

TITLE 45-DEPARTMENT OF BANKING AND FINANCE

Chapter ~~28 9~~ RULES OF PRACTICE AND PROCEDURE APPLICABLE TO ACTIVE EXECUTIVE OFFICERS LICENSES OBTAINED FROM THE NEBRASKA DEPARTMENT OF BANKING AND FINANCE PURSUANT TO NEBRASKA REVISED STATUTES, 1943.

001 SCOPE AND APPLICATION.

001.01 Neb. Rev. Stat. § 8-139 provides requirements for persons serving as active executive officers of banks.

001.02 Except as specifically provided herein, this Rule applies to all banks and all persons who act or seek to act as an executive officer of a bank.

002 DEFINITIONS. ~~OF TERMS~~

002.01 For purposes of this Rule:

002.01A "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; is as defined in Neb. Rev. Stat. § 8-139.

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;

002.03 002.01B "Class I Executive Officer's License" shall mean a license granted prior to the effective date of this Rule to any active executive officer person who performs performed any functions defined in Paragraph 002.01 of an active executive officer with the exception of making loans or investments;

002.04 002.01C "Class II Executive Officer's License" shall mean a license granted prior to the effective date of this Rule to any person who directly or indirectly makes made loans or investments for a financial institution bank;

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 means any use of influence, persuasion, or exercise of authority to cause a loan or investment to be made by a financial institution.~~

~~002.09~~ 002.01D "Investment" ~~shall~~ means an outlay or expenditure of institutional funds requiring individual judgment as to the appropriateness of the expenditure, but ~~shall~~ does not include routine outlays or expenditures requiring little or no judgment, such as ~~the~~ investment of excess funds in overnight federal funds.

002.01E "Loan" means any extension of credit.

002.01F "Opt-In Bank" means a bank which utilizes the Department's licensing process for active executive officers.

002.01G "Opt-Out Bank" means a bank which has elected for its active executive officers to be exempt from the requirement to apply for and obtain a license from the Department.

002 003 APPLICATION PROCESS AND GENERAL QUALIFICATIONS.

003.01 Active executive officers must be persons of good moral character, known integrity, business experience and responsibility, and be capable of conducting the affairs of a bank institution on sound financial principles.

003.02 To determine whether a person meets the requirements of Subsection 003.01 of this Rule, all banks, prior to employing a person who will, or may be expected to, serve as an active executive officer, must verify employment history, check references, obtain a credit report, and obtain a criminal history of such person.

003.03 In the event a bank promotes, or changes the job duties of, a person who was not employed, or not expected, to serve as an active executive officer, the bank must obtain a credit report and obtain a criminal history of such person if such person has been employed by the bank for more than one year prior to the promotion or change in job duties.

003.04 The items obtained in accordance with Subsections 003.02 and 003.03 of this Rule are deemed to be personnel records and are to be retained as provided in 45 NAC 4.

004. LICENSED EXECUTIVE OFFICERS.

004.01 The provisions of Subsection 004 do not apply to active executive officers employed by, or under contract to perform services for, Opt-Out Banks.

~~002.04 004.02 Any No person employed by, or under contract to perform services for, an Opt-In Bank desiring to shall exercise any or all of the functions of an active executive officer in a financial institution, as described in Paragraph 002.04 Subsection shall not perform any of such functions without having first acquired an executive officer's license from the Department. an appropriate executive officer's license.~~

~~002.04A Any person desiring such license shall complete forms in such manner and content as the Department shall require, and shall forward such completed 004.03 An application shall be submitted by the bank on forms to prescribed by the Department along with any required the fee required by Neb. Rev. Stat. § 8-602.~~

~~002.04A(1) 004.04~~ As part of the application, the applicant ~~shall~~ must include a:

004.04A Personal financial statement,

004.04B Current résumé,

004.04C Completed Citizenship Attestation Form,

004.04D Copy of all Criminal History Reports from each state in which the applicant has resided during the past ten years, and

004.04E Letter from the president, or chief executive officer, or a member of the Board of Directors of the financial institution bank stating:

004.04E1 Reasons why the institution desires an executive officer's license for the applicant, and how

004.04E2 The applicant's ~~qualifies for such a~~ qualifications for the license, Provided however, this may be waived by the Department in the event the applicant is the president or chief executive officer of the institution.

004.04E3 The applicant's familiarity with the statutes and rules or regulations of the Department applicable to banks, and

004.04E4 For applicants covered by Subsection 004.04F of this Rule, that the bank has written loan and investment policies.

004.04F An applicant who will be making loans and/or investments must demonstrate to the satisfaction of the Department:

004.04F1 Two years' experience in the making of loans and/or investments, or

004.04F2 Comparable educational experience, defined as closely related to the experience requirements in such areas as examining and reviewing loans or investments or attending specific schools on loans and investments, and

004.04F2 successful completion of at least one school or educational program concentrating on both loans and investments.

~~002.01B Any applicant shall clearly identify on said form which class of license is being sought by the applicant.~~

004.05 An active executive officer may have under his or her direct supervision one or more individuals engaged in making loans or investments, who shall be deemed executive officers in training.

004.06 No loans or investments shall be made by an executive officer in training without having first secured the approval of the holder of an executive officer's license. Written evidence of such approval for each loan or investment transaction must be reflected in the loan or investment file or on the loan documents.

~~002.01C~~ 004.07 An active executive officer shall hold an appropriate executive officer's license must be held for every financial institution Opt-In Bank in which such officer person exercises the functions of an active executive officer.

~~002.01D~~ 004.08 Any An executive officer's license ~~obtained pursuant to this Rule shall is not be deemed~~ transferable ~~to any other financial institution;~~ only if:

004.08A A merger of two Opt-In Banks has occurred, or

004.08B An application to transfer the executive officer license is made to the Department on forms prescribed by the Department no later than thirty days after the applicant has terminated employment with the bank from which the applicant is transferring and the applicant was in good standing with said bank at the time of termination.

~~002.02 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.~~

~~002.03~~ 004.09 In the event of an emergency declared by the Director of the Department, a temporary executive officer's license may be issued for a period of up to ~~30~~ thirty days, and renewed once thereafter, pending receipt of an application for a permanent executive officer's license.

~~003 PERMISSIBLE ACTIVITIES, CLASS I EXECUTIVE OFFICER'S LICENSE~~

~~003.01 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.~~

~~003.01A 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.~~

~~003.01B 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.~~

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

~~004.01 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.~~

~~004.01A In addition to the requirements of Paragraph 002, 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.~~

~~004.01A(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.~~

~~004.01A(2) The applicant shall have successfully completed at least one school or educational program concentrating on both loans and investments.~~

~~004.02 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.~~

~~004.03 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.~~

~~004.03A 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.~~

~~005 SURRENDER, CANCELLATION OR REVOCATION OF LICENSE~~

~~005.04 004.10 Any A holder of any an executive officer's license issued by the Department shall must surrender such license to the Department such license for cancellation upon termination of employment or contract with the financial institution for which such license was obtained. If the licensee fails to surrender the license, the bank must do so within ten days after the termination. If the license cannot be located for surrender, the bank must notify the Department in writing of the termination and request cancellation of the license in the records of the Department.~~

~~005.01A 004.11 Any such surrender to The Department shall be made will cancel surrendered licenses and licenses submitted for cancellation pursuant to Subsection 004.10 of this Rule without prejudice to the holder of such license unless the Director of the Department shall make a finding takes an action in accordance with the requirements of Paragraph 005.03B Subsection 004.15 of this Rule.~~

~~005.02 004.12 The Department shall take possession of, and cancel, any executive officer's license held by any person in any financial institution bank that is in the possession of the Department or has been temporarily or permanently closed by the Department. If any such license cannot be located, the license will be cancelled in the records of the Department.~~

~~005.02A 004.13 Any cancellation made pursuant to Paragraph 005.02 Subsection 004.12 of this Rule shall be without prejudice to the holder of such license unless the Director of the Department shall makes a finding in accordance with Paragraph 005.03B Subsection 004.15 of this Rule.~~

~~004.14 An executive officer's license is subject to suspension by the Department pursuant to Section 005 of this Rule.~~

~~005.03 004.15 Any holder of any An 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 § 8-139 and Neb. Rev. Stat. §§ 8-1,134 to 8-1,139, inclusive, (1984 Supp.) and any rules and regulations promulgated pursuant thereto thereunder.~~

~~005.03A 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.~~

~~005.03B 004.015A The Department shall may revoke with prejudice the an executive officer's license held by any person upon entry by the Director of the Department of an appropriate a finding or findings of fact, conclusions of law, and order based upon discovery of an investigation showing evidence of the following that the executive officer is, or has been:~~

~~005.03B(1)~~ 004.015A1 Conducting the business of a financial institution in an unsafe or unauthorized manner;

~~005.03B(2)~~ 004.015A2 Endangering the interests of stockholders, shareholders, or depositors;

~~005.03B(3)~~ 004.015A3 Violating any ~~laws or of the provisions of Chapter 8 of the Nebraska statutes, any rules or regulations applicable to~~ of the Department ~~including this rule~~, or any ~~administrative~~ orders entered by the Department;

~~005.03B(4)~~ 004.015A4 Supplying false, misleading, or incomplete information in connection with ~~the any~~ application ~~for any executive officer's license held by the applicant~~ made to the Department; or

004.015A5 The subject of an order of revocation of an executive officer's license at another bank.

004.16 Any person whose license has been revoked shall immediately terminate employment with the bank and his or her membership on the bank's Board of Directors, if any.

005 SUSPENSION.

~~005.03C~~ ~~In lieu of the revocation contemplated by Paragraph 005.03B, the Director of,~~ 005.01 The Department may suspend the executive officer's license held by any person for a period of time not to exceed five years. employed by, or under contract to perform services for, an Opt-In Bank or suspend the ability of an active executive officer employed by, or under contract to perform services for, an Opt-Out Bank to continue to act as an active executive officer upon entry by the Director of the Department of a finding or findings of fact, conclusions of law, and order based upon an investigation showing evidence that the executive officer is, or has been:

005.01A Conducting the business of a bank in an unsafe or unauthorized manner;

005.01B Endangering the interests of stockholders, shareholders, or depositors;

005.01C Violating any of the provisions of Chapter 8 of the Nebraska statutes, any rules and regulations of the Department, or any order entered by the Department;

005.01D Supplying false, misleading or incomplete information in connection with any application made to the Department; or

005.01E The subject of an order of suspension of an executive officer's license or from acting as an active executive officer at another bank.

~~005.03C(1)~~ 005.02 As part of any order of suspension, the Director may require suspension of:

005.02A Compensation to ~~the holder of the license, the active executive officer, suspension of~~ and

005.02B The individual from the ~~financial institution's~~ Board of Directors of any bank where ~~if~~ such membership is held, ~~by the license holder.~~

006 CIVIL MONEY PENALTIES, FINES, AND COSTS

~~005.03D~~ 006.01 As part of any order of revocation or suspension, the Director may levy a ~~money civil~~ penalty or fine personally against ~~the holder of an active executive officer's license officer~~ in an amount not to exceed ~~\$10,000, ten thousand dollars~~. Such amount ~~shall not to be payable paid~~ out of the assets of any ~~financial institution bank~~ in which the ~~holder of an active executive officer's license officer~~ is employed or otherwise performing services pursuant to contract.

006.02 The Director may levy the costs of investigation and the costs of proceedings incurred in an order of revocation or suspension against an active executive officer. Such costs shall not be paid out of the assets of any bank in which the active executive officer is employed or otherwise performing services pursuant to contract.

007 EFFECT OF ORDER

~~005.03E~~ 007.01 Any holder of an executive officer's license who has had such license revoked with prejudice or suspended ~~with prejudice~~ shall:

007.01A Surrender any other executive officer's licenses held in any ~~other financial institution~~ Opt-In Bank,

007.01B Cease acting as an active executive officer of any Opt-Out Bank where he or she may also be employed, or under contract to serve as, an active executive officer,

007.01C ~~and shall~~ Not be eligible to apply for another executive officer's license or to serve as an active executive officer of an Opt-Out Bank, and

007.01D Not be eligible to serve as a member of the Board of Directors of any bank.

007.02 Any active executive officer of an Opt-Out Bank who has been suspended as an active executive officer shall:

007.02A cease acting as an active executive officer in any other bank,

007.02B surrender any executive officer's licenses held in any bank, and

007.02C not be eligible to serve as an active executive officer of an Opt-Out Bank or to apply for an executive officer's license, and

007.02D not be eligible to serve as a member of the Board of Directors of any bank.

008 NON-EXCLUSIVE REMEDIES.

008.01 The provisions of this Rule do not constitute the exclusive remedies which the Department may pursue or take against an active executive officer for violations of any state or federal laws, state or federal rules and regulations, or orders of the Department, which apply to the active executive officer.

010 CONDITIONAL LICENSES.

010.01 The Director of the Department may, on a case-by-case basis, and with prior written notice to the applicant and the applicant's employing bank, issue a conditional Executive Officer's license in order to:

010.01A Permit an applicant to demonstrate, within a stated period of time, compliance with specified standards; or

010.01AB Set limitations or additional standards deemed necessary in the public interest as a result of disclosures in the application and/or the Department's investigation of the applicant.

006 010 APPLICATION OF RULE TO EXISTING LICENSE HOLDERS.

006.04 010.01 The distinctions between Class I Executive Officer's licenses and Class II Executive Officer's licenses are eliminated as of the effective date of this Rule.

010.02 All holders of Class I Executive Officer's licenses and Class II Executive Officer's licenses on the effective date of this Rule will be deemed to be licensed executive officers with no action required by the licensed active executive officer or the Opt-In Bank.

010.03 This rule shall apply to All applications for Class I and Class II Executive Officer's licenses received and not yet acted upon by the Department as of the effective date of this Rule, and all will be deemed to be applications for an executive officer's license in accordance with this Rule with no action required by the applicant or the Opt-In Bank, and renewal applications received after the effective date of this rule.

006.01A 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.

~~006.01B 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.~~

~~006.02 The provisions of Paragraph 005 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.~~