

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Division of Banking TITLE NUMBER: 106

CITE AUTHORITY W. Va. Code §31A-8B-5

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 12

TITLE OF RULE BEING AMENDED: General Rules Implementing the WV
Community Reinvestment Act

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

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

TITLE 106
LEGISLATIVE RULES
COMMISSIONER OF BANKING

FILED
JUN 26 AM 7:28

SERIES 12
GENERAL RULES IMPLEMENTING THE WEST VIRGINIA COMMUNITY
REINVESTMENT ACT

OFFICE OF WEST VIRGINIA
COMMISSIONER OF BANKING

§106-12-1. General

1.1. Scope and Purpose. --This regulation establishes general rules implementing Chapter 31A Article 8B, the West Virginia Community Reinvestment Act, of the West Virginia Code; it applies to all bank holding companies, all state-chartered banking institutions, all domestic subsidiaries of bank holding companies and all domestic subsidiaries of state-chartered banks operating or with application to operate in West Virginia. West Virginia Code §31A-8B (et seq.) and this regulation are intended to encourage banks and bank holding companies to help meet the credit needs of their local community or communities; to provide guidance to banks and bank holding companies as to how the Commissioner of Banking ("Commissioner") and the West Virginia Board of Banking and Financial Institutions ("Board") will assess the records of these institutions in satisfying their continuing and affirmative obligations to help meet the credit needs of the local communities, including low and moderate-income neighborhoods, consistent with the safe and sound operation of those institutions; and to provide for taking into account those records in connection with certain applications.

1.2. Authority.--W.Va. Code §31A-8B-5.

1.3. Filing Date.--

1.4. Effective Date.--

§106-12-2. Applicability of Federal Community Reinvestment Act of 1977.

2.1. All state-chartered banks shall comply with the Federal Community Reinvestment Act of 1977 and related regulations heretofore promulgated thereunder. In connection with the examination of a bank, the Commissioner shall assess the record of performance of the bank in helping to meet the credit needs of its entire community, including low - and moderate-income neighborhoods, consistent with the safe and sound operation of the bank. The Commissioner shall consider the factors established in the Federal Community Reinvestment Act of 1977 and related regulations in making this assessment.

106-12-3. Filing Requirements.

3.1. All bank or bank holding company applications requiring Board or Commissioner approval shall include the current Community Reinvestment Act statement required pursuant to the Federal Community Reinvestment Act of 1977 and related regulations issued thereunder. For purposes of a bank holding company application, the information requested pursuant to these regulations shall be submitted for each subsidiary bank located in West Virginia of the applicant bank holding company and each bank located in West Virginia, which is to be acquired by the applicant bank holding company. For purposes of a bank merger application, all information requested pursuant to these regulations shall be submitted for each bank involved in the merger.

3.2. In addition to the Community Reinvestment Act (CRA) statement, the applicant may include supplemental information supporting the applicant's record of performance in meeting the credit needs of the community or communities it is attempting to serve. Credit activities in the following loan categories will be considered as important and favorable:

(A) Housing-related Loans

1. Federal Housing Authority/Veterans Administrative/Farmers Home Administration mortgage loans.
2. Federal Housing Authority Title I home improvement loans
3. Mobile home loans
4. Loans extended via participation in city, county and/or state housing development agencies
5. Housing loans extended in low- and moderate-income neighborhoods
6. Use of various secondary market programs and participation in such programs
7. In-house housing related loan programs

(B) Commercial and Industrial Loans

1. Small Business Loans
 - (a) Small Business Administration guaranteed loans
 - (b) Farmers Home Administration guaranteed Business and Industrial Loans
 - (c) In-house small business loan programs
2. General Commercial Loans

3. Participation in industrial and economic development programs

(a) Extension of industrial development loans

(b) Purchase of industrial revenue bonds

(c) Investment in local municipal and school bonds (for purpose of this category, local means home county and contiguous counties)

(d) Community purpose loans

(C) Agricultural loans

(D) Consumer loans

1. Student loans

2. Consumer counseling

3. Loans to low- and moderate-income consumers

4. All other

3.3. Out-of-state bank holding companies seeking to acquire a West Virginia bank or West Virginia bank holding company pursuant to West Virginia Code §31A-8A-7 (c) shall, in addition to the filing of the required CRA statements, include a record of any formal protest and hearing held regarding the CRA statements performance of the Applicant and all of their currently owned affiliate banks over the last five years.

3.4 The applicant shall furnish any additional information that the Board, or the Commissioner may require.

§106-12-4. Assessing The Record Of Performance

~~4.1. The Commissioner shall provide staffing adequate to make the assessment of an applicant's record or performance. The applicant's CRA statement(s) any supplemental information filed, any previously or currently filed formal protests, loan data as available from officially filed reports of condition, and any other information as may be required or considered relevant by the Commissioner or the Board will be used as the basis for assessing an applicant's record of performance.~~

~~4.2. Use of various statistical comparisons, generated from quarterly reports of condition, will be used in assessing a bank's CRA performance, however, their use may not be conclusive. Ratio comparisons will be evaluated by taking into consideration the applicant's relative size, corporate structure (number of branches, etc.) and economic conditions. Some examples of the types of statistical comparisons which may be made are:~~

~~(A) Loan-to-Deposit Ratio~~

~~(B) Percentage of loans and of deposits in various categories of loans,~~

~~1. real estate loans~~

~~2. consumer loans~~

~~3. commercial and industrial loans~~

~~(C) Trends in loan and deposit categories and loan to deposit ratio.~~

4.1. Whenever the Board or Commissioner receives an application, requiring Board or Commissioner approval, from a banking institution, whose most recent CRA rating is "Needs to improve record of meeting community credit needs", the Board or Commissioner shall require the applicant banking institution to provide additional, detailed information, setting forth the measures undertaken by the applicant banking institution to improve its performance under the CRA. Under no circumstances shall an application requiring Board or Commissioner approval be accepted from banking institutions whose most recent CRA rating is either "Needs to improve record of meeting community credit needs" or "Substantial noncompliance in meeting community credit needs."

4.2. Whenever a bank holding company files an application requiring the approval of the Board or Commissioner, the record of compliance with CRA of each of the holding company's subsidiary banks will be assessed. If, in the opinion of the Board or Commissioner, the overall record of compliance with CRA by the holding company's subsidiary banks is determined to be unsatisfactory, the Board or Commissioner will not accept the application.

§106-12-5. Public Participation.

5.1. For all bank or bank holding company applications requiring Board or Commissioner approval the applicants shall, in conjunction with public notice and publication requirements of the Federal Reserve Board of Federal Deposit, include in said notice's the following statement:

"The public is also invited to submit written comments regarding this application to the West Virginia Board of Banking and Financial Institutions. Write Commissioner of Banking, Capitol Complex, Charleston, West Virginia 25305."

5.2. In conjunction with an application, the Commissioner shall make available for public inspection the applicant's CRA statements, the applicant's record of previously filed CRA protests, historical information concerning loan and deposit trends, and any supplemental information filed.

5.3. A banking institution's record of compliance with the Community Reinvestment Act and these regulations shall be a subject for consideration in conjunction with the notice and hearings required by West Virginia Code §31A-3-3.

§106-12-6. Effects On Applications.

6.1 The assessment of an applicant's record of performance in helping to meet the credit needs of its community or communities, may be the basis for denial of an application.

6.2. Notwithstanding any section of this rule to the contrary, the Board or the commissioner may approve applications subject to terms and conditions, which, in the discretion of the Board or the commissioner, are considered necessary to improve the applicant's record of community reinvestment.

AMENDMENTS MADE TO PROPOSED 106 CSR 12 AS A RESULT OF COMMENTS


In addition to filing the proposed amendments to 106 CSR 12 with the Secretary of State office, copies of the proposed amendments were sent to all persons currently on the Division of Banking's official notification list. This list includes approximately four hundred and fifty (450) people.

We received five (5) written and two (2) telephone comments, copies of written comments are provided. These comments all centered on the "Under no circumstances" language contained proposed §106-12-4.1, which prohibited the consideration by the West Virginia Board of Banking and Financial Institutions of any application filed by a banking institution with a Community Reinvestment Act performance rating of "Needs to improve record of meeting community credit needs" or "Substantial noncompliance in meeting community credit needs." It was suggested that banking institutions with "Needs to improve...." ratings which are making efforts to improve might be unfairly penalized by the proposed amendments.

As a result of comments received, §106-12-4.1 was amended to require banking institutions, with Community Reinvestment Act performance ratings of "Needs to improve....", to provide the West Virginia Board of Banking and Financial Institutions with additional, detailed information setting forth the measures undertaken by the banking institution to improve its Community Reinvestment Act performance rating. The prohibition against accepting applications from banking institutions with a Community Reinvestment Act performance rating of "Substantial noncompliance..." remains.

MEMORANDUM

TO: West Virginia Division of Banking
State Capitol Complex
Building #3, Room 311
1900 Washington Street, East
Charleston, West Virginia 25305
Attention: Richard L. Lancianese

FROM: Herald Baughman 
Vice President (CRA Officer)
One Valley Bancorp

DATE: May 6, 1992

RE: Response to proposed amendments to Legislative Rules - 106 CRS 12 as outlined in your memorandum dated April 15, 1992

Proposed Amendment 4.1

Under no circumstance shall an application requiring Board or Commissioner approval be accepted from banking institutions whose most recent CRA rating is either "Needs to improve record of meeting community credit needs" or "Substantial noncompliance in meeting community credit needs."

Comments:

This amendment is unreasonably prohibitive. It makes no provision for consideration of corrective measures taken by a banking institution after receiving either of the two ratings indicated. Accordingly, a banking institution could be delayed for over two years considering the length of time until the next examination and completion of the rating process, even though corrective measures had been implemented.

It would seem incumbent upon the Board or the Commissioner to determine the current status of compliance at the time of the application. Under Section 3.2 the institution "...may include supplemental information supporting the applicants record of performance in meeting the credit needs of the community..." This provision should allow submission of information evidencing corrective action the institution has taken in response to a regulatory examination.

The current regulation provides the Commissioner the flexibility to use many sources of information, including use of the regulatory rating to assess a bank's CRA performance in order to make a decision on an application. Limiting

the assessment solely to the public rating, thus excluding the use of any other information is unfairly restrictive.

In addition, there may be circumstances where an acquisition or merger can enhance the weak CRA status of the acquiring institution. Failure to consider the application would preclude a transaction which might otherwise be favorable.

Finally, the scope of the rule is too broad in that the proposal precludes the acceptance of any application by a blacklisted bank. The Board could not, therefore, consider an application to offer a new financially-related product or service pursuant to WV Code, § 31A-8C-1, et seq., even though that product might enhance products or services to better meet the community's needs. In short, although a blanket prohibition would have transitory appeal, in the increasingly complex arena of banking laws and regulations, to be effective the Board must exercise discretion in certain circumstances, many of which may now be unforeseen or unanticipated, even if the applicant has a dismal CRA rating.

Proposed Amendment 4.2

Whenever a bank holding company files an application requiring the approval of the Board or Commissioner, the record of compliance with CRA of each of the holding company's subsidiary banks will be assessed. If, in the opinion of the Board or Commissioner, the overall record of compliance with CRA by the holding company's subsidiary banks is determined to be unsatisfactory, the Board or Commissioner will not accept the application.

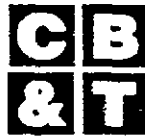
Comments:

The language of Section 4.2 would indicate that where the bank holding company is the applicant, each subsidiary bank will be assessed for its performance under CRA, even though its rating may be "needs to improve" or "substantial noncompliance." Section 4.1, however, rejects the bank application. This seems to be inconsistent. It would raise the question of whether the holding company application would automatically be rejected if one bank had either of these ratings. The language should be clarified.

In any event, it would be prudent to add a provision permitting the Board to consider, as a part of this determination, a commitment to improve CRA performance on the part of the applicant.

HB/sa

cc: J. Holmes Morrison
Phyllis Arnold
Merrell S. McIlwain
Tina Underwood
Thomas A. Winner



CB&T FINANCIAL CORP.

P. O. Box 432, Fairmont, WV 26555-0432

William T. McLaughlin II
Chairman of the Board & President

April 24, 1992

Mr. Tom Winner
West Virginia Bankers Association
Government Relations Officer
1212 Commerce Square
Charleston, West Virginia 25301-1780

Dear Tom:

I have reviewed the memorandum from Sharon Bias regarding Community Reinvestment Act Regulations with some concern.

It is my judgment that the language in sections 4.1 and 4.2 of the regulation is way to inflexible. The beginning of section 4.1 "Under no circumstances," in my judgment, should be changed to **"Under normal circumstances."** This continues to give the Commissioner's office final control over the matter but does not create a rule that could come back to haunt the banking department.

I also believe the regulations should provide for a hearing process on these matters. It seems to me a little dictatorial for a decision to be made solely on the evaluation of field examiners. Such a hearing process should give the applying bank the opportunity to deliver the case directly to the board of banking.

I appreciate the opportunity to share with you my thoughts on the subject.

Best regards,

A handwritten signature in cursive script that reads "Bill".

William T. McLaughlin II



COMMERCIAL BANK

A Member of Commercial BancShares, Inc.

415 Market Street
Parkersburg, West Virginia 26101
(304) 424-0300

April 28, 1992

Thomas Winner
W. Va. Bankers Association, Inc
Suite 1212
Commerce Square
Charleston, WV 25301-1780

Dear Mr. Winner:

I have listed below my comments concerning the New Community Reinvestment Act Regulations per your letter of 4-22-92:

4.1

1. Needs to clarify which institution its speaking of in the case of a "satisfactory" bank acquiring a "Needs to Improve" bank.
2. Also, a clarification or evidence of improvement from a "Needs to Improve" bank should be taken into consideration by the Board or Commissioner.

4.2

1. I believe "overall record" should be clarified.

Yours truly,

Henry Sassi,
Sr. V. P/ and
Compliance Officer

▼
One Valley Bank
PO Box 370
Summersville, WV 26651
(304) 672-3131

ONE VALLEY
BANK

April 27, 1992

Mr. Thomas A. Winner, Director
Government Relations
West Virginia Bankers Association, Inc.
Suite 1212, Commerce Square
Charleston, WV 25301-1780

Dear Mr. Winner:

Concerning your memorandum of April 22, 1992 regarding New
Community Reinvestment Act (CRA) REgulations, I am in agreement
with you.

I believe the language in 4.1 and 4.2 is too strong and could
result in hurting consumers in an area where a branch or bank
or merger was needed.

Very truly yours,



Glenn H. McMillion
Executive Vice President

GHM:SMc

**Beckley
National Bank**

500 Neville Street
Post Office Drawer G
Beckley, WV 25802-2806
(304) 256-2265
FAX (304) 256-2263

SENDER'S ADDRESS:
Merchants & Miners Office
P. O. Box 39
Oak Hill, WV 25901
Telephone: (304) 465-1130

April 24, 1992

Mr. Thomas A. Winner
Director, Government Relations
West Virginia Bankers Association
Suite 1212 - Commerce Square
Charleston, WV 25301

Re: West Virginia CRA Proposed Regulation

Dear Tom:

In reply to your memo concerning the above, I have the following comments to make.

In regard to Paragraph 4.1, I believe that a bank's CRA rating of "Needs to Improve" should be eliminated. My rationale is that each bank's CRA rating is being judged by different examiners and by different regulators without any scientific certainty; therefore, a bank may be doing a reasonably good job, but has been classified as a "Needs to Improve" rating and may be near the top of such rating, and the State Banking Commissioner would be wasting much time and effort in making a judgment call.

In regard to Paragraph 4.2, I believe that this section is so vague that it should be eliminated in its entirety, particularly, if the above comment is acceptable.

The above comments should be of interest to the Banking Commissioner because the Board or the Commissioner would not have to delay applications, holding hearings, render opinions, etc.

Thank you for inviting me to make these comments.

Very truly yours,



C. R. Hill, Jr.
Executive Vice President

CRHJr/pes
CC: Mr. Donald D. Hodson
Mr. Samuel L. Elmore

DATE: June 26, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Richard L. Lancianese
Deputy Commissioner
West Virginia Division of Banking

LEGISLATIVE RULE TITLE: General Rules Implementing the West Virginia
Community Reinvestment Act

1. Authorizing statute(s) citation W. Va. Code § 31A-8B-5

2. a. Date filed in State Register with Notice of ~~Hearing~~ Comment Period:

April 10, 1992

b. What other notice, including advertising, did you give of the hearing?

Sent to each person on West Virginia Division of Banking's
"Official Notification" list.

c. Date of ~~hearing(s)~~ Comment Period:

April 10, 1992 through May 11, 1992

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)

June 26, 1992

f. Name and phone number(s) of agency person(s) to contact for additional information:

Richard Lancianese

558-2294

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: General Rules Implementing the West Virginia
Community Reinvestment Act.

Type of Rule: Legislative Interpretive Procedural

Agency WV Division of Banking Address Building #3, Room 311
State Capitol Complex, Charleston, WV 25305-0240

1. Effect of Proposed Rule:	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Personal Services					
Current Expense					
Repairs and Alterations	n/a	n/a	n/a	n/a	n/a
Equipment					
Other					

2. Explanation of above estimates: not applicable.

3. Objectives of these rules: To bring the rules and regulations of the WV Division of Banking into line with the position taken by the FDIC and the Federal Reserve regarding the Community Reinvestment Act.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

None.

C. Economic Impact on Citizens/Public at Large.

None.

Date: 6-26-92

Signature of Agency Head or Authorized Representative

Richard L. Lancianese, Deputy Commissioner

Richard L. Lancianese, Deputy Commissioner of Banking