



## A MESSAGE FROM COMMISSIONER ENTRINGER



Good intentions: We had a draft of the Department Newsletter ready to go early last year, but someone did not get their portion completed; yes it was me! The last newsletter we issued was October 2005, so I am hoping we can do a better job of communicating with you on a more frequent basis – at least that’s our goal. It has been about 16 months since I was appointed Commissioner. I would like to thank you for all your support! After my appointment as Commissioner, it was certainly a hectic time for me; new responsibilities, legislation, replacing our Chief Examiner – Banks and hiring an Assistant Commissioner. By January 1, 2011, we had our Chief Examiner – Banks in place- Lise Kruse; 10 days later our Assistant Commissioner Aaron Webb started and we made it through the 2011 legislative session. Then came springtime in North Dakota; historic floods in Minot and Bismarck, and continued flooding in the Devils Lake Basin as well as many other areas of the state. In contrast, almost a year later we are thinking, if not speaking the “D” word!

There are a number of things I am thinking about and of course one of them is legislation! We will have to begin the budgeting process later this month and decide if there is any legislation we will be introducing next session. Also, in 2013 we will be getting a visit from the Conference of State Bank Supervisors (CSBS) Accreditation Review Team. As you may know, the Department was accredited by CSBS in 1993. Every five years the CSBS review team comes onsite to make sure we maintain the standards of accreditation. We have already begun to prepare for the re-accreditation procedure.

One final thought: Many of our recent examinations have included comments about loan procedures and policies and loan documentation, yet you may note that our banks are making money and asset quality is improving. For those of us who have been around a while, we know that things run in cycles, including the agriculture economy. I would encourage you to not ease up on loan policies and procedures during these good times, as we all know there will come a time when the loan documentation will be critical. To quote a banker friend of mine: “Let’s not get swept up in success!” While I do want to congratulate you all for the job you are doing, please don’t relax your lending standards during the good times.

## FACTS & FIGURES

- ◆ There are 75 state-chartered banks in North Dakota.
- ◆ Of these institutions, 91% have an overall composite rating of 1 or 2.

Asset quality continues to improve across the state. The changes from 3/31/11 to 3/31/12 are:

- ◆ Average Adversely Classified Items Coverage Ratio: 34.12% vs. 29.02%
- ◆ Average Adversely Classified Assets / Total Assets: 3.35% vs. 2.85%
- ◆ Average Adversely Classified Loans / Total Loans: 4.27% vs. 3.68%
- ◆ Average Past Due & Nonaccrual Loans / Total Loans: 2.65% vs. 2.34%

**The Legal Lending Limit is calculated as:  
25% of Tier 1 Capital as of the most recent Call Report.**



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## STATE BANKING BOARD DECISIONS

### Exception to Legal Lending Limit for loans secured and perfected by an obligation of the United States of America.

North Dakota law does not provide a legal lending limit exception for loans secured by U.S. obligations; however, there is such an exception available for federally chartered banks under 12 CFR 32.3(c)(3). Operating under its parity power (NDCC 6-03-02.3), the State Banking Board recently issued an Order adopting an exception from the legal lending limit under section NDCC 6-03-59, for loans secured by U.S. obligations as defined under 12 CFR 32.3(c)(3). Therefore, a loan fully secured by the **current market value** of a treasury security will not count towards the bank's legal lending limit. The bank must have property perfected by a lien on the collateral in order for the exemption to occur and ONLY to the extent of the current market value of the underlying collateral.

### State-chartered banks authorized to enter into lease financing agreements for public entities.

North Dakota law does not expressly authorize banks to enter into lease financing agreements with public entities; however, 12 CFR 7.1000(d)(1) authorizes this type of financing for federally chartered banks. The State Banking Board acted under its parity power (NDCC 6-03-02.3) to allow the same type of activity for state chartered banks. The State Banking Board conditioned the authority, providing that if the agreement between the bank and public entity is terminated for any reason leaving the bank as the sole and unconditional owner of the property, the bank would have to sell its interest in the real property within five years, unless further extended by the Commissioner. The Board's decision is consistent with NDCC 6-03-09, which requires a bank to sell real property that it possesses for reasons such as foreclosures.

### North Dakota state-chartered banks can purchase stock of an out-of-state bankers' bank holding company.

In analyzing whether a state chartered bank was authorized to purchase the stock of an out-of-state bankers' bank holding company, the State Banking Board reviewed North Dakota Administrative Code section 13-02-10-01, which allows "...state banks to invest in investment securities or instruments in accordance with investment authorizations issued for national banks by the comptroller of the currency, subject to the same limitations or restrictions, if any." The State Banking Board then noted that federal law (12 USC 24, Subdivision 7) allows a nationally-chartered bank to invest in a bankers' bank holding company under specific rules and limitations. The State Banking Board ruled that North Dakota law allows a state chartered bank to invest in this stock as it is permissible for a nationally chartered bank.

## COMMON VIOLATIONS—MOST OFTEN CITED

- Real Estate Appraisals (NDCC 6-03-05, FDIC Rules & Regulations Part 323): Missing appraisal or no evaluation when a certified appraisal is not required by a certified or a licensed appraiser.
- Real Estate Appraisals for Other Real Estate Owned (NDCC 6-03-08): No appraisal or evaluation upon transfer of asset into the Other Real Estate account.
- Bank Secrecy Act: Late or missing CTR filings, failure to search records (FinCEN 314(a) requests), Customer Identification Program (no verification of identity, failure to keep minimum records or verify discrepancies, and failure to obtain minimum records).
- Suspicious Activity Reports: Either late or not filed.
- Pledging to public deposits (NDCC 21-04-09): Ineligible securities pledged or inadequate pledge.
- Legal Lending Limit (NDCC 6-03-59).
- Regulation O: Insider overdraft and lending limit

