

GUIDANCE DOCUMENT

This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

STATEMENT OF POLICY #5

PAYMENT OF FEES TO AN INSIDER OF A BANK

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

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

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

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

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

CLASSIFICATION OF EXPENSES

EXPENSE CLASSIFICATION

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

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