

WEST VIRGINIA
SECRETARY OF STATE
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ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: WV Division of Banking TITLE NUMBER: 106

CITE AUTHORITY WV Code §31A-4-26 (a)(5)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 9

TITLE OF RULE BEING AMENDED: Legislative Rule Pertaining to the
Legal Lending Limit

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Sharon I. Berg

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TITLE 106
LEGISLATIVE RULES
COMMISSIONER OF BANKING

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 9
LEGISLATIVE RULE PERTAINING TO THE LEGAL LENDING LIMIT

§106-9-1. General.

1.1 Scope. -- This ~~regulation rule~~ establishes the general rules method for implementing West Virginia Code § 31A-4-26 subsection (a), section twenty six, article four, chapter thirty one a; it applies to all loans and/or extension of credit made by state-chartered banking institutions and their domestic operating subsidiaries. This ~~regulation rule~~ does not apply to loans made by a state-chartered banking institution to its affiliates (as that term is defined in subsection (b) (1) of Section 23A of the Federal Reserve Act (12 U.S.C. 371c(b) (1))) or operating subsidiaries. West Virginia Code § 31A-4-26 ~~subsection (a), section twenty six, article four, chapter thirty one a~~ and this regulation rule are intended to prevent one (1) individual, or a relatively small group, from borrowing an unduly large amount of the state-chartered bank's funds. The statute and this regulation rule are intended to safeguard the depositors of state-chartered banks by spreading the loans and/or extensions of credit among a relatively large number of persons engaged in different lines of business.

1.2 Authority. -- WV Code §31A-4-26(a) (5)

1.3 Filing Date. -- ~~March 30, 1984~~

1.4 Effective Date. -- ~~April 30, 1984~~

§106-9-2. Definitions.

For purposes of this ~~regulation rule~~:

2.1. "Loans and Extensions of Credit" means any direct or indirect advance of funds (including obligations of makers and endorsers arising from the discounting of commercial paper) to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of a person. "Loans and Extensions of Credit" also includes a "Contractual Commitment to Advance Funds" as that term is defined in section 2.4 of ~~these regulations~~ this rule;

2.2. "Person" means an individual, sole proprietorship, partnership, joint venture, association, society, firm, institution, syndicate, trust, estate, business trust, public or private corporation, not-for-profit corporation, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization;

~~2.3. "Unimpaired Capital and Unimpaired Surplus" means the amount of common stock outstanding and unimpaired plus the amount of surplus outstanding and unimpaired. The term "surplus", as used in this definition, shall include capital surplus, earned surplus, undivided profits, allowance for possible loan losses, subordinated notes and subordinated debentures.~~

2.3 "Unimpaired Capital and Unimpaired Surplus" means the amount of total equity capital outstanding as indicated in the bank's most recent quarterly report of condition and income as filed with the Commissioner of Banking pursuant to West Virginia Code § 31A-4-19, plus the amount of the allowance for loan losses, minus the amount of goodwill or other nonmarketable intangible assets included in such quarterly report pursuant to generally accepted accounting principles. Unrealized gains and losses on the bank's securities and loan portfolios shall be included in the calculation of total equity capital to the extent required by generally accepted accounting principles and applicable federal or state law, rule or regulation.

2.4. "Contractual Commitment to Advance Funds" means (a) an obligation on the part of the bank to make payments (directly or indirectly) to a designated third party contingent upon a default by the bank's customer in the performance of an obligation under the terms of that customer's contract with the third party or (b) an obligation to guarantee or stand as surety for the benefit of a third party. The term includes, but is not limited to, standby letters of credit (as defined in section 2.5 of ~~these regulations~~ this rule), guarantees, puts and other similar arrangements. For purposes of this ~~regulation rule~~, undisbursed loan funds and loan commitments not yet drawn upon but which the bank has through written agreement obligated itself to disburse upon request are not equivalent to a contractual commitments to advance funds as defined herein in this subsection. ~~are not considered a "contractual commitment to advance funds."~~ The definition also does not include commercial letters of credit and similar instruments where the issuing banks expect the beneficiary to draw upon the issuer, which do not "guarantee" payment of a money obligation, and which do not provide for payment in the event of a default by the account party; and

2.5. A "Standby Letter of Credit" is any letter of credit, or similar arrangement, however named or described, which represents an obligation to the beneficiary on the part of the issuer (a) to repay money borrowed by or advanced to or for the account of the

account party, or (b) to make payment on account of any indebtedness undertaken by the account party, or (c) to make payment on account of any default by the account party in the performance of an obligation.

§106-9-3. Limitations and Compliance.

3.1. General limitation.

~~West Virginia Code subdivision (1), subsection (a), section twenty six, article four, chapter thirty one a provides:~~

~~The total loans and extensions of credit by a state chartered banking institution to a person outstanding at one time and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed fifteen percent (15%) of the unimpaired capital and unimpaired surplus of that state chartered banking institution.~~

The total loans and extensions of credit made by a state-chartered banking institution to any one person or common enterprise and not fully secured, as determined in a manner consistent with subsection 3.2 of this rule, shall not exceed fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution initially determined for the period that the loan or extension of credit is made.

3.2. Additional general limitation; loans fully secured by readily marketable collateral.

~~West Virginia Code subdivision (2), subsection (a), section twenty six, article four, chapter thirty one a provides:~~

~~The total loans and extensions of credit by a state chartered banking institution to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed ten percent (10%) of the unimpaired capital and unimpaired surplus of that state chartered banking institution. This limitation shall be separate from and in addition to the limitation contained in Paragraph (1) of this subsection.~~

Where the total loans and extensions of credit by a state-chartered banking institution to any one person or common enterprise are fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the outstanding amount of those loans and extensions, then the bank may provide

these loans or extensions of up to ten percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution initially determined for the period that the loan or extension is made. This limitation shall be separate from and in addition to the limitation contained in subsection 3.1 of this rule.

3.3. Definition of readily marketable collateral. For purposes of this ~~regulation rule~~, "Readily Marketable Collateral" means financial instruments and bullion which are salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions on an auction or a similarly available daily bid and ask price market. "Financial Instruments" include stocks, notes, bonds, and debentures traded on a national securities exchange, "OTC Margin Stocks" (as defined in Regulation U of the Federal Reserve Board), commercial paper, negotiable certificates of deposit, bankers' acceptances and shares in money market and mutual funds of the type which issue shares in which banks may perfect a security interest.

3.4. Compliance with West Virginia Code § 31A-4-26(a)(2) ~~subdivision (two), subsection (a), section twenty six, article four, chapter thirty one a;~~

(a) Each loan or extension of credit based on the limitation contained in West Virginia Code subdivision (2), subsection (a), section twenty-six, article four, chapter thirty-one-a shall be secured by readily marketable collateral having a current market value of at least one hundred percent (100%) of the amount of the loan or extension of credit at all times. "Current Market Value" means the bid or closing price listed for an item in a regularly published listing or an electronic reporting service.

(b) Each bank must institute adequate procedures to ensure that the collateral value fully secures the outstanding loan at all times.

(c) Financial instruments may be denominated in foreign currencies which are freely convertible to United States dollars. If collateral is denominated and payable in a currency other than that of the loan or extension of credit which it secures, the bank's procedures must require that the collateral be revalued at least monthly, using appropriate foreign exchange rates, in addition to being repriced at current market value.

(d) If collateral values fall below one hundred percent (100%) of the outstanding loan, to the extent that the loan is no longer in conformance with this section and exceeds the general fifteen percent (15%) limitation, the loan must be brought into conformance within five (5) business days, except where judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from taking action.

3.5 Material decline of unimpaired capital and unimpaired surplus.

(a) Where there is a material decline in a state-chartered bank's unimpaired capital and unimpaired surplus causing it to decrease during any quarterly reporting period more than 20% from that amount reported in the bank's most recent report of income and condition or causing it to decrease more than 30% in any twelve month period, the bank shall review its outstanding loans and extensions and report to the commissioner of banking those loans and extensions that exceed the limitations of this section using the bank's current re-evaluated unimpaired capital and unimpaired surplus. The report shall detail the bank's position in each such loan and extension. The commissioner may, within his or her discretion, require that these loans and extensions be brought into conformity with the bank's current re-evaluated legal lending and investment limitation.

(b) The commissioner of banking retains the authority to direct any state-chartered bank to recalculate its lending limits at more frequent intervals than provided in this section and require all outstanding loans and extensions of credit to be brought into conformance with the re-evaluated limitation in order to ensure a bank's safety and soundness. In such cases, the commissioner will provide the bank a written notice explaining briefly the specific reasons why the determination was made to require the more frequent calculations.

§106-9-4. Combining loans to separate borrowers.

4.1. General Rule. - Loans or extensions of credit to one (1) person will be attributed to other persons, for purposes of this regulation rule, when

(a) the proceeds of the loans or extensions of credit are to be used for the direct benefit of the other person or persons or

(b) a "Common Enterprise" is deemed to exist between the persons.

4.2. Definition of a common enterprise.

(a) Whether two (2) or more persons are engaged in a "Common Enterprise" will depend upon a realistic evaluation of the facts and circumstances of particular transactions.

(b) Where the expected source of repayment for each loan or extension of credit is the same for each person, a "Common Enterprise" will be deemed to exist and the loans or extensions of credit must be combined.

(c) Where loans or extensions of credit are made by persons who are related through common control, including where one person is controlled by another person, a "Common Enterprise" will be deemed to exist if the persons are engaged in interdependent businesses or there is substantial financial interdependence among them. A "Common Enterprise" will be deemed to exist when fifty percent (50%) or more of one person's gross receipts or gross expenditures (on an annual basis) are derived from transactions with one or more persons related through common control (as defined in Section 4.3 of ~~these regulations~~ this rule). Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments.

(d) A "Common Enterprise" will also be deemed to exist when separate persons borrow from a bank for the purpose of acquiring a business enterprise of which those persons will own more than fifty percent (50%) of the voting securities.

4.3 Definition of control. -- For the purposes of Section 4.2(c) of ~~these regulations~~ this rule, "Control" shall be presumed to exist when:

(a) One or more persons acting in concert directly or indirectly own, control or have power to vote twenty-five percent (25%) or more of any class of voting securities of another person; or

(b) One or more persons, acting in concert, control, in any manner, the election of a majority of the directors, trustees or other persons exercising similar functions of another person; or

(c) Any other circumstances exist which indicate that one or more persons acting in concert directly or indirectly exercise a controlling influence over the management or policies of another person.

§106-9-5. Loans to corporations.

5.1. Definition of subsidiary. -- For purposes of this ~~regulation~~ rule, a corporation is a "Subsidiary" of any person which owns or beneficially owns more than fifty percent (50%) of the voting stock of the corporation. ~~Such~~ The ownership need not be direct. ~~Thus~~ For example, if A owns more than fifty percent (50%) of the voting stock of Corporation X which, in turn, owns more than fifty percent (50%) of the voting stock of Corporation Y, Corporation Y would be considered a subsidiary of both A and of Corporation X.

5.2. General rule. -- Loans or extensions of credit to a person and its subsidiary or to subsidiaries of one person need not be combined where the state-chartered banking institution has

determined that the person and subsidiaries involved are not engaged in a "Common Enterprise" as that term is defined in Section 4.2 of ~~these regulations~~ this rule.

5.3. Exceptions. -- Notwithstanding Section 5.2 of ~~these regulations~~ this rule, loans or extensions of credit by a state-chartered banking institution to a "Corporate Group" may not exceed fifty percent (50%) of that state-chartered banking institution's unimpaired capital and unimpaired surplus. This aggregate limitation applies only to loans made pursuant to West Virginia Code § 31A-4-26(a)(1) and (2) ~~subdivisions (1) and (2), subsection (a), section twenty six, article four, chapter thirty one-a~~. A "Corporate Group" includes a person and all of its subsidiaries.

§106-9-6. Loans to partnerships, joint ventures, and associations.

6.1. General rule. -- Loans or extensions of credit to a partnership, joint venture or association shall, for purposes of ~~this regulation~~ rule, be considered loans or extensions of credit to each member of ~~such~~ the partnership, joint venture or association.

6.2. Attributing. -- Loans or extensions of credit to members of a partnership, joint venture or association shall, for the purpose of ~~this regulation~~ rule, be attributed to the partnership, joint venture or association where one or more of the tests set forth in section 4 of ~~these regulations~~ this rule is satisfied with respect to one or more ~~such~~ members. However, loans to members of a partnership, joint venture or association will not be attributed to other members of the partnership, joint venture or association under this ~~paragraph~~ subsection unless one or more of the tests set forth in section 4 of ~~these regulations~~ this rule is satisfied with respect to ~~such~~ the other members. The tests set forth in section 4 of ~~these regulations~~ this rule shall be deemed to be satisfied when loans or extensions of credit are made to members of a partnership, joint venture or association for the purpose of purchasing an interest in the ~~such~~ partnership, joint venture or association.

6.3. Exception. -- The rule set forth in Section 6.1 of ~~these regulations~~ this rule is not applicable to limited partners in limited partnerships or to members of joint ventures or associations if the ~~such~~ partners or members, by the terms of the partnership or membership agreement, are not to be held liable for the debts or actions of the partnership, joint venture or association. However, the rules set forth in Section 4.1 of ~~these regulations~~ this rule are applicable to ~~such~~ these partners or members.

§106-9-7. Exceptions to the lending limits.

7.1. Discount of commercial or business paper. -- West Virginia Code § 31A-4-26(a)(4)(A) ~~subdivisions (A) and (4), subsection (a), section twenty-six, article four, chapter thirty-one a~~ provides:

Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus.

(a) This exception applies to negotiable paper given in payment of the purchase price of commodities in domestic or export transactions purchased for resale or to be used in connection with the fabrication of a product or to be used for any other business purpose which may reasonably be expected to provide funds for payment of the paper. Loans or extensions of credit arising from the discount of paper of the kind described in this paragraph subsection must bear the full recourse endorsement of the owner. However, loans or extensions of credit arising from the discount of such paper in export transactions may be endorsed by ~~such~~ the owner without recourse or with limited recourse, or may be accompanied by a separate agreement for limited recourse: Provided, That if transferred without full recourse, the paper must be supported by an assignment of appropriate insurance covering the political, credit and transfer risks applicable to the paper. Insurance provided by the Export-Import Bank or the Foreign Credit Insurance Association is considered appropriate for this purpose. Loans or extensions of credit based on this exception are not subject to any limitation.

(b) Since the reason for the unlimited credit under this exception is that the paper arises from the sale of a commodity which may reasonably be expected to provide funds for payment of the paper, failure to pay either principal or interest when due removes the reason for unlimited credit. Therefore, although the line of credit to the maker or endorser should not be classified as excessive by reasons of ~~such~~ the default, the paper on which the default has occurred must thereafter be taken into consideration in determining whether additional loans or extension of credit may be made within the limits of West Virginia Code § 31A-4-26(a) ~~subsection (a), section twenty-six, article four, chapter thirty-one a~~. The same principles of disqualification from the exception applies to any renewal or extension of either the entire loan or an

installment thereof the loan.

7.2. Bankers' acceptances. -- West Virginia subdivisions (B) and (4), subsection (a), section twenty-six, article four, chapter thirty-one-a provides:

The purchase of bankers' acceptances of the kind described in section thirteen of the Federal Reserve Act and issued by other banks shall not be subject to any limitation based on capital and surplus.

(a) This exception permits the purchase by a state-chartered banking institution without limitation of bankers' acceptances created by other banks: Provided, that ~~such the~~ acceptances are of the kind described in 12 U.S.C. §§372 and ~~373~~ (eligible acceptances). Acceptances other than those described in 12 U.S.C. §§372 and ~~373~~ must be included within the purchasing state-chartered banking institution's lending limit to each acceptor bank.

(b) The limits under which a state-chartered banking institution may itself accept drafts eligible for rediscount are contained in 12 U.S.C. §§372 and ~~373~~. These limits are distinct from the limits under West Virginia Code § 31A-4-26(a) subsection (a), ~~section twenty-six, article four, chapter thirty-one-a~~. Acceptances by a national bank of "Ineligible" drafts, i.e., time drafts which do not meet the requirements for discount with a Federal Reserve Bank, are subject to the limitations of West Virginia Code § 31A-4-26(a) subsection (a), ~~section twenty-six, article four, chapter thirty-one-a~~.

(c) During any period within which a state-chartered banking institution holds its own acceptances, eligible or ineligible, having given value therefore, the amount given is considered, for purposes of this regulation rule, to be a loan or extension of credit to the customer for whom the acceptance was made and is subject to the lending limits. To the extent that a loan or extension of credit created by discounting the acceptance is covered by a bona fide participation agreement, the discounting bank need only consider that portion of the discounted acceptance which it retains as being subject to the limitations of West Virginia Code § 31A-4-26(a) subsection (a), ~~section twenty-six, article four, chapter thirty-one-a~~.

7.3. Loans secured by bills of lading or warehouse receipts covering readily marketable staples. -- ~~West Virginia Code~~

~~subdivisions (c) and (4), subsection (a), section twenty-six, article four, chapter thirty one a provides:~~

~~Loans and extensions of credit secured by bills of lading, warehouse receipts or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of thirty five percent (35%) of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent (115%) of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.~~

~~(a) This exception allows a state chartered banking institution to make loans or extensions of credit to one person in an amount equal to thirty five percent (35%) of its capital and in addition to the general fifteen percent (15%) permitted by West Virginia Code subdivision (1), subsection (a), section twenty-six, article four, chapter thirty one a and in addition to the ten percent (10%) permitted by West Virginia Code subdivision (2), subsection (a), section twenty-six, article four, chapter thirty one a provided the collateral requirements are met.~~

(a) The total loans and extensions of credit made by a state chartered banking institution to any one person or common enterprise may exceed fifteen percent of the unimpaired capital and unimpaired surplus of that state chartered banking institution at the time the loans or extensions of credit are made if they are fully secured by bills of lading or other documents giving a lien on readily marketable staples, as determined in a manner consistent with subdivision 7.3(b) of this rule, notwithstanding the collateral requirements in subsection 3.2 of this rule.

(b) Where the total loans and extensions of credit by a state chartered banking institution to any one person or common enterprise are fully secured by bills of lading or other documents giving a lien on readily marketable staples the market value of which at all times equals or exceeds one hundred fifteen percent (115%) of the outstanding amount of such loans or extensions of credit, the bank may provide such loans or extensions of up to an additional thirty-five percent (35%) of the unimpaired capital and unimpaired surplus of that state chartered banking institution. This limitation is separate from and in addition to the limitation contained in subsection 3.1 of this rule.

(c) The maximum term of a loan or extension of credit extended under subdivision 7.3(b) of this rule shall be ten (10) months.

~~(b)~~ (d) A "Readily Marketable Staple" means an article of commerce, agriculture or industry of such uses as to make it the subject of dealings in a ready market with sufficiently frequent price quotations as to make ~~(1)~~ the price easily and definitely ascertainable, and ~~(2)~~ the staple itself easy to realize upon sale sell at any time at a price which would not involve any considerable sacrifice from the amount at which it is valued as collateral determined in an organized market. Staples eligible for this exception must be nonperishable, ~~may be refrigerated or frozen~~ and must be fully covered by insurance when such insurance is customary. This exception is intended to apply primarily to basic commodities, such as wheat and other grains, cotton, wool, and basic metals such as tin, copper, lead and the like. Whether a commodity is readily marketable depends upon existing conditions and it is possible that a commodity that qualifies at one time may cease to qualify at a later date. Fabricated commodities which do not constitute standardized interchangeable units and do not possess uniformly broad marketability do not qualify as readily marketable collateral staples.

~~(e)~~ (e) Commodities sometimes fail to qualify as nonperishable because of the manner in which they are handled or stored during the life of the loan or extension of credit. Accordingly, the question as to whether a staple is nonperishable must be determined on a case-by-case basis.

~~(d)~~ This exception is applicable to a loan or extension of credit arising from a single transaction or secured by the same staples for ~~(1)~~ not more than ten (10) months if secured by nonperishable staples; and ~~(2)~~ not more than six (6) months if secured by refrigerated or frozen staples.

~~(e)~~ (f) The important characteristic of warehouse receipts, order bills of lading or other similar documents is that the holder of such the documents has control of the commodity and can obtain immediate possession. (However, the existence of brief notice periods or similar procedural requirements under state law, for the disposal of the collateral will not affect the eligibility of instruments for this exception.) Only documents with these characteristics are eligible security for loans under this exception. In the event of default on a loan secured by such documents, the bank must be in a position to sell the underlying commodity and promptly transfer title and possession to the purchaser, thus being able to protect itself with without extended litigation. Generally, documents of title qualifying under the Uniform Commercial Code [W. Va. Code § 46-1-201] are "Similar Documents" qualifying for this exception.

~~(f)~~ (g) Field warehouse receipts are an acceptable form of collateral when they are issued by a duly bonded and licensed grain elevator or warehouse having exclusive possession and control of the commodities even though the grain elevator or warehouse is

maintained on the commodity owner's premise.

~~(g)~~ (h) Warehouse receipts issued by the borrower-owner which is a grain elevator or warehouse company, duly bonded and licensed and regularly inspected by state and federal authorities, may be considered eligible collateral under this exception only when the receipts are registered with an independent registrar whose consent is required before the commodities can be withdrawn from the warehouse.

(i) If collateral values fall below the levels required by subdivision 7.3(b) of this rule, to the extent that a loan is no longer in conformance with the collateral requirements and exceeds the general fifteen percent (15%) limitation, the loan must be brought into conformance within five (5) business days, except where judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from taking action.

7.4. Loans secured by obligations of the United States and West Virginia. -- West Virginia Code § 31A-4-26(a)(4)(D) subdivisions ~~(D) and (4)~~, subsection ~~(a)~~, section twenty six, article four, chapter thirty one a provides:

Loans or extensions of credit secured by bonds, notes, certificates of indebtedness or treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States or by bonds, notes, certificates of indebtedness which are general obligations of the state of West Virginia or by other such obligations fully guaranteed as to principal and interest by the state of West Virginia shall not be subject to any limitation based on capital and surplus.

(a) This exception applies only to the extent that loans or extensions of credit are fully secured by the current market value of obligations of the United States or the state of West Virginia or guaranteed by the United States of the state of West Virginia.

(b) If the market value of the collateral declines to the extent that the loan is no longer in conformance with this exception and exceeds the general fifteen percent (15%) limitation, the loan must be brought into conformance within five (5) business days.

7.5. Loans to or guaranteed by a federal agency or the state of West Virginia. -- West Virginia Code § 31A-4-26(a)(4)(E) subdivisions ~~(e) and (4)~~, subsection ~~(a)~~, section twenty six, article four, chapter thirty one a provides:

Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or of the State of West Virginia or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus.

(a) This exception may apply to only that portion of a loan or extension of credit that is covered by a federal government or state of West Virginia guarantee or commitment.

(b) For purposes of this exception, the commitment or guarantee must be payable to cash or its equivalent within sixty (60) days after demand for payment is made.

(c) A guarantee or commitment is unconditional if the protection afforded the bank is not substantially diminished or impaired in the case of loss resulting from factors beyond the bank's control. Protection against loss is not materially diminished or impaired by procedural requirements, such as an agreement to take over only in the event of default, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank.

7.6. Loans secured by segregated deposit accounts. -- West Virginia Code § 31A-4-26(a)(4)(F) ~~subdivisions (F) and (4), subsection (a), section twenty six, article four, chapter thirty-one~~ provides:

Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on capital and surplus.

(a) The lending bank must ensure that a security interest has been perfected in the deposit, including the assignment of a specifically identified deposit and any other actions required by state law.

(b) Deposit accounts which may qualify for this exception include deposits in any form generally recognized as deposits. In the case of a deposit eligible for withdrawal prior to the maturity of the secured loan, the bank must establish internal procedures which will prevent the release of the security.

(c) A deposit which is denominated and payable in a currency other than that of a loan or extension of credit which it secures may be eligible for this exception if it is freely convertible to

United States dollars. The deposit must be revalued at least monthly, using appropriate foreign exchange rates to ensure that the loan or extension of credit remains fully secured. This exception applies to only that portion of the loan or extension of credit that is covered by the United States dollar value of the deposit. If the United States dollar value of the deposit falls to the extent that the loan is in nonconformance with this exception and exceeds the general fifteen percent (15%) limitation, the loan must be brought into conformance within five (5) business days, except where judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from taking such action. This exception is not authority for state-chartered banking institutions to take deposits denominated in foreign currencies.

7.7. Loans to state-chartered banking institutions with the approval of the Commissioner. -- West Virginia Code § 31A-4-26(a)(4)(G) ~~subdivisions (g) and (4), subsection (a), section twenty six, article four, chapter thirty one a~~ provides:

Loans or extensions of credit to any banking institution or to any receiver, conservator or other agent in charge of the business and property of such banking institution or other federally insured depository institution, when such loans or extensions of credit are approved by the Commissioner of banking, shall not be subject to any limitation based on capital and surplus.

This exception is intended to apply only in emergency situations where a state-chartered banking institution is called upon to provide assistance to another depository institution.

7.8. Discount of installment consumer paper. -- ~~West Virginia Code subdivisions (H), and (4), subsection (a), section twenty six, article four, chapter thirty one a~~ provides:

(a) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by of the any one person or common enterprise transferring the paper shall be are subject under this section to a maximum limitation equal to twenty-five percent (25%) of such the unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set forth in ~~Subdivision (b)~~ subsection 3.2 of this regulation rule.

~~(b) If the bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing~~

~~that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.~~

~~(1) This exception allows a state chartered banking institution to discount negotiable or nonnegotiable installment consumer paper of one (1) person in an amount equal to ten percent (10%) of its capital and surplus in addition to the fifteen percent (15%) permitted by West Virginia Code subdivision (one), subsection (a), section twenty-six, article four, chapter thirty one a if the paper carries a full recourse endorsement or unconditional guarantee by the seller transferring such paper.~~

The unconditional guarantee may be in the form of a repurchase agreement or a separate guarantee agreement. A condition reasonably within the power of the bank to perform, such as the repossession of collateral, will not be considered to make conditional an otherwise unconditional agreement.

~~(2) (1) For purposes of Section 7.8 this section of these regulations this rule only, "Consumer" means the user of any products, commodities, goods, or services, whether leased or purchased, and does not include any person who purchases products or commodities for the purpose of resale or for fabrication into goods for sale.~~

~~(3) (2) For purposes of Section 7.8 this section of these regulations the rule only, "Consumer Paper" includes paper relating to automobiles, mobile homes, residences, office equipment, household items, tuition fees, insurance premium fees and similar consumer items. Also included is paper covering the lease (where the bank is not the owner or lessor) or purchase of equipment for use in manufacturing, farming, construction or excavation.~~

~~(4) (b) Under certain circumstances, installment consumer paper which otherwise meets the requirements of this exception section will be considered a loan or extension of credit to the maker of the paper rather than the seller or transferor of the paper. Specifically, where (A) through a review of the bank's files it has been determined that the financial condition of each maker is reasonably adequate to repay the loan or extension of credit and (B) an officer designated by the bank's Chairman or Chief Executive Officer pursuant to authorization by the board of directors certifies in writing that the bank is relying primarily upon the maker to repay the loan or extension of credit, the loan or extension of credit is subject only to the lending limits of the maker of the paper. Where paper is purchased in substantial~~

quantities, the records, evaluation and certification may be in such form as is appropriate for the class and quantity of paper involved.

~~7.9. Loans secured by livestock or dairy cattle.~~

~~(a) Loans secured by livestock. West Virginia Code subdivisions (i), (I) and (4), subsection (a), section twenty-six, article four, chapter thirty one a provides:~~

~~Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen percent (115%) of the face amount of the note covered, shall be subject under this section, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection, to a maximum limitation equal to twenty five percent (25%) of such capital and surplus.~~

~~This exception allows a state chartered banking institution to make loans or extensions of credit to one person in an amount equal to ten percent (10%) of the outstanding loan balance at all times. The loans or extensions of credit may be secured by shipping documents or other instruments which transfer title to, secure title to or give a first lien on livestock. "Livestock" includes dairy and beef cattle, hogs, sheep, goats, horses, mules, poultry and fish, whether or not held for resale. To support compliance with this exception, the bank must maintain in its files an inspection and appraisal report on the livestock pledged. The inspection and appraisal report should be performed at least every twelve (12) months or more frequently as deemed prudent.~~

~~Under the laws of certain states, a person furnishing pasturage under grazing contract may have a lien on the livestock for the amount due to pasturage. If the lien which is based on pasturage furnished by the lienor prior to the making of the loan (A) is assigned to the bank by a recordable instrument and (B) is protected against being defeated by some other lien or claim, by payment to a person other than the bank, or otherwise, it would qualify under this exception provided the amount of such perfected lien is at least equal to the amount of the loan and the value of the livestock is at no time less than one hundred fifteen percent (115%) of the loan. Where the amount due under the grazing contract is dependent upon future performance thereunder, the resulting lien has merely prospective value and does not meet the requirements of the exception.~~

~~(b) Loans secured by dairy cattle. West Virginia Code subsections (ii), (I) and (4), subsection (a), section twenty-six, article four, chapter thirty one a provides:~~

~~Loans and extensions of credit which arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller, and which are secured by the cattle being sold, shall be subject under this section, notwithstanding the collateral requirements set forth in Subdivision (2) of this subsection to a limitation of twenty-five percent (25%) of such capital and surplus.~~

~~This exception allows a state chartered banking institution to discount paper of one person given in payment for dairy cattle livestock in an amount equal to ten percent (10%) of its capital and surplus (in addition to the fifteen percent (15%) permitted by West Virginia Code subdivision (i), subsection (a), section two-b, article four, chapter thirty-one a). The discounted paper must carry the full recourse endorsement or unconditional guarantee of the seller and the dairy cattle must secure the debt. Liens on the cattle may be in any form which allows the bank to maintain a perfected security interest in the cattle under applicable state law.~~

~~The exception for loans and extensions of credit secured by livestock is separate and apart from the exception for loans and extensions of credit created by the discount of paper of the purchase of dairy cattle. Therefore, a state chartered banking institution may make loans or extensions of credit to one person secured by each type of collateral in an amount equal to ten percent (10%) of its capital and surplus (in addition to the fifteen (15%) permitted under West Virginia Code subdivision (1), subsection (a), section twenty-six, article four, chapter thirty-one-a).~~

7.9 Loans and extensions of credit secured by livestock.

(a) The total loans and extensions of credit made by a state chartered banking institution to any one person or common enterprise may exceed fifteen percent of the unimpaired capital and unimpaired surplus of that state chartered banking institution at the time the loans or extensions of credit are made if they are fully secured by documents or instruments securing title or giving a lien on livestock, as determined in a manner consistent with subdivision 7.9(b) of this rule.

(b) Where the total loans and extensions of credit by a state-chartered banking institution to any one person or common enterprise are fully secured by:

(i) shipping documents or instruments transferring or securing title covering livestock or giving a first lien on livestock when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen percent (115%) of the face amount of the obligation; or,

(ii) discounted paper given in payment for livestock by dealers, which carries a full recourse endorsement or unconditional guarantee of the seller, and which is secured by a first lien on the livestock being sold when the market value of the livestock securing the obligation is not at any time less than one hundred (100%) of the face amount of the obligation; Then,

the bank may provide those loans or extensions of up to an additional ten percent of the unimpaired capital and unimpaired surplus of that state chartered banking institution calculated at the time that loan or extension is made. This limitation is separate from and in addition to the limitation contained in subsection 3.1 of this rule.

(c) "Livestock" as the term is used in this subsection, includes dairy and beef cattle, hogs, sheep, goats, horses, mules, poultry and fish, whether or not held for resale.

(d) Banks must maintain in their files an inspection and appraisal report on the livestock pledged, in order to demonstrate compliance with this subsection. The inspection and appraisal report should be performed at least every twelve (12) months or more frequently as considered prudent.

(e) Liens on the livestock must be in a form which allows the bank to maintain a perfected security interest in the livestock under applicable state law.

(f) If collateral values fall below the levels required by subdivision 7.9(b) of this rule, to the extent that the loan is no longer in conformance with the collateral requirements and exceeds the general fifteen percent (15%) limitation, the loan must be brought into conformance within thirty (30) business days, except where judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from taking action.

7.10. Loans to Student Loan Marketing Association. - -
West Virginia Code § 31A-4-26(a)(1) ~~subdivision (1),~~
~~subsection (a), section twenty-six, article four, chapter thirty-~~
~~one-a provides:~~

Loans or extensions of credit to the Student Loan Marketing Association shall not be subject to any limitation based on capital and surplus.

7.11. Loans to a corporation owning the property in which that state-chartered banking institution is located. -- West Virginia Code § 31A-4-26(a)(4)(K) ~~subdivisions (K) and (4),~~
~~subsection (a), section twenty six, article four, chapter thirty-~~
~~one-a provides:~~

Loans or extensions of credit to a corporation owning the property in which that state-chartered banking institution located, when that state-chartered banking institution has an unimpaired capital and surplus of not less than one million dollars (\$1,000,000) or when approved in writing by the Commissioner of Banking, shall not be subject to any limitation based on capital and surplus.

~~§106-9-8. Transitional rules.~~

~~8.1. Loans in violation prior to effective date. Loans or extensions of credit which were in violation of West Virginia Code section twenty six, article four, chapter thirty one a prior to August 19, 1983 will be considered to remain in violation of West Virginia Code subsection (a), section twenty six, article four, chapter thirty one a after that date until they are paid in full, regardless of whether the loans or extensions of credit conform to the rules established in this regulation. Renewals or extensions of such loans or extensions of credit will also be considered violations of law.~~

~~8.2. Additional advances after effective date. A state chartered banking institution which has outstanding loans or extensions of credit to a person in violation of West Virginia Code subsection (a), section twenty six, article four, chapter thirty one a as of August 19, 1983, may make additional advances to such person after that date if the additional advances are permitted under this regulation. The additional advances, however, may not be used directly or indirectly to repay any outstanding illegal loans or extensions of credit.~~

~~8.3. Loans not in violation prior to effective date. Loans or extensions of credit which were in conformance with West Virginia Code section twenty six, article four, chapter thirty one a prior to August 19, 1983, but are not in conformance with the rules established in this regulation will not be considered to be violations of law during the existing contract terms of such loans or extensions of credit. Renewals or extensions of such loans or extensions of credit which are not in conformance with the rules set forth in this regulation may be made on or after August 19, 1983; however, all loans or extensions of credit made under such renewals or extensions must conform with the rules set forth in this regulation no later than January 1, 1985.~~

~~8.4. Commitment to advance funds made prior to effective date. If a state chartered banking institution, prior to August 19, 1983, entered into a legally binding commitment to advance funds on or after that date, and such commitment was in~~

~~conformance with West Virginia Code subsection (a), section twenty-six, article four, chapter thirty one a, advances under such commitment may be made notwithstanding the fact that the advances are not in conformance with this regulation. The bank must, however, demonstrate that the commitment represents a legal obligation to fund, either by a written agreement or through file documentation. Advances under renewals or extensions of such commitments must conform to this regulation if the renewal or extension of the commitment is made on or after August 19, 1983.~~

§106-9-9 8. Miscellaneous.

~~9.1. 8.1. Obligations of accommodation parties. --~~
The liability of a drawer, endorser or guarantor who does not receive any of the proceeds, or the benefit of the proceeds, of the loan or extension of credit is not a loan or extension of credit to such person for purposes of this ~~regulation~~ rule unless one of the tests set forth in Section 4 of ~~these regulations~~ this rule is satisfied.

~~9.2. 8.2. Sale of federal funds and limitations on interbank liabilities.~~

(a) "Sale of Federal Funds" means, for purposes of this subsection, any transaction among depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at federal reserve banks or from credits to new or existing deposit balances due from a correspondent depository institution.

(b) "Continuing Contract" means, for purposes of this subsection, an agreement that remains in effect for more than one business day but has no specified maturity and requires no advance notice for termination.

(c) Sales of federal funds with a maturity of one (1) business day or under a continuing contract are not "Loans and Extensions of Credit" for purposes of this ~~regulation~~ rule and are governed by the guidelines set forth in Federal Reserve Board Regulation F [12 CFR 206].

~~(d) However, sales of Extensions of credit or sales of federal funds to other banking or depository institutions with a maturity of more than one business day are subject to the legal lending limits generally set forth in subdivisions (1) and (2), subsection (a), section twenty-six, article four, chapter thirty-one-a of the state code..~~

~~9.3. 8.3. Purchase of third-party paper. --~~ Where a bank purchases third-party paper subject to an agreement that the seller will repurchase the paper upon default or at the end of a stated

period after default, the seller's obligation to repurchase is subject to West Virginia Code § 31A-4-26(a) subsection (a), section twenty six, article four, chapter thirty one a and is measured by the total unpaid balance of the paper owned by the bank less any applicable dealer reserves. Where the seller's obligation to repurchase is limited, the seller's total loans or extensions of credit, for the purpose of West Virginia Code § 31A-4-26(a)(1) subdivision (1), subsection (a), section twenty six, article four, chapter thirty one a are measured by the total amount of paper the seller may ultimately be obligated to repurchase. Where no more than an agreed percentage of the purchase price is retained by the bank and credited to a reserve to be held as a form of collateral security, but the bank has no direct or indirect recourse to the seller, the loans or extensions of credit do not constitute loans or extensions of credit to the seller subject to the expanded limitations of Section 8.4 of these regulations subsection 7.8(a) of this rule.

~~9.4-~~ 8.4. Overdrafts. -- Overdrafts, whether or not prearranged, are "Loans and Extensions of Credit" for purposes of this regulation rule. This rule does not apply to "Intra-day" or "Daylight" overdrafts.

~~9.5-~~ 8.5. Loans charged off, in whole or in part. -- The legal lending limits apply to all existing loans or extensions of credit to a person by the bank, including loans or extensions of credit which have been charged off on the books of the bank in whole or in part. Loans or extensions of credit which have become unenforceable by reason of discharge in bankruptcy or are no longer legally enforceable for other reasons are not "Loans and Extensions of Credit" for purposes of this regulation rule.

~~9.6-~~ 8.6. Sale of loan participation.

(a) When a bank sells a participation in a loan or extension of credit, including the discount of a bank's own applicable acceptance, that portion of the loan that is sold on a nonrecourse basis will not be applied to the bank's lending limits. In order to remove a loan or extension of credit from a bank's lending limit, a participation must result in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. This is so even where the participation agreement provides that repayment must be applied first to the shares sold. In that case, the pro rata sharing may only be accomplished if the agreement also provides that, in case of a default or comparable event defined in the agreement, participants shall share in all subsequent repayments and collections in proportion to the percentage of participation at the time of the occurrence of the event.

(b) The provisions of subsection ~~9.6(a)~~ 8.6(a) of these regulations this rule apply to all "Loans and Extensions of Credit," as defined in Section 2 of ~~these regulations~~ this rule, including "Contractual Commitment(s) to Advance Funds," as defined in Section 2.4 of ~~these regulations~~ this rule.

~~9.7.~~ 8.7. Interest or discount on loans. -- The legal lending limits do not apply to the portion of a loan or extension of credit that represents accrued or discount interest.

~~9.8.~~ 8.8. Loans to or guaranteed by general obligations of a state or political subdivision.

(a) A loan or extension of credit to a bank customer which is guaranteed or secured by a "General Obligation" of any state or political subdivision thereof, is not considered an obligation of the customer for purposes of West Virginia Code § 31A-4-26(a) ~~subsection (a), section twenty six, article four, chapter thirty one-a.~~ The lending bank should obtain the opinion of competent counsel that the guarantee or collateral is a valid and enforceable obligation of the public body.

(b) A loan or extension of credit to a state or political subdivision thereof the state is not subject to any limitation based on capital or surplus if the loan or extension of credit constitutes a "general obligation" of the state or political subdivision. The lending bank should obtain the opinion of competent counsel that the loan or extension of credit is a valid and enforceable obligation of the borrower.

~~9.9.~~ 8.9. Loans to industrial development authorities. -- A loan or extension of credit to an industrial development authority or similar public entity created for the purpose of constructing and leasing a plant facility, including a health care facility, to an industrial occupant is not a loan or extension of credit to the authority for the purposes of West Virginia Code § 31A-4-26(a) ~~subsection (a), section twenty six, article four, chapter thirty one-a~~ if:

(a) The bank relies on the credit of the industrial occupant in making the loan;

(b) The authority's liability with respect to the loan is limited solely to whatever interest it has in the particular facility;

(c) The authority's interest is assigned to the bank as security for the loan or a promissory note from the lessee to the bank provides a higher order of security than the assignment of a lease; and

(d) The industrial occupant's lease rentals are assigned and

paid directly to the bank. A loan or extension of credit meeting the above criteria will be deemed considered a loan or extension of credit to the lessee and will be combined with other obligations of the lessee for the purposes of West Virginia Code § 31A-4-26(a) subsection (a), section twenty-six, article four, chapter thirty-one-a.

~~9.10.~~ 8.10. Separate limitations for West Virginia Code § 31A-4-26(a) subsection (a), chapter twenty-six, article four, chapter thirty-one-a. -- The legal lending limits prescribed by West Virginia Code subsection (a), section twenty-six, article four, chapter thirty-one-a are separate and distinct from the investment limits prescribed by West Virginia Code subsection (b), section twenty-six, article four, chapter thirty-one-a. Accordingly, a state-chartered banking institution may make loans or extensions of credit to one borrower up to the full amount permitted by West Virginia Code § 31A-4-26(a) subsection (a), section twenty-six, article four, chapter thirty-one-a and also hold eligible investment securities of the same obligor up to the full amount permitted by West Virginia Code § 31A-4-26(b) subsection (b), section twenty-six, article four, chapter thirty-one-a. In order for a security to be an "Investment Security", it must be eligible for investment by a state-chartered banking institution in accordance with the standards set forth in West Virginia Code § 31A-4-26(b) subsection (b), section twenty-six, article four, chapter thirty-one-a.

October 31, 1994

Sharon G. Bias
Commissioner of Banking
Building 3, Room 311
State Capitol Complex
Charleston, WV 25305

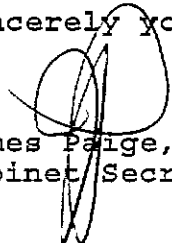
Re: Proposed Rule Amending - Title 106, Series 9
Legislative Rule Pertaining to Legal Lending Limits

Dear Commissioner Bias:

Pursuant to W. Va. Code § 5F-2-2(a)(12), I hereby consent to the filing of the attached rule amendment specified above as modified for technical changes by the Legislative Rulemaking Review Committee.

You may attach a copy of this letter to your filing with the Secretary of State as evidence of my consent.

Sincerely yours,



James Paige, III
Cabinet Secretary



FILED

Oct 11 10 41 AM '94

West Virginia Legislature
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Room M-152, State Capitol
Charleston, West Virginia 25305
(304)340-3286

Senator Joe Manchin, III, Co-Chair
Delegate Brian A. Gallagher, Co-Chair

October 4, 1994

Debra A. Graham, Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register
TO: Ms. Sharon G. Bias
Commissioner of Banking
Building 3, Room 311
State Capitol Complex
Charleston, WV 25305
FROM: Legislative Rule-Making Review Committee
PROPOSED RULE: Legislative Rule Pertaining to the Legal Lending
Limit

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
(a) as originally filed
(b) as modified by the agency X
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
- 5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Tim Winslow
General Counsel