

TITLE 45-DEPARTMENT OF BANKING AND FINANCE

Chapter 28 ~~REPEALED. 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.~~

~~001 SCOPE AND APPLICATION~~

~~001.01 This rule shall govern all applications for executive officer licenses from the Nebraska Department of Banking and Finance. It provides for classes of executive officer licenses; conditions and qualifications for obtaining such licenses; definitions; and license removal standards and procedures pursuant to Neb. Rev. Stat. Sections 8-1,134 to 8-1,139. Executive officer licenses subject to this rule are all those required for commercial banks by Neb. Rev. Stat. Section 8-139, and industrial loan and investment companies by Neb. Rev. Stat. Section 8-403.04, or as may be required by future legislation.~~

~~002 DEFINITIONS OF TERMS~~

~~002.01 "Active Executive Officer" shall mean any employee of a financial institution, or any person under contract to perform services for a financial institution, who exercises management functions in said financial institution, or exercises major policy-making functions in said financial institution, or exercises substantial employee supervision including power to terminate employment, or is determined by the Department to be a policy-dominant individual in said financial institution. Examples of titles of such officers include President, any Vice President, Cashier, Assistant Cashier, Chief Executive Officer, Loan Officer, or Investment Officer;~~

~~002.02 "Applicant" shall mean any person applying to the Department for an executive officer's license, or for whom an application has been made by a financial institution;~~

~~002.03 "Class I Executive Officer's License" shall mean a license granted to any active executive officer who performs any functions defined in Paragraph 002.01 with the exception of directly or indirectly making loans or investments;~~

~~002.04 "Class II Executive Officer's License" shall mean a license granted to any person who directly or indirectly makes loans or investments for a financial institution;~~

~~002.05 "Department" shall mean the Nebraska Department of Banking and Finance;~~

~~002.06 "Director" shall mean the Director of the Nebraska Department of Banking and Finance;~~

~~002.07 "Financial Institution" shall mean any institution under the jurisdiction of the Department in which officers are required by law to obtain an appropriate executive officer's license;~~

~~002.08 "Indirect" shall mean any use of influence, persuasion or exercise of authority to cause a loan or investment to be made by a financial institution.~~

~~002.09 "Investment" shall mean an outlay or expenditure of institutional funds requiring individual judgment as to the appropriateness of the expenditure, but shall not include routine outlays or expenditures requiring little or no judgment, such as the investment of excess funds in overnight federal funds.~~

### ~~003 APPLICATION PROCESS AND GENERAL QUALIFICATIONS~~

~~003.01 Any person desiring to exercise any or all of the functions of an active executive officer in a financial institution, as described in Paragraph 002.01, shall not perform any of such functions without having first acquired from the Department an appropriate executive officer's license.~~

~~003.01A Any person desiring such license shall complete forms in such manner and content as the Department shall require, and shall forward such completed forms to the Department along with any required fee.~~

~~003.01A(1) As part of the application, the applicant shall include a financial statement and a letter from the president or chief executive officer of the financial institution stating reasons why the institution desires an executive officer's license for the applicant, and how the applicant qualifies for such a license. Provided however, this requirement may be waived by the Department in the event the applicant is the president or chief executive officer of the institution.~~

~~003.01B Any applicant shall clearly identify on said form which class of license is being sought by the applicant.~~

~~003.01C An active executive officer shall hold an appropriate executive officer's license for every financial institution in which such officer exercises the functions of an active executive officer.~~

~~003.01D Any executive officer's license obtained pursuant to this Rule shall not be deemed transferable to any other financial institution.~~

~~003.02 Applicants for any executive officer's license shall demonstrate to the Department evidence of good moral character, known integrity, business experience in a financial institution or related field, and responsibility; and be capable of conducting the affairs of a financial institution on sound financial principles. In addition, the applicant must demonstrate familiarity with the statutes and rules and regulations of the Department applicable to the relevant financial institution for which the license is being sought.~~

~~003.03 In the event of an emergency declared by the Director, a temporary executive officer's license may be issued for a period of up to 30 days, and renewed once thereafter, pending receipt of an application for a permanent executive officer's license.~~

~~004 PERMISSIBLE ACTIVITIES, CLASS I EXECUTIVE OFFICER'S LICENSE~~

~~004.01 Any holder of a Class I Executive Officer's License may perform any of the functions of an active executive officer, except that such holder shall not be permitted by reason of holding such license to directly or indirectly make loans or investments on behalf of the financial institution.~~

~~004.01A Any holder of a Class I Executive Officer's License may directly or indirectly make loans or investments only upon applying for and receiving a Class II Executive Officer's License in accordance with the requirements of this Rule.~~

~~004.01B Any holder of a Class I Executive Officer's License who applies to the Department for a Class II Executive Officer's License shall surrender to the Department his or her Class I Executive Officer's License upon receipt of the Class II Executive Officer's License.~~

~~005 PERMISSIBLE ACTIVITIES, CLASS II EXECUTIVE OFFICER'S LICENSE~~

~~005.01 Any holder of a Class II Executive Officer's License may perform all functions of an active executive officer, in accordance with the personnel and management policies and structure of the financial institution in which such license holder is employed or has otherwise contracted with for services.~~

~~005.01A In addition to the requirements of Paragraph 003, an applicant for a Class II Executive Officer's License shall be issued such a license only upon having first demonstrated to the satisfaction of the Department either two years experience in the making of loans and investments, or comparable educational experience.~~

~~005.01A(1) "Comparable educational experience" means closely related to the experience requirements in such things as examining and reviewing loans or investments or attending specific schools on credit and investments.~~

~~005.01A(2) The applicant shall have successfully completed at least one school or educational program concentrating on both loans and investments.~~

~~005.02 No applicant shall be permitted to hold a Class II Executive Officer's License in any financial institution which does not have a written loan policy procedure.~~

~~005.03 The holder of a Class II Executive Officer's License may have under his or her direct supervision one or more individuals engaged in making loans or investments, and who shall be deemed as loan officers in training.~~

~~005.03A No loans or investments shall be made by such officers in training without having first secured the approval of the holder of a Class II Executive Officer's License. Written evidence of such approval for each loan or investment transaction shall be reflected in the loan file or on the loan documents.~~

#### ~~006 SURRENDER, CANCELLATION OR REVOCATION OF LICENSE~~

~~006.01 Any holder of any executive officer's license issued by the Department shall surrender to the Department such license upon termination of employment with the financial institution for which such license was obtained.~~

~~006.01A Any such surrender to the Department shall be made without prejudice to the holder of such license unless the Director of the Department shall make a finding in accordance with the requirements of Paragraph 006.03B.~~

~~006.02 The Department shall take possession of and cancel any executive officer's license held by any person in any financial institution that is in the possession of the Department or has been temporarily or permanently closed by the Department.~~

~~006.02A Any cancellation made pursuant to Paragraph 006.02 shall be without prejudice to the holder of such license unless the Director of the Department shall make a finding in accordance with Paragraph 006.03B.~~

~~006.03 Any holder of any executive officer's license is subject to revocation of such license by the Department pursuant to the requirements and procedures of Neb. Rev. Stat. Sections 8-1,134 to 8-1,139 (1984 Supp.) and rules promulgated pursuant thereto.~~

~~006.03A Any person whose license has been revoked shall forthwith terminate his or her employment with the financial institution and the financial institution's board of directors if such membership is held.~~

~~006.03B The Department shall revoke with prejudice the executive officer's license held by any person upon entry by the Director of the Department of an appropriate finding and order based upon discovery of evidence of the following:~~

~~006.03B(1) Conducting the business of a financial institution in an unsafe or unauthorized manner;~~

~~006.03B(2) Endangering the interests of stockholders, shareholders or depositors;~~

~~006.03B(3) Violating any laws or rules applicable to the Department including this rule, or any administrative orders entered by the Department.~~

~~006.03B(4) Supplying false, misleading or incomplete information in connection with the application for any executive officer's license held by the applicant.~~

~~006.03C In lieu of the revocation contemplated by Paragraph 006.03B, the Director of the Department may suspend the executive officer's license held by any person for a period of time not to exceed five years.~~

~~006.03C(1) As part of any order of suspension the Director may require suspension of compensation to the holder of the license, and suspension from the financial institution's board of directors if such membership is held by the license holder.~~

~~006.03D As part of any order of revocation or suspension the Director may levy a money penalty or fine personally against the holder of an executive officer's license in an amount not to exceed \$10,000, such amount not to be payable out of the assets of any financial institution in which the holder of an executive officer's license is employed or otherwise performing services pursuant to contract.~~

~~006.03E Any holder of an executive officer's license who has had such license revoked or suspended with prejudice shall surrender any other executive officer licenses held in any other financial institution, and shall not be eligible to apply for another executive officer's license.~~

~~007 APPLICATION OF RULE TO EXISTING LICENSE HOLDERS~~

~~007.01 This rule shall apply to all applications received and not yet acted upon by the Department as of the effective date of this rule, and all applications and renewal applications received after the effective date of this rule.~~

~~007.01A No active executive officer holding an executive officer's license issued by the Department shall be required to apply for and obtain a new license pursuant to this rule; provided however, that all executive officer licenses in existence as of the effective date of this rule shall be subject to all provisions of this rule at the time of renewal of such licenses.~~

~~007.01B Nothing in this rule shall be construed to expand the authority of any holder of an executive officer's license held prior to the effective date of this rule.~~

~~007.02 The provisions of Paragraph 006 shall apply to all holders of executive officer's licenses issued by the Department, whether issued prior to or after the effective date of this rule.~~