


Timothy J. Karsky
*Commissioner*Robert J. Entringer
*Assistant Commissioner*Douglas D. Grenz
*Chief Examiner - Banks*Corey J. Krebs
*Chief Examiner - Credit Unions*CSBS ACCREDITED 1993
NASCUS ACCREDITED 2000

MEMORANDUM

DATE: June 10, 2009

TO: Senator Tom Fischer, Chairman
Administrative Rules Committee

FROM: Timothy J. Karsky, Commissioner 

SUBJECT: Rules Published in the July 2009
Supplements of the North Dakota Administrative Code

In a May 26, 2009, letter addressed to the Department of Financial Institutions, Code Reviser John Walstad asked that a representative of the Department appear before your committee to testify on the rule changes as follows: Amendments to Chapter 13-02-15, Loan Production Offices; and new rules for Chapter 13-02-22, Deposit Production Offices.

The amendments to Chapter 13-02-15, Loan Production Offices, clarifies some of the definitions in the rule and the additional language added to the rule gives us parity with the Comptroller of the Currency rules regarding Loan Production Offices for national banks.

The new rule, Chapter 13-02-22, Deposit Production Offices, gives state-chartered banks the ability to establish these offices similar to what national banks can do and the rule is very similar to the Office of the Comptroller of the Currency's rule regarding the establishment of Deposit Production Offices.

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.

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The amendments made to Chapter 13-02-15, Loan Production Offices, were done by this Department so that the rule would be similar to the way national banks operate in the State of North Dakota. They did not result from statutory changes made by the Legislative Assembly.

The rules regarding Chapter 13-02-22, Deposit Production Offices, were requested by several state-chartered institutions to have the opportunity to establish these offices in the State of North Dakota. Again, they did not result from statutory changes made by the Legislative Assembly.

2. Whether the rules are related to any federal statute or regulation.

The rule does not relate to any federal statute or regulation; however, there are similar rules for national banks that operate in the State of North Dakota, and these proposed rules would be very similar if adopted.

3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.

The initial discussion by the State Banking Board occurred at its regular meeting held May 2, 2008, to address whether or not the activity for Deposit Production Offices should be authorized and whether or not the Department should pursue amending the Loan Production Offices rule. At that meeting the Department was instructed to draft the new rules and amendments to the old rules. At the July 10, 2009, regular State Banking Board meeting the proposed amendments to the rules for Loan Production Offices were reviewed. The proposed changes included expanding the definitions for bank funds, core banking activity, what constitutes lending money, receipt of bank funds, and who is a third party. Furthermore, the definition of loan production office was changed to mean an office which is apart from the main bank, facility, or interstate branch where loans are solicited but money is not lent. The Board also addressed the ability for authorization to establish Loan Production Offices in other states.

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The Board also discussed the proposed new rules for Deposit Production Offices, which again grants parity for state-chartered banks to have the ability to establish these offices. The rule sets forth the definitions for Deposit Production Offices and how the authorization of Deposit Production Offices will take place. The rule establishes the criteria that banks must meet in order to establish these offices, along with limitations on the activities that can be performed.

The Board authorized the Department to proceed with hearing, notice, and publication for the rules. Notice was sent out on September 18, 2008, to all state and nationally-chartered banks in North Dakota; Federal Deposit Insurance Corporation; Federal Reserve; Comptroller of the Currency; North Dakota Bankers Association; Independent Community Banks of North Dakota; Mid America Credit Union Association; North Dakota Retailers Association; and State Banking Board members. The public hearing was held on the proposed amendments and new rules on November 19, 2008, in the Office of the Department of Financial Institutions, before Commissioner Timothy J. Karsky, who acted as the Hearing Officer. The final comment period ended on December 1, 2008. The rules were sent to the Attorney General's Office for examination as to the legality on March 19, 2009; on April 8, 2009, the Attorney General issued an opinion that the rules are in substantial compliance with N.D.C.C. Ch. 28-32 and were approved as to their legality. The rules were adopted in final form at the May 14, 2009, State Banking Board meeting and were filed with the Legislative Council on May 14, 2009.

4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint, and the response of the agency, including any change made to the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearing on this rule.

No comments were made at the public hearing concerning the rules. The Department did receive two written comments regarding the rules; one a

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letter of support by a financial institution for the rules as drafted. The Department also received a written comment dated November 10, 2008, from Marilyn Foss, General Counsel for the North Dakota Bankers Association. Ms. Foss had various comments concerning the delegation of the authority to the Commissioner, and also suggested that the definition for impairment of capital be clarified to provide guidance to the banks regarding this factor, and to clarify the activity that can be done under a deposit production office. The State Banking Board reviewed the concerns of Ms. Foss, addressed each issue, and revised the regulation to incorporate her suggestions.

5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.

The cost for publication of the notice was \$1,679.36. I performed the duties of the hearing officer and the hearing was short in duration so the costs were minimal.

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

The proposed rules for Chapter 13-02-22 give state-chartered banks the ability to establish Deposit Production Offices. This activity can currently be done by a national bank and the proposed rule will give parity for state-chartered institutions. This activity will help banks attract deposits in offices that are not considered branches.

The amendments to Chapter 13-03-15, Loan Production Offices, clarify and update the Loan Production Office rule which was established in May 1993. The amendments bring this rule up-to-date with the current national banking rule regarding Loan Production Offices.

7. Whether a regulatory analysis was required by North Dakota Century Code Section 28-32-08 and whether that regulatory analysis was issued.

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A regulatory analysis was not required nor issued.

8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued.

The proposed amendments are not expected to have an adverse economic impact on state-chartered institutions as it only grants authority for these institutions to establish Loan Production Offices or Deposit Production Offices. This rule will harmonize the loan production office with federal rules.

9. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09.

No constitutional takings assessment was required.

10. If these rules were adopted as an emergency (interim final) rules under North Dakota Century Code Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support the declaration and provide a copy of the Governor's approval of the emergency status of the rules.

The rules were not adopted as an emergency rule.

TJK:sr