans and/or investments must demonstrate to the satisfaction of the Department:

004.04F1 Two years' experience in the making of loans and/or investments, or

004.04F2 Comparable educational experience, defined as closely related to the experience requirements in such areas as examining and reviewing loans or investments or attending specific schools on loans and investments, and

004.04F3 Successful completion of at least one school or educational program concentrating on both loans and investments.

004.05 An active executive officer may have under his or her direct supervision one or more individuals engaged in making loans or investments, who shall be deemed executive officers in training.

004.06 No loans or investments shall be made by an executive officer in training without having first secured the approval of the holder of an executive officer's license. Written evidence of such approval for each loan or investment transaction must be reflected in the loan file or on the loan documents.

004.07 An executive officer's license must be held for every Opt-In Bank in which such person exercises the functions of an active executive officer.

004.08 An executive officer's license is transferable only if:

004.08A A merger of two Opt-In Banks has occurred, or

004.08B An application to transfer the executive officer license is made to the Department on forms prescribed by the Department no later than thirty days after the applicant has terminated employment with the bank from which the applicant is transferring and the applicant was in good standing with said bank at the time of termination.

004.09 In the event of an emergency declared by the Director of the Department, a temporary executive officer's license may be issued for a period of up to thirty days, and renewed once thereafter, pending receipt of an application for a permanent executive officer's license.

004.10 A holder of an executive officer's license must surrender such license to the Department for cancellation upon termination of employment or contract. If the licensee fails to surrender the license, the bank must do so within ten days after the termination. If the license cannot be located for surrender, the bank must notify the Department in writing of the termination and request cancellation of the license in the records of the Department.

004.11 The Department will cancel surrendered licenses and licenses submitted for cancellation pursuant to Subsection 004.10 of this Rule without prejudice to the holder of such license unless the Director of the Department takes an action in accordance with Subsection 004.15 of this Rule.

004.12 The Department shall take possession of, and cancel, any executive officer's license held by any person in any bank that is in the possession of the Department or has been temporarily or permanently closed by the Department. If any such license cannot be located, the license will be cancelled in the records of the Department.

004.13 Any cancellation made pursuant to Subsection 004.12 of this Rule shall be without prejudice to the holder of such license unless the Director of the Department makes a finding in accordance with Subsection 004.15 of this Rule.

004.14 An executive officer's license is subject to suspension by the Department pursuant to Section 005 of this Rule.

004.15 An executive officer's license is subject to revocation by the Department pursuant to Neb. Rev. Stat. § 8-139 and Neb. Rev. Stat. §§ 8-1,134 to 8-1,139, inclusive, and any rules or regulations promulgated thereunder.

004.015A The Department may revoke with prejudice an executive officer's license upon entry by the Director of the Department of a finding or findings of fact, conclusions of law, and order based upon an investigation showing evidence that the executive officer is, or has been:

004.015A1 Conducting the business of a financial institution in an unsafe or unauthorized manner;

004.015A2 Endangering the interests of stockholders, shareholders, or depositors;

004.015A3 Violating any of the provisions of Chapter 8 of the Nebraska statutes, any rules or regulations of the Department, or any orders entered by the Department;

004.015A4 Supplying false, misleading, or incomplete information in connection with any application made to the Department; or

004.015A5 The subject of an order of revocation of an executive officer's license at another bank.

004.16 Any person whose license has been revoked shall immediately terminate employment with the bank and his or her membership on the bank's Board of Directors, if any.

005 SUSPENSION.

005.01 The Department may suspend the executive officer's license held by any person employed by, or under contract to perform services for, an Opt-In Bank or suspend the ability of an active executive officer employed by, or under contract to perform services for, an Opt-Out Bank to continue to act as an active executive officer upon entry by the Director of the Department of a finding or findings of fact, conclusions of law, and order based upon an investigation showing evidence that the executive officer is, or has been:

005.01A Conducting the business of a bank in an unsafe or unauthorized manner;

005.01B Endangering the interests of stockholders, shareholders, or depositors;

005.01C Violating any of the provisions of Chapter 8 of the Nebraska statutes, any rules or regulations of the Department, or any order entered by the Department;

005.01D Supplying false, misleading, or incomplete information in connection with any application made to the Department; or

005.01E The subject of an order of suspension of an executive officer's license or from acting as an active executive officer at another bank.

005.02 As part of any order of suspension, the Director may require suspension of:

005.02A Compensation to the active executive officer, and

005.02B The individual from the Board of Directors of any bank where such membership is held.

006 CIVIL MONEY PENALTIES, FINES, AND COSTS.

006.01 As part of any order of revocation or suspension, the Director may levy a civil penalty or fine personally against an active executive officer in an amount not to exceed ten thousand dollars. Such amount shall not be paid out of the assets of any bank in which the active executive officer is employed or otherwise performing services pursuant to contract.

006.02 The Director may levy the costs of investigation and the costs of proceedings incurred in an order of revocation or suspension against an active executive officer. Such costs shall not be paid out of the assets of any bank in which the active executive officer is employed or otherwise performing services pursuant to contract.

007 EFFECT OF ORDER.

007.01 Any holder of an executive officer's license who has had such license revoked with prejudice or suspended shall:

007.01A Surrender any other executive officer's licenses held in any Opt-In Bank,

007.01B Cease acting as an active executive officer of any Opt-Out Bank where he or she may also be employed, or under contract to serve as, an active executive officer,

007.01C Not be eligible to apply for another executive officer's license or to serve as an active executive officer of an Opt-Out Bank, and

007.01D Not be eligible to serve as a member of the Board of Directors of any bank.

007.02 Any active executive officer of an Opt-Out Bank who has been suspended as an active executive officer shall:

007.02A Cease acting as an active executive officer in any other bank,

007.02B Surrender any executive officer's licenses held in any bank,

007.02C Not be eligible to serve as an active executive officer of an Opt-Out Bank or to apply for an executive officer's license, and

007.02D Not be eligible to serve as a member of the Board of Directors of any bank.

008 NON-EXCLUSIVE REMEDIES.

008.01 The provisions of this Rule do not constitute the exclusive remedies which the Department may pursue or take against an active executive officer for violations of any state or federal laws, state or federal rules and regulations, or orders of the Department, which apply to the active executive officer.

009 CONDITIONAL LICENSES.

009.01 The Director of the Department may, on a case-by-case basis, and with prior written notice to the applicant and the applicant's employing bank, issue a conditional Executive Officer's license in order to:

009.01A Permit an applicant to demonstrate, within a stated period of time, compliance with specified standards; or

009.01B Set limitations or additional standards deemed necessary in the public interest as a result of disclosures in the application and/or the Department's investigation of the applicant.

010 APPLICATION OF RULE TO EXISTING LICENSE HOLDERS.

010.01 The distinctions between Class I Executive Officer's licenses and Class II Executive Officer's licenses are eliminated as of the effective date of this Rule.

010.02 All holders of Class I Executive Officer's licenses and Class II Executive Officer's licenses on the effective date of this Rule will be deemed to be licensed executive officers with no action required by the licensed active executive officer or the Opt-In Bank.

010.03 All applications for Class I and Class II Executive Officer's licenses received and not yet acted upon by the Department as of the effective date of this Rule will be deemed to be applications for an executive officer's license in accordance with this Rule with no action required by the applicant or the Opt-In Bank.

