

**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: West Virginia Division of Banking TITLE NUMBER: 106

CITE AUTHORITY West Virginia Code 31A-4-38

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 16

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

Lease Financing Transactions

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.

Sharon J. Bids  
Dep. Commissioner of Banking

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Lease Financing Transactions

Type of Rule:  Legislative  Interpretive  Procedural

Agency West Virginia Division of Banking Address Bldg. 3, Room 311  
State Capitol Complex, Charleston, West Virginia 25305

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

2. Explanation of above estimates:

N/A

3. Objectives of these rules:

To provide guidance to state-chartered banking institutions that wish to engage in the leasing of personal property.

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.

Should provide the public with alternatives to leasing from manufacturers of various types of personal property.

Date: 07/02/91

Signature of Agency Head or Authorized Representative

Sharon J. Bias  
Deputy Commissioner

TITLE 106  
LEGISLATIVE RULES  
WEST VIRGINIA DIVISION OF BANKING

SERIES 16  
LEASE FINANCING TRANSACTIONS

SECTION 106-16-1. GENERAL.

1.1 Scope and Purpose. -- The purpose of this regulation is to set forth the manner in which state chartered banking institutions may engage in lease financing transactions.

1.2 Authority. -- West Virginia Code 31A-4-38.

1.3 Filing Date. --

1.4 Effective Date. --

SECTION 106-16-2. DEFINITIONS.

2.1 "BANK", as used in this regulation, shall mean a corporation heretofore or hereafter chartered to conduct a banking business under the laws of West Virginia and shall embrace and include a trust company or an institution combining banking and trust company facilities, functions and services so chartered or authorized to conduct such business in this state and shall include industrial banks as authorized by West Virginia Code 31-7-1 et seq.

2.2(a) "NET LEASE", as used in this regulation, shall mean a lease which is the functional equivalent to a loan of money secured by the leased properties and under which a bank will not directly or indirectly, provide or be obligated to provide for:

(1) The servicing, maintenance or repair of the lease property during the lease term.

(2) The purchasing of parts and accessories for the leased property; however, improvements and additions to the leased property may be leased to the lessee upon its request in accordance with any applicable requirements for maximum estimated rental value.

(3) The loan of replacement or substitute property while the leased property is being serviced.

(4) The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance.

(5) The renewal of any license or registration for the property unless such action by the bank is necessary to protect its interest as owner or financier of the property.

~~(b) -- "PERSONAL PROPERTY", as used in this regulation, shall mean tangible, personal property including, vehicles, machinery, equipment and furniture.~~

(b) The limitations contained in § 106-16-2.2(a) do not prohibit a bank from arranging for any of the services enumerated therein to be provided by a third party to the lessee (at the expense of the lessee) with respect to property leased by the lessee.

(c) If, in good faith, a bank believes that there has been an unexpected change in conditions which threatens its financial position by significantly increasing its exposure to loss, the limitations contained in subsection (a) of this section shall not prevent the bank as owner and lessor under a net lease, from taking reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease.

2.3 "PERSONAL PROPERTY", as used in this regulation, shall mean tangible, personal property including, vehicles, machinery, equipment, furniture and fixtures.

#### SECTION 106-16-3. AUTHORITY TO ENGAGE IN LEASING TRANSACTIONS.

##### 3.1 Investment in Personal Property.

(a) A bank may (1) become the legal or beneficial owner and lessor of specific, personal property or otherwise acquire such property only after the bank has entered into a legally binding written commitment to lease the personal property on terms which comply with the provisions of this regulation; (2) become the owner and lessor of personal property by purchasing the property from another lessor in connection with the purchase of the related lease; ~~provided that the aggregate book value of all tangible personal property held for lease does not exceed ten (10) percent of the consolidated assets of the bank;~~ and (3) incur obligations incidental to its position as the legal or beneficial owner and lessor of the ~~lean~~ lease property; provided the lease is a net basis lease representing a noncancelable obligation of the lessee, notwithstanding the possible early termination of the lease.

(b) Prior to entering into a lease financing transaction, a bank must reasonably expect to realize a return of its full investment in the lease property, plus the estimated cost of financing the property over the term of the lease from:

- (1) Rentals;
- (2) Estimated tax benefits; and
- (3) The estimated residual value of the property at the expiration of the initial term of the lease.

(c) The aggregate book value of all tangible personal property held for lease by a bank pursuant to the provisions of this regulation shall not exceed ten (10) percent of the consolidated assets of the bank.

~~(c)~~(d) At the expiration of the lease (including any renewals or extensions with the same lessee), or in the event of a default on a lease agreement prior to the expiration of the lease term, all of the bank's interest in the property shall either be liquidated or re-leased in conformance with this regulation as soon as practicable, but in no event later than one year from the expiration of the lease, or, under exceptional circumstances, such additional time as the Commissioner of Banking may permit through written approval. Property which the bank retains in anticipation of re-leasing must be re-valued at the lower of current fair market value or book value prior to any subsequent lease, for the purpose of determining the applicable maximum estimated residual value.

~~(d)~~(e) Notwithstanding the provisions of paragraph (d), above, on the return of leased property, at the expiration of a conforming lease term, or on the default of a lessee, a short term bridge or interim lease is permissible if it otherwise conforms with the requirements of this section. Short term bridge or interim leases may only be used to facilitate conforming long term lease financing transactions.

#### SECTION 106-16-4. LEASE TERM, LEGAL LENDING LIMITS.

##### 4.1 Term of Initial Lease Transaction.

Lease financing transactions entered into pursuant to this regulation must have an initial term of not less than ninety (90) days and not more than ten (10) years.

##### 4.2 Application of Legal Lending Limits.

Lease financing transactions entered into pursuant to this regulation are subject to the limitations on loans and extensions of credit under West Virginia Code §31A-4-26 and regulations promulgated thereunder. The Commissioner of Banking reserves the right to determine that such lease are also subject to the limitations of any other law, regulation or ruling.

**SECTION 106-16-5. RESIDUAL VALUE.**

**5.1 Maximum Estimated Residual Value.**

(a) Any unguaranteed portion of the estimated residual value relied upon by the bank to yield a return of its full investment shall not exceed twenty-five (25) percent of the original cost of the property to the lessor. The amount of the estimated residual value guaranteed by the manufacturer, the lessee or a third party may exceed twenty-five (25) percent of the original cost of the property, where the bank has determined, and can provide full, supporting documentation, that the guarantor, which is not an affiliate, as that term is defined by 12 USC 371C, has the resources to meet the guarantee.

(b) Calculations of estimated residual value on leases or personal property to Federal, state or local governments entities may be based on reasonably anticipated future transactions or renewals.

(c) In all cases, the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of § 106-16-3.1(b) must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property depends on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual market value of the leased item.

**SECTION-106-16-6.---CONFLICTS-**

~~Nothing--in--this--regulation--shall--be--construed--to--be--in conflict-with-the-duties,-liabilities-and-standards-imposed-by-the Consumer-Leasing-Act-of-1976,-15-USC-1667-et-seq-~~

**SECTION 106-16-6. MAINTENANCE AND RETENTION OF RECORDS.**

Whenever a bank enters into a lease financing transaction, it shall identify any and all records associated with said lease financing transaction to distinguish them from those records maintained by the bank on its loans. Records associated with a bank's lease financing transactions shall be maintained separately from those records associated with a bank's loan transactions.

**SECTION 106-16-7. CONFLICTS.**

Nothing in this regulation shall be construed to be in conflict with the duties, liabilities and standards imposed by the Consumer Leasing Act of 1976, 15 USC 1667 et seq.

**SUMMARY OF COMMENTS RECEIVED REGARDING PROPOSED  
LEGISLATIVE RULE 106 CSR 11**

**COMMENTS RECEIVED.**

Written comments were requested in lieu of having a public hearing on the proposed rule. No comments were received.

SUMMARY OF COMMENTS RECEIVED AND AMENDMENTS  
MADE TO PROPOSED LEGISLATIVE RULE  
106 CSR 16

**COMMENTS RECEIVED.**

Written comments were accepted in lieu of having a public hearing on the proposed rule. No written comments were received. However, the Division did receive one oral comment which suggested that the definition of the word "personal property" be changed to include fixtures.

**AMENDMENTS MADE.**

1) §106-16-2.2(b) was deleted and renamed §106-16-2.3. This was done as it was felt that the definition of the term "personal property" should be separate and not included in the definition of term "net lease".

2) New §106-16-2.2(b) was added to bring the proposed regulation into uniformity with recently released regulations of the Office of the Comptroller of the Currency relating to lease financing transactions entered into by national banks.

3) Language contained in §106-16-3.1(a) was deleted and renamed §106-16-3.1(c). As originally proposed, the 10% limitation would have only applied to those circumstances where a bank becomes the owner of personal property by purchasing the property from another lessor in connection with the purchase of a related lease. It was the desire of the Division of Banking to have the 10% limitation apply to all circumstances where a bank becomes the owner of personal property for the purpose of leasing that property.

4) The word "lean" was deleted and replaced with the word "lease". This was done to correct a typographical error in the proposed rule.

5) §§106-16-3.1(c)&(d) were renamed 3.1(d) & (e). This was necessary due to the amendments discussed in 3 above.

6) New §106-16-6 was added. This was done as the originally proposed rule did not contain provisions for record keeping.

7) Original §106-16-6 was deleted and renamed §106-16-7. This was necessary due to the amendment discussed in 6 above.