

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 #6

FORMAL AND INFORMAL ADMINISTRATIVE ACTIONS

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

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

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

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

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

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

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

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

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

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

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