

NEBRASKA ADMINISTRATIVE CODE

TITLE 49 - DEPARTMENT OF BANKING AND FINANCE

CHAPTER 3 - PROOF REQUIREMENTS FOR GRANTING OF APPLICATIONS

001 GENERAL.

001.01 This Rule has been promulgated pursuant to authority delegated to the Director in Section 84-909 of the APA.

001.02 The Department has determined that this Rule is in the public interest.

001.03 The definitions in 49 NAC 1.002 shall apply to the provisions of this Rule, unless otherwise specified.

001.04 This Rule applies to all application cases whether or not a hearing is required, set, or held.

001.05 The requirements of this Rule are not all inclusive. An applicant must comply with any additional standards required by applicable statute, other Rules of the Department, and as prescribed in the forms of the Department.

002 BURDEN OF PROOF. The burden of proof in an application case shall be upon the applicant.

003 FINANCIAL CONDITION. Every applicant must show that there will be no adverse effect on its financial condition if its application is approved.

004 APPLICATIONS FOR CHARTERS, LICENSES, OR CERTIFICATES OF AUTHORITY.

004.01 An applicant for a charter to engage in a banking business must show to the Department that:

004.01A The application will promote the public necessity of the community where the applicant proposes to be located;

004.01B The application will promote the convenience and advantage of the community where the applicant proposes to be located; and

004.01C There is a substantial likelihood that there will be no adverse effect on existing financial institutions in the applicant's proposed primary service area, other than normal competitive effects, if the application is approved.

004.02 An applicant for a certificate to conduct a building and loan association, savings and loan association, or savings bank must show to the Department that:

004.02A There is a need for such an institution in the community where the applicant proposes to be located;

004.02B The application will not result in undue injury to properly conducted local building and loan associations, savings and loan associations, or savings banks; and

004.02C There is a reasonable probability of usefulness and success for the applicant as a result of the application.

004.03 An applicant for a license to conduct an industrial loan and investment company must show to the Department that:

004.03A The application will promote the public necessity of the community where the applicant proposes to be located;

004.03B The application will promote the convenience and advantage of the community where the applicant proposes to be located; and

004.03C There is a substantial likelihood that there will be no adverse effect on existing financial institutions in the applicant's proposed primary service area, other than normal competitive effects, if the application is approved.

004.04 An applicant for a certificate of approval to organize a credit union must show to the Department that:

004.04A Conditions existing are favorable for the success of the applicant. In making this determination, the Department will consider, among other things:

004.04A1 The character and general fitness of management, and its ability to effectively handle financial matters;

004.04A2 The number of potential members of the applicant, and the depth of the proposed members' support;

004.04A3 Whether existing credit unions are adequately serving applicant's proposed membership;

004.04A4 The business plan submitted as part of the applicant's application for federal insurance of its accounts;

004.04B The proposed location has the potential for attracting members to applicant's field of membership; and

004.04C The proposed credit union will not result in undue injury to existing credit unions.

004.05 An applicant for a charter of authority to transact a trust company business must show to the Department that:

004.05A The application will promote the public necessity of the community where the applicant proposes to be located;

004.05B The application will promote the convenience and advantage of the community where the applicant proposes to be located;

004.05C There is a substantial likelihood that there will be no adverse effect on existing financial institutions in the applicant's proposed primary service area, other than normal competitive effects;

004.05D The applicant has the expertise to conduct a trust business;

004.05E The applicant has adopted the Statement of Principles of Trust Management; and

004.05F The applicant has the capacity to inject additional capital if the application is approved.

004.06 An applicant for an amendment to a bank charter to conduct a trust company business in a trust department of the bank must show to the Department that:

004.06A The applicant has the expertise, or can readily obtain the expertise, to conduct a trust business;

004.06B The trust department will be separate and apart from every other department in the bank;

004.06C The applicant has adopted the Statement of Principles of Trust Management; and

004.06D The applicant has the capacity to inject additional capital if the application is approved.

004.07 An applicant for a license to operate an installment loan company must show to the Department that allowing it to engage in business will promote the convenience and advantage of the community in which it proposes to conduct business. In making this determination, the Department will consider, among other things:

004.07A The convenience of the locations of any existing licensees to residents of the area as compared to convenience of the applicant's proposed location;

004.07B The number of persons in the area who desire to use the services of the applicant and the amount of business they would generate;

004.07C The benefits and advantages to the community offered by the applicant or which would result if the application is approved; and

004.07D The services, products, fees, charges, and rates which the applicant proposes in connection with its business.

005 APPLICATIONS TO MOVE CHARTERS, LICENSES, OR CERTIFICATES OF AUTHORITY.

005.01 An applicant for the move of the charter and main office of a bank outside the corporate limits of the city where the charter is located must show to the Department that:

005.01A The application will promote the public necessity of the community where the applicant proposes to relocate;

005.01B The application will promote the convenience and advantage of the community where the applicant proposes to relocate;

005.01C There is a substantial likelihood that there will be no adverse effect on existing financial institutions in the applicant's proposed primary service area, other than normal competitive effects, if the application is approved; and

005.01D Proof that the move will have a minimal effect on applicant's existing customers in the community being vacated. Such proof may be shown by the

existence of a branch in that community. If an applicant cannot provide such proof, it must submit a proposal to continue to serve such customers on a limited basis.

005.02 An applicant for the move of the certificate of authority and main office of a building and loan association, a savings and loan association, or a savings bank outside the corporate limits of the city where the institution is located must show to the Department that:

005.02A There is a need for such an institution in the community where the applicant proposes to relocate;

005.02B The move will not result in undue injury to properly conducted building and loan associations, savings and loan associations, or savings banks located in the community where the applicant proposes to relocate;

005.02C There is a reasonable probability of usefulness and success for the applicant as a result of the move; and

005.02D Proof that the move will have a minimal effect on applicant's existing customers in the community being vacated. Such proof may be shown by the existence of a branch in that community. If an applicant cannot provide such proof, it must submit a proposal to continue to serve such customers on a limited basis.

005.03 An applicant for the move of a license and main office of an industrial loan and investment company outside the corporate limits of the city in which the license is located must show to the Department that:

005.03A The application will promote the public necessity of the community where the applicant proposes to relocate;

005.03B The application will promote the convenience and advantage of the community where the applicant proposes to relocate;

005.03C There is a substantial likelihood that there will be no adverse effect on existing financial institutions in the applicant's proposed primary service area, other than normal competitive effects, if the application is approved; and

005.03D Proof that the move will have a minimal effect on applicant's existing customers in the community being vacated. Such proof may be shown by the existence of a branch in that community. If an applicant cannot provide such proof, it must submit a proposal to continue to serve such customers on a limited basis.

005.04 An applicant for the move of the certificate of approval and main office of a credit union outside the corporate limits of the city in which the license is located must show to the Department that:

005.04A The proposed location will benefit existing members of the applicant;

005.04B The proposed location has the potential for attracting new members to applicant's field of membership;

005.04C The proposed location will be adequately staffed and supervised; and

005.04D Proof that the move will have a minimal effect on applicant's existing members residing in the community being vacated. Such proof may be shown by the existence of a branch in that community. If an applicant cannot provide such proof, it must submit a proposal to continue to serve such members on a limited basis.

005.05 An applicant for the move of the charter and main office of a trust company outside the corporate limits of the city in which the charter is located must show to the Department that:

005.05A The application will promote the public necessity or need of the community where the applicant proposes to relocate;

005.05B The application will promote the convenience and advantage of the community where the applicant proposes to relocate;

005.05C There is a substantial likelihood that there will be no adverse effect on existing financial institutions in the applicant's proposed primary service area, other than normal competitive effects, if the application is approved; and

005.05D Proof that the move will have a minimal effect on applicant's existing customers in the community being vacated. Such proof may be shown by the existence of a branch trust office in that community. If an applicant cannot provide such proof, it must submit a proposal to continue to serve such customers on a limited basis.

005.06 An applicant for the move within the corporate limits of the city of the main office of a bank, building and loan association, savings and loan association, savings bank, industrial loan and investment company, credit union, trust company, or installment loan company must provide to the Department:

005.06A An explanation of the reasons for the move;

005.06B An analysis of the financial feasibility of the move, including a discussion of the disposition of the applicant's current premises; and

005.06C An explanation of the effect that closing the existing office will have on applicant's existing customers.

006 APPLICATIONS TO ESTABLISH BRANCH OR AUXILIARY OFFICES

006.01 An applicant to establish a branch of a bank must submit to the Department:

006.01A A written business plan which contains:

006.01A1 A description of the activities to be conducted and the services provided at the proposed branch;

006.01A2 If the description contained in Section 006.01A1 of this Rule, differs, in whole or in part, from applicant's business at any of its existing offices, a discussion of the expertise available to the applicant for the successful conduct of the activities;

006.01A3 A showing of adequate staffing and supervision;

006.01B An analysis of the financial feasibility of the proposal, including pro forma financial statements for the office for three years following opening; and

006.01C The proposed name of the branch and the name of every other bank and bank branch office located in the same city, village, or county.

006.02 An applicant to establish a mobile branch of a bank shall submit to the Department:

006.02A A description of the services to be provided through the mobile branch;

006.02B A description of the vehicle(s) to be used as the mobile branch;

006.02C The proposed boundaries of the mobile branch;

006.02D Information regarding any planned fixed stops for the mobile branch;

006.02E Security measures and procedures; and

006.02F Proof that its bond will cover the activities of the mobile branch.

006.03 An applicant to establish a branch of a building and loan association, savings and loan association, or savings bank must show to the Department that:

006.03A There is a need for such a branch in the community where the applicant proposes to be located;

006.03B The application will not result in undue injury to properly conducted local building and loan associations, savings and loan associations, or savings banks;

006.03C The proposed location will be adequately staffed and supervised; and

006.03D There is a reasonable probability of usefulness and success for the applicant as a result of the application.

006.04 An applicant to establish an auxiliary office of an industrial loan and investment company must show to the Department that:

006.04A The application will promote the public necessity or need of the community where the applicant proposes to be located;

006.04B The application will promote the convenience and advantage of the community where the applicant proposes to be located;

006.04C There is a substantial likelihood that there will be no adverse effect on existing financial institutions in the applicant's proposed primary service area, other than normal competitive effects, if the application is approved;

006.04D The proposed location will be adequately staffed and supervised; and

006.04E The proposal is financially feasible.

006.05 An applicant to establish a branch of a credit union must show to the Department that:

006.05A The proposed location has the potential for attracting new members to applicant's field of membership or for providing more convenient or cost-effective services to existing members;

006.05B The proposed location will be adequately staffed and supervised;

006.05C The proposal is financially feasible; and

006.05D If any office is to be closed as a result of the application, the effect on existing members will be minimal.

006.06 An applicant to establish a branch trust office of a state-chartered trust company or a branch trust office of a bank which has been further chartered to conduct a trust department in a bank must submit to the Department:

006.06A Information which will allow the Director to conclude there is a need in the community for the office and that its establishment would be in the public interest. Such information shall include:

006.06A1 A description of the services to be provided and activities to be conducted at the proposed branch trust office;

006.06A2 Information regarding the availability and type of trust services in the proposed primary service area;

006.06A3 A reasonable projection of the number of persons who are likely to need and use trust services, and the basis for such projection;

006.06A4 If the branch trust office is to be located in another state pursuant to the Interstate Trust Company Office Act, the applicant shall also submit a description of services to be provided and activities to be conducted that are permissible for a trust company chartered by the host state where the branch trust office is to be located or for a national bank authorized to conduct a trust company business within the host state that would not be permissible for a trust company chartered under the Nebraska Trust Company Act;

006.06B A showing of adequate staffing and supervision;

006.06C An analysis of the financial feasibility of the proposal, including pro forma financial statements for the three years following opening of the office;

006.06D Proof that the applicant is currently in compliance with the Statement of Principles of Trust Management; and

006.06E If the applicant is a bank which has been further chartered to conduct a trust department, the applicant must also discuss its procedures to ensure that no banking activities will be conducted at the proposed location.

007 APPLICATIONS TO MOVE BRANCH OR AUXILIARY OFFICES.

007.01 An applicant to move a branch of a bank, building and loan association, savings and loan association, or savings bank, or an applicant to move a branch trust office, or an applicant to move an auxiliary office of an industrial loan and investment company, must provide to the Department:

007.01A An explanation of the reasons for the move;

007.01B Proof that closing the existing office will have a minimal effect on applicant's existing customers. If an applicant cannot provide such proof, it must submit a proposal to continue to serve such customers on a limited basis;

007.01C The proposal is financially feasible; and

007.01D If the move is outside the corporate limits of the city where the office is currently is located, an applicant must also provide:

007.01D1 A written business plan which contains:

007.01D1(a) A description of the activities to be conducted at the proposed location;

007.01D1(b) If the description contained in 007.01D1(a), above, differs, in whole or in part, from applicant's business at any of its existing offices, a discussion of the expertise available to the applicant for the successful conduct of the activities;

007.01D1(c) A showing of adequate staffing and supervision; and

007.01D2 Pro forma financial statements for the office for the three years following opening.

007.02 An applicant to move to move a branch of a credit union must show to the Department that:

007.02A The proposed location will benefit existing members of the applicant;

007.02B The proposed location has the potential for attracting new members to applicant's field of membership;

007.02C The proposed location will be adequately staffed and supervised;

007.02D The effect on existing members if any office is to be closed as a result of the application will be minimal; and

007.02E The proposal is financially feasible.

008 OTHER APPLICATIONS

008.01 An applicant for a cross industry acquisition or merger must show to the Department that:

008.01A The application will promote the public necessity of the community or communities where the applicant proposes to be additionally located as a result of the application;

008.01B The application will promote the convenience and advantage of the community or communities where the applicant proposes to be additionally located as a result of the application; and

008.01C The customers of the financial institution to be acquired or merged will be adequately served following the acquisition or merger.

008.02 An applicant to acquire a bank for credit card operations must submit:

008.02A The designation and mailing address of a resident of Nebraska as the applicant's agent for service of paper, notice or legal process;

008.02B A statement that it agrees to be bound by the conditions set forth in Section 8-1512 and this Rule;

008.02C A copy of any application, applications, or other documents required by appropriate federal authorities for the ownership of a bank, the primary or sole purpose of which is to make loans pursuant to a credit card or transaction card; and a copy of its federal charter, if the applicant is a federally chartered institution as defined in Section 8-1512;

008.02D A copy of any application, applications, or other documents required by appropriate state authorities for the ownership of a bank, the primary or sole purpose of which is to make loans pursuant to a credit card or transaction card; and a copy of its state charter, if the applicant is a state chartered institution as defined in Section 8-1512;

008.02E Copies of all contracts with a qualifying association, if the applicant contemplates such a contractual relationship; and

008.02F Information allowing the Director to reasonably determine that the requirements of Section 8-1513(2) will be met.

008.03 An applicant to acquire an out-of-state bank and establish a branch or branches in that state ("host state") pursuant to the Interstate Branching by Merger Act of 1997, must submit to the Department:

008.03A Proof that the proposed transaction is authorized under the laws of the host state; and

008.03B A description of activities to be conducted at the out-of-state branch or branches that are permissible for a bank chartered by the host state where the branch is to be located that would not be permissible for a bank chartered under the Nebraska Banking Act.

008.04 An applicant to establish a representative trust office of a state-chartered trust company or a representative trust office of a bank which has been further chartered to conduct a trust department in a bank must submit to the Department:

008.04A Proof that the activities at the representative trust office will be limited to nonfiduciary activities, and procedures to ensure such limitations;

008.04B Information which will allow the Director to conclude that the establishment of the representative trust office would be in the public interest. Such information shall include:

008.04B1 A description of the nonfiduciary services to be provided and activities to be conducted at the proposed representative trust office;

008.04B2 A reasonable projection of the number of persons who are likely to need and use nonfiduciary trust services, and the basis for such projection;

008.04B3 If the representative trust office is to be located in another state pursuant to the Interstate Trust Company Office Act, the applicant shall also submit a description of services to be provided and activities to be conducted that are permissible for a trust company chartered by the host state where the branch trust office is to be located or for a national bank authorized to conduct a trust company business within the host state that would not be permissible for a trust company chartered under the Nebraska Trust Company Act;

008.04C A showing of adequate staffing and supervision; and

008.04D If the applicant is a bank which has been further chartered to conduct a trust department, the applicant must also discuss its procedures to ensure that no banking activities will be conducted at the proposed location.

009 PUBLIC NECESSITY OR NEED.

009.01 For purposes of this Rule, in determining whether an application would promote the public necessity or need, the Department will examine whether the applicant will promote the legitimate interests of the community as a whole.

009.02 An applicant must demonstrate that it has a sound financial institution structure that is reasonably competitive, fully adequate for the needs of the community and operated on a profitable basis.

009.03 In making these determinations, the Department will consider, among other things:

009.03A The size of the primary and secondary service area;

009.03B The demographics of the primary service area;

009.03C The agricultural, commercial, residential and industrial development of the primary and secondary service areas;

009.03D The potential growth of the area;

009.03E The number and size of any financial institutions already serving the proposed primary and secondary service areas; and the dates when they were established;

009.03F The adequacy of the services being provided by the existing financial institutions compared to the needs of the residents and the services to be offered by the applicant. Services may include electronic banking; and

009.03G The capability of existing financial institutions to handle potential development and growth of the area.

010 CONVENIENCE AND ADVANTAGE OF THE COMMUNITY. For purposes of this Rule, in determining whether an application would promote the convenience and advantage of the community, the Department will consider, among other things:

010.01A The convenience of the locations of any existing financial institutions to residents of the area as compared to convenience of the applicant's proposed location;

010.01B The number of persons in the area who desire to use the proposed financial institution and the amount of business they would generate;

010.01C The benefits and advantages to the community offered by the applicant or which would result if the application is approved; and

010.01D Applicant's most recent federal Community Reinvestment Act evaluation, if any.