



NOTICE OF RULEMAKING HEARING NEBRASKA DEPARTMENT OF BANKING AND FINANCE

Notice is hereby given that the Nebraska Department of Banking and Finance will hold a rulemaking hearing on February 9, 2023, commencing at 9:30 a.m. CST, at the First Nebraska Administrative Building, 1526 K Street, Suite 300, Lincoln, Nebraska 68508.

The purpose of the hearing is to take testimony and evidence concerning the following revisions to Title 45 of the Rules and Regulations of the Department:

1. 45 NAC 1 – Adopts guidance applicable to all Chapters in Title 45. The rule sets forth subject matter authority of the Department of Banking and Finance and the Director’s ability to take action to protect the public interest when the Director determines it necessary; provides necessary administrative information; and establishes the methods and impact of filing documents and payment of fees.
2. 45 NAC 2 – Adopts minimum information and record requirements that banks must obtain and maintain for their entity customers. The rule incorporates and updates the provisions of existing 45 NAC 6, “General.” Adds identification and resolution requirements for different entity customers, including limited liability companies, and clarifies the entities covered as public or not-for-profit organizations.
3. 45 NAC 3 – Adopts minimum record keeping requirements for data centers of banks and specifies data fields for the different accounts in banks. The rule incorporates and updates many of the provisions of existing 45 NAC 23, “Minimum Record Keeping Requirements.” The revisions recognize that banks may retain records in electronic format, and remove an obsolete Exhibit A and an outdated Consumer Loan Reference Chart, which is an unnecessary part of the rule.
4. 45 NAC 4 – Adopts minimum retention periods for bank records. The rule incorporates and updates many of the provisions of 45 NAC 27, “Schedule for Records Retention by Banks.” The revisions define and recognize

retention of records in an electronic format; update language regarding records of property escheated to the State Treasurer; provide a standard for existing microfilmed records; and a cross-referencing clarification for banks with trust department records.

5. 45 NAC 5 – Adopts minimum retention periods for records of free-standing trust companies and trust departments of banks. The rule incorporates and updates many of the provisions of existing 45 NAC 32, “Schedule for Retention of Records: Banks Exercising Trust Powers and Trust Companies.” The revisions track a number of the changes proposed in 45 NAC 4, which define and recognize retention of records in an electronic format; update language regarding records of property escheated to the State Treasurer; provide standards for records of safe deposit boxes and for existing microfilmed records; and include a cross-referencing clarification for bank records that are not a part of the bank’s trust department.
6. 45 NAC 6 – Provides procedures for the filing of bank Articles of Incorporation and Bylaws. The rule incorporates and expands the provisions of existing 45 NAC 8, “Articles of Incorporation,” by establishing procedures for banks filing Bylaws with the Department, formalizing the Department’s review and no-objection procedures of corporate documents, and by providing cross references to relevant statutes.
7. 45 NAC 7 – Amends the rule requiring banks to obtain bond riders or endorsements to cover persons and entities that perform data processing services for the bank and specifying provisions required in the rider/endorsement. The proposed amendments expand the type of entities banks may contract with to provide these services and the list of processor-related persons who are to be deemed as bank employees for purposes of bond coverage, and update the title.
8. 45 NAC 8 – Repeal and Reissue 45 NAC 8, under the new title, "Changes In Paid-In Capital Stock." The proposed rule incorporates and expands provisions currently contained in 45 NAC 12, "Paid-In Capital Stock Increase," by establishing procedures for a bank decreasing its paid-in capital stock and updating the procedures for an increase in capital stock. The revisions set time frames for filing notices with the Department; direct when a bank may need to update its Articles of Incorporation as a result of capital stock changes; and establish agency approval and no-objection processes.
9. 45 NAC 9 – Repeal the title of 45 NAC 9, “Change in Control,” as the rule itself was repealed in 1987. Reissue the proposed rule titled, “Active Executive Officers,” to provide practices and procedures for bank executive officer license applications, renewals, surrenders, cancellations, and

revocations. It incorporates, updates, and re-organizes many of the provisions of existing 45 NAC 28, "Rules of Practice and Procedure Applicable to Executive Officers Licenses Obtained from the Nebraska Department of Banking and Finance Pursuant to Nebraska Revised Statutes, 1943." The revisions address executive officers of banks which opt out of the licensing process; eliminate distinctions between Class I and Class II licenses; adopt and eliminate definitions; formalize application standards; provide for the limited transfer of a license; update license surrender and cancellation provisions; establish the evidence necessary for license suspension or suspension of executive officer authority; provide for the levy of costs in disciplinary proceedings; set post-suspension and revocation requirements; and provide for the issuance of conditional licenses.

10. 45 NAC 10 – Adopts standards under which bank directors, officers, and employees may guarantee loans at their employing bank without violating statutory limits for insider borrowing. The proposed rule, "Insider Loan Guarantees," incorporates, updates, and re-organizes many of the provisions of existing 45 NAC 16, "Director, Officer or Employee Borrowing;" defines terms; and corrects a statutory reference.
11. 45 NAC 11 – Repeal the title of 45 NAC 11, "Board of Directors; Residence," as the rule itself was repealed in 1991. Reissue the proposed rule, "Executive Officer Borrowing Reports," to establish standards for reports that bank executive officers are required to make when they borrow from a financial institution other than their employing bank; correct a statutory reference; and incorporate current law. The proposed rule incorporates and updates provisions currently contained in 45 NAC 17, "Officer Borrowing."
12. 45 NAC 12 – Repeal and Reissue 45 NAC 12 under the new title, "Directors' Examinations Performed by Certified Public Accountants or Public Accountants," to provide the standards for certified public accountants and public accountants to conduct directors' examinations of banks; update the criteria to determine auditor independence; authorize a bank's Board of Directors to adopt specified external auditing standards and to appoint an independent person to conduct the directors' examination; and provide that the Department may require enhanced audit procedures due to safety and soundness concerns. The proposed rule incorporates and expands provisions currently contained in 45 NAC 24 of the same title.
13. 45 NAC 13 – Adopts standards governing audits and directors' examinations of banks, including reconciliation and testing of accounts and review of capital accounts; allows for a risk-focused review of

accounts; requires inquiry into other financial risk activity; removes an obsolete reference to a handbook on statistical probability; and provides an option for electronic submission of annual reports to the Department. Revises and extends the date for submission of the audit report to 120 days after the completion of the audit, or 120 days after calendar year-end for periodic audits. The proposed rule incorporates and updates provisions of existing 45 NAC 25 of the same title.

14. 45 NAC 14 – Adopts standards for banks to qualify for the statutory exception to the lending limit for loans secured by livestock; defines a term; removes a reference to an obsolete form; provides requirements for inspections and appraisals of livestock feeding operations, and for independence of the inspection/appraisal process from the loan production function; and removes a sample form. The rule will incorporate and update provisions of existing 45 NAC 19 of the same title.
15. 45 NAC 15 – Repeal the title of 45 NAC 15, “Executive Officer’s License,” as the rule itself was repealed in 1987. Reissue the proposed rule, “Loans Secured by Warehouse Receipts,” to adopt standards for banks to qualify for the statutory exception to the lending limit for loans secured by warehouse receipts and define a term. The rule will incorporate and update provisions of existing 45 NAC 20 of the same title.
16. 45 NAC 16 – Repeal and Reissue 45 NAC 16 under the new title, “Loans Secured By Deposit Accounts.” The proposed rule sets standards for banks to qualify for the statutory exception to the lending limit for loans secured by deposit accounts; defines a term; and updates methods for calculation of the lending limit. The rule will incorporate and update provisions of existing 45 NAC 31 of the same title.
17. 45 NAC 17 – Repeal and Reissue 45 NAC 17 under the new title, “Pool Participation Approval.” The proposed rule sets standards for bank investments in obligations representing loans to other banks; provides an option for electronic filing of a required form with the Department; and clarifies the regulatory approval process. The proposed rule will incorporate and update provisions of existing 45 NAC 18 of the same title.
18. 45 NAC 18 – Repeal and Reissue 45 NAC 18 under the new title, “Requirements for Purchases of Shares of Investment Companies.” The proposed rule sets the standards for bank investments in shares of investment companies; expands the list of obligations that are eligible for investment to include Canadian government obligations and digital asset depositories; adds a definition of “unimpaired capital;” and updates methods for calculation of investment limits. The proposed rule will incorporate and update provisions of existing 45 NAC 30 of the same title.

19. 45 NAC 19 – Repeal and Reissue 45 NAC 19 under the new title, “Leasing of Personal Property.” The proposed rule establishes the standards for banks leasing personal property, and requires banks to comply with Title 12, Chapter 1, Part 23 of the Code of Federal Regulations, “Leasing.” The proposed rule will incorporate and update some of the provisions of existing 45 NAC 26, “Banks: Leasing of Personal Property,” including the striking of provisions which are duplicative of federal regulations, and an addition of a statutory reference for investment limits.
20. 45 NAC 20 – Outright repeal 45 NAC 20 as an updated version will be adopted as 45 NAC 15.
21. 45 NAC 23 – Outright repeal 45 NAC 23 as an updated version will be adopted as 45 NAC 3.
22. 45 NAC 24 – Outright repeal 45 NAC 24 as an updated version will be adopted as 45 NAC 12.
23. 45 NAC 25 – Outright repeal 45 NAC 25 as an updated version will be adopted as 45 NAC 13.
24. 45 NAC 26 – Outright repeal 45 NAC 26 as an updated version will be adopted as 45 NAC 19.
25. 45 NAC 27 – Outright repeal 45 NAC 27 as an updated version will be adopted as 45 NAC 4.
26. 45 NAC 28 – Outright repeal 45 NAC 28 as an updated version will be adopted as 45 NAC 9.
27. 45 NAC 30 – Outright repeal 45 NAC 30 as an updated version will be adopted as 45 NAC 18.
28. 45 NAC 31 – Outright repeal 45 NAC 31 as an updated version will be adopted as 45 NAC 16.
29. 45 NAC 32 – Outright repeal 45 NAC 32 as an updated version will be adopted as 45 NAC 5.

The rulemaking hearing is being conducted under and by virtue of the provisions of Section 84-907, R.R.S 1943, as amended, which provides that COPIES OF THE PROPOSED RULES ARE AVAILABLE FOR PUBLIC EXAMINATION at the Office of the Department of Banking and Finance, 1526 K Street, Suite 300, Lincoln, Nebraska 68508, and at the Office of the Secretary of State, 1445 K Street, Suite 2300, Lincoln, Nebraska 68508. In addition, the

proposed rules are available on the Department of Banking and Finance's website at <https://ndbf.nebraska.gov>, and the Secretary of State's website www.sos.ne.gov.

A copy of the Fiscal Impact Statement is available at the Office of the Department of Banking and Finance and on the Department's website.

All interested persons are invited to attend and testify at the hearing. Interested persons may also submit written comments to the Department of Banking and Finance prior to the start of the hearing. Such comments will be made part of the hearing record at the time of the hearing. Written comments should be sent to the Nebraska Department of Banking and Finance, Attn: Tag Herbek, 1526 K St., Suite 300, Lincoln, NE 68508, or emailed to dob.banking@nebraska.gov.

If auxiliary aids or reasonable accommodations are needed for attendance at this hearing, please call the Nebraska Department of Banking and Finance at (402) 471-2171, or, for persons with hearing impairments, please call the Nebraska Relay System at (800) 833-7352 TDD. This contact should be made at least seven (7) days prior to the hearing.

Dated at Lincoln, Nebraska, this 23rd day of December, 2022.

Kelly Lammers, Director

Nebraska Department of Banking and Finance