



**Dora**  
Department of Regulatory Agencies

**Office of Policy, Research and Regulatory Reform**

**2012 Sunset Review:  
Banking Board and the Division of  
Banking**

October 15, 2012





## Executive Director's Office

Barbara J. Kelley  
Executive Director

John W. Hickenlooper  
Governor

October 15, 2012

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado Banking Board and the Division of Banking. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2013 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 102 of Title 11, C.R.S. The report also discusses the effectiveness of the Banking Board and the Division of Banking in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Barbara J. Kelley  
Executive Director





John W. Hickenlooper.  
Governor

Barbara J. Kelley  
Executive Director

## **2012 Sunset Review: Colorado Banking Board and the Division of Banking**

### **Summary**

#### ***What Is Regulated?***

The Colorado Banking Code (Banking Code) provides regulatory oversight of state chartered commercial and industrial banks, and trust companies (depository and non-depository).

#### ***Why Is It Regulated?***

The purpose of the Banking Code is to provide protection to consumers by requiring state chartered banks, and trust companies to undergo examinations to ensure financial soundness. For the most part, these examinations are conducted by the Division of Banking (Division) and Federal Deposit Insurance Corporation staffs.

#### ***Who Is Regulated?***

In calendar year 2011, there were 76 state chartered commercial banks and 8 trust companies.

#### ***How Is It Regulated?***

The Banking Code is enforced by the Colorado Banking Board (Board). The Board is a Type 1, policy autonomous board with the authority to impose discipline on state chartered banks and trust companies, promulgate rules and establish policy.

#### ***What Does It Cost?***

In fiscal year 10-11, the total expenditures for the oversight of state chartered banks and trust companies were \$4,317,978. There were 44.5 full-time equivalent employees associated with this regulatory oversight.

#### ***What Enforcement Activity Is There?***

In fiscal years 06-07 through 10-11, there were a total of 14 enforcement actions imposed by the Board: 10 memoranda of understanding, 2 cease and desist orders, 1 written agreement and 1 closure.

## Key Recommendations

### **Continue the Board and the Division for 11 years, until 2024.**

The purpose of the Banking Code is to provide protection to consumers. One of the most important regulatory requirements for banks and trust companies is the examination process. The examinations vary in scope and frequency (e.g., safety and soundness examinations), and they ensure, to the extent practicable, that banks and trust companies are in sound financial condition to provide services to consumers as well as protect their assets. The absence of regulatory oversight of banks and trust companies in Colorado would likely compromise consumer protection as well as Colorado's short-term and long-term economic stability. As such, the General Assembly should continue the Board and Division for 11 years, until 2024.

### **Repeal the regulation of industrial banks from the Banking Code.**

Authorization for state chartered industrial banks has been in existence in Colorado since 1923. Originally, they served as finance companies specializing in consumer loans and second mortgages. In the past, industrial banks served an important purpose in providing loans to consumers. However, the industry has changed over the years and the scope of banking products and services that may be offered by industrial banks now closely matches those that can be offered by commercial banks. There are no longer any state chartered industrial banks in Colorado. Industrial banks have become obsolete and the statutory provisions that authorize them should be repealed from the Banking Code.

## Major Contacts Made During This Review

Banking Board Members  
Colorado Bankers Association  
Colorado Division of Banking  
Federal Deposit Insurance Corporation  
Independent Bankers of Colorado

### What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:  
Colorado Department of Regulatory Agencies  
Office of Policy, Research and Regulatory Reform  
1560 Broadway, Suite 1550, Denver, CO 80202  
[www.askdora.colorado.gov](http://www.askdora.colorado.gov)



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## Table of Contents

Background.....	1
Introduction.....	1
Types of Regulation.....	2
Sunset Process.....	4
Methodology.....	4
Profile of the Industry.....	4
Legal Framework.....	8
History of Regulation.....	8
Federal Laws.....	9
State Laws.....	10
Program Description and Administration.....	18
Banks and Trust Companies.....	19
Examinations.....	21
Complaints/Enforcement Actions.....	30
Analysis and Recommendations.....	35
Recommendation 1 – Continue the Banking Board and the Division of Banking for 11 years, until 2024.....	35
Recommendation 2 – Repeal the regulation of industrial banks from the Banking Code.....	36
Recommendation 3 – Extend the amount of time the Board has to approve or disapprove a merger agreement between banks from 30 to 60 days.....	37
Recommendation 4 – Repeal the regulation of private family trust companies from the Banking Code.....	38
Recommendation 5 – Update the Banking Code to reflect the Dodd-Frank Wall Street Reform and Consumer Protection Act, which allows de novo interstate banking.....	39
Recommendation 6 – Amend the Banking Code to preclude a commercial bank exercising trust powers from holding fiduciary funds for an extended period without investing them.....	39

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## Background

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### Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria<sup>1</sup> and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

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<sup>1</sup> Criteria may be found at § 24-34-104, C.R.S.

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## **Types of Regulation**

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

### Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

### Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

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While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

### Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

### Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

### Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.



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Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

### **Sunset Process**

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: [www.askdora.colorado.gov](http://www.askdora.colorado.gov).

The regulatory functions of the Colorado Banking Board (Board) and the Division of Banking (Division) as enumerated in Title 11 of the Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2013, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the administration of the Colorado Banking Code (Banking Code) by the Board and the Division pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of state chartered banks and trust companies should be continued for the protection of the public and to evaluate the performance of the Board and the Division. During this review, the Board and the Division must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

### **Methodology**

As part of this review, DORA staff attended Board meetings; interviewed Division staff; reviewed Board records and minutes including complaint and disciplinary actions; interviewed officials with state and national professional associations, and representatives of state chartered banks and trust companies; reviewed Colorado statutes and Board rules; and reviewed the laws of other states.

### **Profile of the Industry**

The Banking Code provides regulatory oversight for state chartered commercial and industrial banks, trust companies (depository and non-depository), as well as money transmitters. The regulation of money transmitters has a separate, stand-alone sunset review, and as such, will not be discussed in this report.

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There are two types of charters available for banks and trust companies: federal and state. This sunset review focuses on the regulation of state chartered banks and trust companies. Hence, the remainder of this sunset review will refer to state chartered banks and state chartered trust companies as banks (commercial and industrial) and trust companies.

A state charter is essentially an agreement between an entity and the regulatory authority that governs the manner in which a bank or trust company is regulated and operates.<sup>2</sup> In Colorado, the Board approves state charters for commercial banks, industrial banks and trust companies. In order to obtain a state charter, an applicant must complete a number of documents contained in an Application for Charter to Operate a State Bank in Colorado (the Division provides templates of the required documents), including, but not limited to:

- Articles of incorporation;
- Bylaws;
- Financial reports for officers, directors and stockholders; and
- Economic data and background information.

The articles of incorporation include a variety of information such as the name of the bank or trust company, principal office location and a listing of the directors of the bank (commercial or industrial) or trust company.

The bylaws include information such as the requirements for annual meetings for shareholders, election of the board of directors, and selection of officers of the bank or trust company.

Financial reports for officers, directors and stockholders include information such as employment records, education and professional credentials, business and banking affiliations, and legal matters, if any.

Economic data and background information includes an overview of the population where the proposed bank or trust company is to be located, the competition (other banks or trust companies) in the area, the primary service area characteristics (e.g., residential area and owner occupied homes) and general information concerning the proposed bank or trust company (e.g., land, building and furniture).

### Commercial Banks

Commercial banks are stock corporations that offer a variety of products and services to the public, including loans to businesses and individuals (e.g., auto and personal) and checking and savings accounts.

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<sup>2</sup> How Stuff Works. *How Banks Work*. Retrieved July 3, 2012, from <http://money.howstuffworks.com/personal-finance/banking/bank5.htm>

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## Industrial Banks

Industrial banks are similar to commercial banks. However, industrial banks are prohibited from offering checking accounts to their customers. Further, industrial banks can offer savings and money market accounts, as well as certificates of deposit.

Additionally, industrial banks were originally established to provide loans for items that traditional banks did not offer, such as second mortgage loans to consumers. As industrial banks evolved, they offered additional loans that were unavailable at traditional banks, including loans for boats and recreational vehicles.

Traditional (commercial) banks, however, expanded the types of loans offered to consumers, including second mortgages and loans for items that were uncommon such as boats and recreational vehicles. As a result, there are currently no industrial banks in Colorado.

## Trust Companies

Trust companies are legal entities that act as fiduciaries, agents or trustees on behalf of a person or business entity for the purpose of administration, management and the eventual transfer of assets to a beneficiary party.<sup>3</sup> Trust companies act in a number of capacities such as custodians for trusts, estates, custodial arrangements, asset management and stock transfers.<sup>4</sup>

There are two types of trust companies: depository and non-depository. Depository trust companies are authorized to accept deposits into trust accounts, and these companies must be insured by the Federal Deposit Insurance Corporation (FDIC). Depository trust companies are authorized to be chartered by the Division, and they are regulated, in terms of examinations, in a shared capacity with the FDIC.

Non-depository trust companies, as the name implies, do not accept and maintain deposits. Instead, these companies provide a variety of fiduciary services to the public. Non-depository trust companies are chartered and regulated solely by the Division.

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<sup>3</sup> Investopedia. Definition of Trust Company. Retrieved July 10, 2010, from <http://www.investopedia.com/terms/t/trustcompany.asp#axzz20EYs0uvP>

<sup>4</sup> Investopedia. Definition of Trust Company. Retrieved July 10, 2010, from <http://www.investopedia.com/terms/t/trustcompany.asp#axzz20EYs0uvP>

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## Federal Deposit Insurance Corporation

All banks (commercial and industrial) and trust companies, with the exception of non-depository trust companies, are required to be insured through the FDIC. The FDIC is an independent agency of the federal government, and its mission is to protect consumers (depositors) against the loss of their deposits if an insured bank fails.<sup>5</sup> FDIC insurance covers all types of deposits received at an insured bank, including deposits in a checking account, negotiable order of withdrawal account, savings account, money market deposit account or time deposit such as a certificate of deposit.<sup>6</sup>

FDIC insurance covers consumers' accounts dollar-for-dollar, including principal and any accrued interest through the date of the insured bank's closing, up to the insurance limit (\$250,000).<sup>7</sup> The standard deposit insurance amount (\$250,000) is per consumer, per insured bank for each ownership category.<sup>8</sup>

The FDIC, however, does not insure money invested in stocks, bonds, mutual funds, life insurance policies, annuities or municipal securities.<sup>9</sup>

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<sup>5</sup> Federal Deposit Insurance Corporation. Your Insured Deposits. Retrieved July 10, 2012, from <http://www.fdic.gov/deposit/deposits/insured/basics.html>

<sup>6</sup> Federal Deposit Insurance Corporation. Your Insured Deposits. Retrieved July 10, 2012, from <http://www.fdic.gov/deposit/deposits/insured/basics.html>

<sup>7</sup> Federal Deposit Insurance Corporation. Your Insured Deposits. Retrieved July 10, 2012, from <http://www.fdic.gov/deposit/deposits/insured/basics.html>

<sup>8</sup> Federal Deposit Insurance Corporation. Your Insured Deposits. Retrieved July 10, 2012, from <http://www.fdic.gov/deposit/deposits/insured/basics.html>

<sup>9</sup> Federal Deposit Insurance Corporation. Your Insured Deposits. Retrieved July 10, 2012, from <http://www.fdic.gov/deposit/deposits/insured/basics.html>

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## Legal Framework

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### **History of Regulation**

Nationally, the regulation of banks first occurred in 1781 when the first charter was granted to the Bank of North America by the Continental Congress.<sup>10</sup> By 1790, there were three additional chartered banks in the United States: the Bank of New York, the Bank of Massachusetts and the Bank of Maryland.<sup>11</sup>

After the Constitution was ratified, Congress moved to establish First Bank of the U.S.A. in 1791.<sup>12</sup> First Bank of the U.S.A. was a federally chartered bank that acted as a central bank so as to promote a sound monetary and credit system.<sup>13</sup>

In Colorado, the regulation of banks commenced in 1877, one year after statehood was achieved.<sup>14</sup> The original legislation codified the process by which banking associations could be chartered and operated.<sup>15</sup>

Since enactment of the Colorado Banking Code (Banking Code), the regulatory oversight of the industry has continually evolved. The Colorado Department of Regulatory Agencies completed sunset reviews of the Colorado Banking Board (Board) and the Division of Banking (Division) in 1993 and 2003.

One notable recommendation in the 1993 sunset review was to clearly spell out in the Banking Code that the Board has the authority to impose civil money penalties against persons and banks that are engaging in unsafe and unsound banking practices. The General Assembly subsequently passed the recommendation in the 1994 legislative session.

The 2003 sunset review recommended altering the composition of the Board. The General Assembly passed the recommendation, which increased the composition to nine members.

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<sup>10</sup> CESifo Economic Studies Advance Access Published November 5, 2009. *Bank Regulation in the United States*. Retrieved July 10, 2012, from

<http://www.business.auburn.edu/~barthjr/publications/Bank%20Regulation%20in%20the%20United%20States.pdf>

<sup>11</sup> CESifo Economic Studies Advance Access Published November 5, 2009. *Bank Regulation in the United States*. Retrieved July 10, 2012, from

<http://www.business.auburn.edu/~barthjr/publications/Bank%20Regulation%20in%20the%20United%20States.pdf>

<sup>12</sup> CESifo Economic Studies Advance Access Published November 5, 2009. *Bank Regulation in the United States*. Retrieved July 10, 2012, from

<http://www.business.auburn.edu/~barthjr/publications/Bank%20Regulation%20in%20the%20United%20States.pdf>

<sup>13</sup> CESifo Economic Studies Advance Access Published November 5, 2009. *Bank Regulation in the United States*. Retrieved July 10, 2012, from

<http://www.business.auburn.edu/~barthjr/publications/Bank%20Regulation%20in%20the%20United%20States.pdf>

<sup>14</sup> The Colorado Department of Regulatory Agencies 1993 Division of Banking Sunset Review. p.1.

<sup>15</sup> The Colorado Department of Regulatory Agencies 1993 Division of Banking Sunset Review. p.2.

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## Federal Laws

There are a multitude of federal laws that influence the overall regulation of both federally and state chartered banks, including, but not limited to:

- Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act);
- Bank Secrecy Act (BSA);
- Truth in Lending Act (TILA); and
- Federal Deposit Insurance Corporation Act (FDIC Act).

The Dodd-Frank Act, which was enacted by Congress in 2010, is one of the most comprehensive and complex federal laws addressing the regulation of banks. Among other things, the Dodd-Frank Act relaxes restrictions on interstate banking for banks. Prior to the passage of the Dodd-Frank Act, there were strict provisions that prohibited, in most instances, banks from engaging in interstate banking.

The BSA was originally enacted by Congress in 1970. The purpose of the BSA is to fight money laundering and other financial crimes.<sup>16</sup> Money laundering is the process of making illegally-gained proceeds (i.e., “dirty money”) appear legal (i.e., “clean”).<sup>17</sup> Typically, money laundering involves three steps: placement, layering and integration.<sup>18</sup> Placement of funds occurs when the illegitimate funds are furtively introduced into the legitimate financial system.<sup>19</sup>

Layering occurs when the money is moved around to create confusion, sometimes by wiring or transferring the funds through numerous accounts.<sup>20</sup>

Integration occurs when the funds are integrated into the financial system through additional transactions until the “dirty” money appears “clean.”<sup>21</sup>

Additionally, the TILA was enacted by Congress in 1968. One of the most important components of the TILA was the requirement that a lender disclose information to a borrower prior to extending credit, such as the annual percentage rate, term of the loan and total costs to the borrower.<sup>22</sup>

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<sup>16</sup> Financial Crimes Enforcement Network U.S. Department of the Treasury, Washington D.C. *Bank Secrecy Act Requirements*. Retrieved May 3, 2012, from

[http://www.fincen.gov/financial\\_institutions/msb/materials/en/bank\\_reference.html](http://www.fincen.gov/financial_institutions/msb/materials/en/bank_reference.html)

<sup>17</sup> U.S. Department of the Treasury – Financial Crimes Enforcement Network. *History of Anti-Money Laundering Laws*. Retrieved September 21, 2012, from [http://www.fincen.gov/news\\_room/aml\\_history.html](http://www.fincen.gov/news_room/aml_history.html)

<sup>18</sup> U.S. Department of the Treasury – Financial Crimes Enforcement Network. *History of Anti-Money Laundering Laws*. Retrieved September 21, 2012, from [http://www.fincen.gov/news\\_room/aml\\_history.html](http://www.fincen.gov/news_room/aml_history.html)

<sup>19</sup> U.S. Department of the Treasury – Financial Crimes Enforcement Network. *History of Anti-Money Laundering Laws*. Retrieved September 21, 2012, from [http://www.fincen.gov/news\\_room/aml\\_history.html](http://www.fincen.gov/news_room/aml_history.html)

<sup>20</sup> U.S. Department of the Treasury – Financial Crimes Enforcement Network. *History of Anti-Money Laundering Laws*. Retrieved September 21, 2012, from [http://www.fincen.gov/news\\_room/aml\\_history.html](http://www.fincen.gov/news_room/aml_history.html)

<sup>21</sup> U.S. Department of the Treasury – Financial Crimes Enforcement Network. *History of Anti-Money Laundering Laws*. Retrieved September 21, 2012, from [http://www.fincen.gov/news\\_room/aml\\_history.html](http://www.fincen.gov/news_room/aml_history.html)

<sup>22</sup> Investopedia. *Definition of Truth in Lending Act – TILA*. Retrieved September 21, 2012, from <http://www.investopedia.com/terms/t/tila.asp#axzz222RUESy9>

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The FDIC was originally created in 1933 when Congress adopted the Bank Act. The law required the banking industry to fund deposit insurance which, in turn, assured depositors they would get their money back if their bank failed.<sup>23</sup> The FDIC Act of 1950 extended deposit insurance to banks.<sup>24</sup>

## **State Laws**

The Banking Code provides regulatory oversight of commercial and industrial banks and trust companies and is located in Title 11 of the Colorado Revised Statutes (C.R.S.). It contains Articles 101 through 109.

Additionally, the Board has regulatory oversight of banks (federally and state chartered) that are approved to accept deposit of public funds from governmental entities (e.g., local governments) via the Public Deposit Protection Act (PDPA). The PDPA is located in section 11-10.5-101, *et seq.*, C.R.S.

### Banking Code

#### *Article 101: General Provisions*

Generally, this Article defines a multitude of banking related terms used throughout the Banking Code. For example, banking transactions are defined to include:

cash withdrawals, deposits, account transfers, payments from bank accounts, disbursements under a preauthorized credit agreement and loan payments initiated by an account holder at a communications facility and accessing his or her account at a Colorado bank.<sup>25</sup>

#### *Article 102: Division of Banking*

This Article highlights the roles of the Commissioner of Banking (Commissioner) and the Board.

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<sup>23</sup> Answers.com. *Federal Deposit Insurance Acts*. Retrieved July 29, 2012, from <http://www.answers.com/topic/federal-deposit-insurance-acts>

<sup>24</sup> Answers.com. *Federal Deposit Insurance Acts*. Retrieved July 29, 2012, from <http://www.answers.com/topic/federal-deposit-insurance-acts>

<sup>25</sup> § 11-101-401(9), C.R.S.

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## Commissioner's Responsibilities

The Commissioner serves as the administrative head of the Division. The Commissioner's principal responsibility is to administer the examination and enforcement functions of the Division.<sup>26</sup> In carrying out these responsibilities, the Commissioner has the power to require a bank to:<sup>27</sup>

- Comply with the standards that the Board may prescribe for determining the value of various types of assets;
- Charge off (reduce) the whole or any part of an asset that, at the time of the Commissioner's action, could not lawfully be acquired;
- Write down<sup>28</sup> an asset to its market value;
- File, record or otherwise make effective liens and other interests in property;
- Obtain a financial statement from a person with present or prospective liability to the bank to the extent that the bank can do so;
- Obtain title insurance for real estate taken as security; and
- Maintain adequate insurance against such other risks as the Commissioner or Board may determine to be necessary and appropriate for the protection of depositors and the public.

## Board Composition and Responsibilities

Members of the Board are appointed by the Governor with the consent of the majority of the members of the Senate.<sup>29</sup> The Board is comprised of nine members, and the composition is as follows.<sup>30</sup>

- Five members of the Board must be executive officers of state banks, each of whom are required to have a minimum of five years of practical experience as an active executive officer of a bank;
  - At least two of the executive officers serving as members of the Board must represent banks having less than \$150 million in total assets at the time of their appointment;
- One member of the Board is required to be licensed as a money transmitter;
- One member of the Board is required to be an executive officer of a trust company; and
- Two members of the Board must be public members and are required to have expertise in finance through their current experience in business, industry, agriculture or education.

At least one member of the Board is required to reside west of the Continental Divide.<sup>31</sup>

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<sup>26</sup> § 11-102-102(3), C.R.S.

<sup>27</sup> §§ 11-102-102(3)(a-h), C.R.S.

<sup>28</sup> Reducing the book value of an asset because it is overvalued compared to the market value.

<sup>29</sup> § 11-102-103(5), C.R.S.

<sup>30</sup> §§ 11-102-103(2)(a-d), C.R.S.

<sup>31</sup> § 11-102-103(4), C.R.S.



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The Board has the following enforcement authority:<sup>32</sup>

- Order any person to cease violating a provision of the Banking Code or a banking rule or to cease engaging in any unsound banking practice;
- Impose civil money penalties (not to exceed \$1,000 per day for each day the violation continues); and
- Suspend or remove an executive officer, director, employee, agent or other person participating in the conduct of the affairs of a bank.

The Board also has the authority to initiate informal actions to enforce the Banking Code and applicable rules.<sup>33</sup> Specifically, the Board may enter into written agreements with any bank, executive officer, director, employee, agent or other person participating in the conduct of the affairs of the bank such as:<sup>34</sup>

- A memorandum of understanding;
- An informal commitment letter; or
- A strongly worded letter of reprimand.

#### *Article 103: Organization and Corporate Functions*

This Article addresses various issues such as minimum capital requirements for banks, the provisions required to receive a state charter, and the process for liquidating banks.

#### Capital Requirements

The Banking Code enables the Board to establish minimum capital requirements for banks via banking rule. As such, Colorado Banking Rule CB101.51(D) requires banks to maintain Tier 1 capital in an amount equal to at least three percent of adjusted total assets. Tier 1 capital is the core measure of a bank's financial strength. Technically, Tier 1 capital is a measure of a bank's core capital, which includes its common stock and its disclosed reserves.<sup>35</sup> Common stock represents a percentage of the bank that is owned by common-stock shareholders.<sup>36</sup> Disclosed reserves are profits that are generated by a bank outside of the distributions made to shareholders in the form of cash or stock dividends.<sup>37</sup>

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<sup>32</sup> § 11-102-104(7), C.R.S.

<sup>33</sup> § 11-102-507, C.R.S.

<sup>34</sup> §11-102-507, C.R.S.

<sup>35</sup> WiseGEEK. *What is Tier 1 Capital?* Retrieved August 22, 2012, from <http://www.wisegeek.com/what-is-tier-1-capital.htm>

<sup>36</sup> WiseGEEK. *What is Tier 1 Capital?* Retrieved August 22, 2012, from <http://www.wisegeek.com/what-is-tier-1-capital.htm>

<sup>37</sup> WiseGEEK. *What is Tier 1 Capital?* Retrieved August 22, 2012, from <http://www.wisegeek.com/what-is-tier-1-capital.htm>

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## State Charter

An applicant for a state charter is required to submit its proposed articles of incorporation to the Board, which include, but are not limited to:<sup>38</sup>

- The name of the state bank;
- Whether it intends to exercise trust powers;
- The community where it will be located; and
- The amount of capital it has.<sup>39</sup>

Additionally, an applicant for a state charter must also provide information to the Board, including but not limited to:<sup>40</sup>

- The name, business and residence address, and business and professional affiliations of each director and executive officer;
- The name, residence, citizenship and occupation of each subscriber and the number of shares for which he or she has subscribed;
- The past and present connection with any bank of each director and each subscriber to more than five percent of the capital stock;
- The amount to be borrowed and from whom borrowed on any stock issued to a subscriber to more than five percent of stock;
- The address at which it is proposed that the bank does business; and
- A statement that all the proposed bylaws are included in the application.

Within six months after filing an application for a state charter, the Board is required to hold a public hearing to consider the application.<sup>41</sup>

## Liquidation, Dissolution and Reorganization of Banks

With the approval of the Board, a bank may liquidate and dissolve.<sup>42</sup> The Board approves a liquidation when,

the proposal to liquidate has been approved by a vote of two-thirds of the outstanding voting stock and the capital of the state bank is adequate and the bank has sufficient liquid assets to pay off depositors and creditors immediately.<sup>43</sup>

Within 30 days after approval from the Board to liquidate, a liquidation notice must be sent to a variety of stakeholders, including each depositor, creditor, person interested in funds held as a fiduciary and lessee of a safe deposit box.<sup>44</sup>

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<sup>38</sup> § 11-103-303(1)(a), C.R.S.

<sup>39</sup> In general, capital refers to financial resources available for use, such as cash.

<sup>40</sup> § 11-103-303(1)(b), C.R.S.

<sup>41</sup> § 11-103-304(3)(a), C.R.S.

<sup>42</sup> § 11-103-801(1), C.R.S.

<sup>43</sup> § 11-103-801(1), C.R.S.

<sup>44</sup> § 11-103-801(2)(b), C.R.S.

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Typically, the FDIC acts as the liquidator when a bank dissolves. When a state bank is liquidated, after payment of federal deposit insurance, claims for payment have the following priority:<sup>45</sup>

1. Obligations incurred by the bank board, fees and assessments due to the Division of Banking and expenses of liquidation, all of which may be covered by proper reserve funds;
2. Claims of depositors having an approved claim against the general liquidating account of the bank;
3. Claims of general creditors having an approved claim against the general liquidating account of the bank;
4. Claims otherwise proper that were not filed within the time prescribed by the Code;
5. Approved claims of subordinate creditors; and
6. Claims of stockholders of the bank.

#### *Article 104: Holding Companies*

This article provides the regulatory framework for holding companies in Colorado, such as the requirements for holding companies in acquiring control of banks.

#### Acquisition of Control of Banks and Bank Holding Companies

Colorado holding companies are permitted to acquire control of out-of-state bank holding companies and out-of-state banks.<sup>46</sup> Also, subject to certain limitations, an out-of-state bank holding company is permitted to acquire control of Colorado chartered financial institutions.<sup>47</sup>

#### *Article 105: Banking Practices*

This Article highlights issues such as the general provisions of banking practices and the loans, acceptances, investments and letters of credit requirements of banks.

#### General Provisions

The Banking Code authorizes banks to maintain the same types of accounts that national banks are authorized to maintain, such as demand (e.g., checking), savings and time deposit (certificate of deposit) accounts.<sup>48</sup>

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<sup>45</sup> § 11-103-805(5)(a), C.R.S.

<sup>46</sup> § 11-104-202(1), C.R.S.

<sup>47</sup> § 11-104-202(1), C.R.S.

<sup>48</sup> § 11-105-102(1), C.R.S.

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## Loans, Acceptances, Investments and Letters of Credit

Banks are authorized to make loans, both secured and unsecured, accept drafts, make investments and issue letters of credit.<sup>49</sup>

### *Article 106: Fiduciary Business*

This Article outlines the parameters by which banks function as fiduciaries, including their fiduciary powers and authorization to invest in securities.

### General Fiduciary Powers

A bank acting as a fiduciary has all of the rights, powers, privileges and immunities as an individual fiduciary.<sup>50</sup>

### Investment in Securities

A bank or trust company is authorized to invest or reinvest the assets that it maintains in its trust in the securities of any open-end or closed-end management investment company or investment trust registered under the federal Investment Company Act of 1940.<sup>51</sup>

### *Article 107: Criminal Offenses*

This Article, among other things, highlights acts that are criminal offenses, such as the receipt of deposits while insolvent and embezzlement or misrepresentation of funds. The Article also delineates the penalties for criminal offenses.

### Receipt of Deposits While Insolvent

It is a criminal offense for a bank to receive any deposit while insolvent or if an officer, director or employee knows of or should know of the insolvency and receives or authorizes a deposit.<sup>52</sup> Also, it is a criminal offense for a bank or person within a bank to knowingly conceal or misstate material facts regarding the insolvency of the bank from the Board, Commissioner or the Division.<sup>53</sup>

### Embezzlement or Misapplication of Funds

It is a criminal offense for any,

officer, director, shareholder or employee of any bank to directly or indirectly embezzle, abstract or misapply any of the funds or securities or other property of or under the control of the bank with the intent to deceive, injure, cheat, wrong or defraud any person.<sup>54</sup>

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<sup>49</sup> § 11-105-302, C.R.S.

<sup>50</sup> § 11-106-103, C.R.S.

<sup>51</sup> § 11-106-106, C.R.S.

<sup>52</sup> § 11-107-102, C.R.S.

<sup>53</sup> § 11-107-102, C.R.S.

<sup>54</sup> § 11-107-107, C.R.S.

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## Penalties for Unlawful Acts or Omissions

Any person responsible for an act or omission expressly declared to be a criminal offense by the Banking Code:<sup>55</sup>

- Is guilty of a misdemeanor which is punishable by a fine up to \$1,000 or by imprisonment in a county jail of up to a year, or both; or
- Is guilty of a Class 6 felony if the act or omission was intended to defraud.

### *Article 108: Industrial Banks*

This Article highlights the regulatory framework for industrial banks in Colorado, which is essentially identical to the regulatory oversight of commercial banks. There are no industrial banks located in Colorado at this time.

### *Article 109: Trust Companies*

This Article highlights the regulatory framework for trust companies, including private family trust companies.

## Trust Companies

Trust companies are legal entities that act as fiduciaries, agents or trustees on behalf of a person or business entity for the purpose of administration, management and the eventual transfer of assets to a beneficiary party.<sup>56</sup> Trust companies act in a number of capacities including as custodians for trusts, estates, custodial arrangements, asset management and stock transfers.<sup>57</sup>

## Private Trust Companies

Private trust companies are firms owned or controlled exclusively by family members.<sup>58</sup> The purpose of establishing a private trust company varies, but some families establish private trust companies to have more control over how their trust assets are handled, while others may want to consolidate several family trusts under one umbrella.<sup>59</sup> There are currently no private family trust companies in Colorado.

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<sup>55</sup> § 11-107-108(1), C.R.S.

<sup>56</sup> Investopedia. Definition of Trust Company. Retrieved July 10, 2010, from <http://www.investopedia.com/terms/t/trustcompany.asp#axzz20EYs0uvP>

<sup>57</sup> Investopedia. Definition of Trust Company. Retrieved July 10, 2010, from <http://www.investopedia.com/terms/t/trustcompany.asp#axzz20EYs0uvP>

<sup>58</sup> The Wall Street Journal. *Matter of Trust: Super-Rich Set Up Companies*. Retrieved July 27, 2012, from <http://online.wsj.com/article/SB118618514414987894.html>

<sup>59</sup> The Wall Street Journal. *Matter of Trust: Super-Rich Set Up Companies*. Retrieved July 27, 2012, from <http://online.wsj.com/article/SB118618514414987894.html>

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## PDPA

In order to be authorized to be a public depository, a bank must be designated as an eligible public depository by the Board.<sup>60</sup> Banks, among other things, must agree, in writing, to abide by all regulatory reporting requirements and examination requirements to be considered by the Board to be an eligible public depository.<sup>61</sup>

To be a public depository, banks must also adhere to minimum capital requirements highlighted in the Colorado Banking Rules. Specifically, PDPA Rule PDP1(A) requires an eligible bank to have and maintain a minimum level of total capital to risk-weighted assets in excess of eight percent.<sup>62</sup>

Once a designation as an eligible depository is granted by the Board, it may be retained unless the Board acts to suspend, revoke or otherwise limit the designation.<sup>63</sup>

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<sup>60</sup> § 11-10.5-106(1), C.R.S.

<sup>61</sup> § 11-10.5-106(2)(c), C.R.S.

<sup>62</sup> Public Deposit Protection Act Rules. PDP1(A).

<sup>63</sup> § 11-10.5-106(3)(b)(II), C.R.S.

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## Program Description and Administration

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The Colorado Banking Code (Banking Code) provides for the regulatory oversight of banks (commercial and industrial) and trust companies (depository and non-depository) and is located in Title 11 of the Colorado Revised Statutes (C.R.S.). The Banking Code contains Articles 101 through 109.

The regulation of banks and trust companies is vested in the Colorado Banking Board (Board). The Board is a Type 1, policy autonomous board that is responsible for imposing discipline on banks and trust companies, rulemaking and policymaking.

The Commissioner of Banking (Commissioner), as well as the Division of Banking (Division) staff, is responsible for completing examinations (safety and soundness, information technology, trust department and Public Deposit Protection Act), reviewing financial statements and completing duties delegated to the Commissioner by the Board.

In fiscal year 10-11, the Division devoted 44.5 full-time equivalent (FTE) employees to provide examinations and administrative support for the regulatory oversight of banks and trust companies. The FTE are as follows:

- Administrative Support Staff – 5.0 FTE;
- Applications Manager – 1.0 FTE;
- Caseload Managers – 4.0 FTE;
- Commissioner – 1.0 FTE;
- Consumer Complaints Manager – 1.0 FTE;
- Examination Scheduler – 1.0 FTE;
- Field Examiners – 27.5 FTE;
- Director of Examinations – 1.0 FTE;
- Information Technology Auditor – 2.0 FTE; and
- Operations Manager – 1.0 FTE.

Table 1 highlights the total expenditures for the regulation of banks and trust companies in fiscal years 06-07 through 10-11.

**Table 1**  
**Total Program Expenditures in Fiscal Years 06-07 through 10-11**

Fiscal Year	Total Expenditures
06-07	\$3,696,509
07-08	\$4,037,267
08-09	\$4,179,268
09-10	\$4,199,870
10-11	\$4,317,978

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As Table 1 illustrates, the total expenditures increased 17 percent from fiscal year 06-07 to fiscal year 10-11. The increase is attributable to an addition of six examiners (five financial credit examiners and one information technology auditor) within the Division.

### **Banks and Trust Companies**

Table 2 highlights the number of banks and trust companies in calendar years 2007 through 2011.

**Table 2**  
**Total Number of Banks and Trust Companies in Calendar Years 2007 through 2011**

<b>Banks and Trust Companies</b>	<b>Calendar Year 2007</b>	<b>Calendar Year 2008</b>	<b>Calendar Year 2009</b>	<b>Calendar Year 2010</b>	<b>Calendar Year 2011</b>
Commercial Banks	107	107	107	81	76
Industrial Banks	3	2	0	0	0
Trust Companies	8	7	8	8	8
<b>Total</b>	<b>118</b>	<b>116</b>	<b>115</b>	<b>89</b>	<b>84</b>

As Table 2 shows, the number of commercial banks decreased by 31 from calendar year 2009 to calendar year 2011. The decrease is attributable, in part, to 24 individual chartered FirstBanks merging into one charter, as well as two other banks merging.

As highlighted in Table 2, there were no industrial banks in calendar years 2009 through 2011. This can be attributed to the fact that, there is no longer a need or demand for industrial banks because commercial banks now offer products (loans, including second mortgages) that only industrial banks once offered.

Also, the data reveal that the total number of trust companies has remained fairly constant in the past five calendar years (2007 through 2011).

There has been minimal growth in the number of new, converted (from federal to state charter) or merged banks and trust companies in the recent past. Table 3 highlights the total number of new state charters in calendar years 2007 through 2011.



**Table 3**  
**Total Number of New, Converted and Merged Commercial Banks, Industrial Banks and Trust Companies**

New Charters	Calendar Year 2007	Calendar Year 2008	Calendar Year 2009	Calendar Year 2010	Calendar Year 2011
Commercial Banks					
<i>De Novo</i> (New)	3	3	0	0	0
Conversion	1	3	0	0	1
Merger	1	3	2	26	1
Industrial Banks					
<i>De Novo</i> (New)	0	0	0	0	0
Conversion	0	1	1	0	0
Merger	0	0	0	0	0
Trust Companies					
<i>De Novo</i> (New)	1	0	0	1	0
Conversion	0	0	0	0	0
Merger	0	0	1	0	0

Table 3 shows a large number (26) of commercial bank mergers in calendar year 2010. The increase, as previously mentioned, is due to FirstBank merging 24 of its banks into one charter, and two other banks merged into one bank.

In order to obtain an initial state charter for banks and trust companies, an applicant is required to complete a number of documents within the Application for Charter to Operate a State Bank in Colorado (the Division provides templates of the required documents), including, but not limited to:

- Articles of incorporation;
- Bylaws;
- Financial reports for officers, directors and stockholders; and
- Economic data and background information.

Applicants for a state charter must also obtain insurance through the Federal Deposit Insurance Corporation (FDIC).

Once an application is approved by the Board, an applicant for a *de novo* (new) bank (commercial and industrial) and trust company is required to pay an application fee of \$12,000.

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## **Examinations**

According to Division staff, banks chartered by the states are divided into those that are members of the Federal Reserve System (state member banks) and those that are not (state nonmember banks). State banks are not required to join the Federal Reserve System, but they may elect to become members if they meet the standards set by the Board of Governors. If a bank chooses to become a member of the Federal Reserve System,<sup>64</sup> the Federal Reserve is its primary federal supervisor.

If a bank chooses not to become a member of the Federal Reserve System, the FDIC is its primary federal supervisor. The formation of a bank holding company subjects banks and banking organizations to an additional layer of regulation and supervision by the Federal Reserve System. Generally, for Colorado chartered banks, the Division, Federal Reserve Bank of Kansas City (Federal Reserve), and FDIC monitor the financial conditions at banks under their respective jurisdictions through examinations.

In Colorado, the majority of banks are not members of the Federal Reserve System (55 of 76); therefore, the Division and the FDIC staffs work in collaboration to conduct most of the examinations of banks and trust companies. That is, staff from both entities will perform examinations with each taking the “lead” on an alternating basis.

Specifically, Division and federal banking regulators conduct safety and soundness, and in some instances, information technology (IT) examinations of banks as well as trust examinations for trust departments within banks.

Division staff also conducts Public Deposit Protection Act (PDPA) examinations of federally and state chartered banks that are authorized to possess state and local government funds.

Generally, each of the examinations (safety and soundness, IT, trust department and PDPA) utilizes a composite rating system of “1” to “5,” where “1” is the best and “5” is the worst.

A composite rating of “1” indicates that the bank or trust company is sound in every aspect. Any weaknesses are minor and can be handled in a routine manner by the board of directors and management. These banks and trust companies are the most capable of withstanding the vagaries of business conditions and are resistant to outside influences such as economic instability.

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<sup>64</sup> Member banks must subscribe to stock in their regional Federal Reserve Bank (Colorado is in the 10<sup>th</sup> District) in an amount equal to six percent of their capital and surplus, half of which must be paid in while the other half is subject to call by the Board of Governors. The holding of this stock, however, does not carry with it the control and financial interest conveyed to holders of common stock in for-profit organizations. It is merely a legal obligation of Federal Reserve membership, and the stock may not be sold or pledged as collateral for loans. Member banks receive a six percent dividend annually on their stock, as specified by law, and vote for the Class A and Class B directors of the Reserve Bank. Stock in Federal Reserve Banks is not available for purchase by individuals or entities other than member banks.

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Banks and trust companies that achieve a composite rating of “2” are fundamentally sound and are capable of withstanding business fluctuations. Also, these institutions are in substantial compliance with laws and regulations.

Banks and trust companies that are assessed a composite rating of “3” are generally less capable of withstanding business fluctuations and may be in significant non-compliance with laws and regulations.

Banks and trust companies with a composite rating of “4” have demonstrated unsafe or unsound practices or conditions. These institutions are generally not capable of withstanding business fluctuations, and there may be significant non-compliance with laws and regulations. Also, these institutions require close regulatory supervision, which means, in most cases, formal enforcement action by the Board is necessary to address the problem(s).

Banks and trust companies with a composite rating of “5” (the lowest rating) exhibit extremely unsafe and unsound practice or conditions; exhibit a critically deficient performance; and often contain inadequate risk management practices. These financial institutions require ongoing regulatory oversight, and they pose a significant risk to consumers.

Each of the aforementioned examinations performed on banks and trust companies utilize two types of examinations: full scope and target.

A full scope examination is a comprehensive examination of a bank or trust company to ensure, among other things, compliance with existing federal and state laws and regulations.

A target examination, as the name implies, focuses on certain areas related to banks and trust companies. A target examination determines whether a bank or trust company has all of the necessary operational processes and personnel to operate in a safe and sound manner.

### Safety and Soundness Examinations

The Division and federal banking regulators utilize the CAMELS rating system for safety and soundness examinations, which includes six key components used to assess an institution’s financial condition and operations. The six components are:

- Capital adequacy;
- Asset quality;
- Management capability;
- Earnings quantity and quality;
- Liquidity; and
- Sensitivity to market risk.

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Generally, new and converted (from a federal charter to a state charter) banks and trust companies are required to undergo full scope examinations every 12 months for the first three years of operation as a bank or trust company.<sup>65</sup>

If there is a change of control of a bank or trust company, the Division, generally, requires it to undergo a full scope examination within the first four months of operation under the new ownership.<sup>66</sup>

The frequency of full scope examinations depends, in large part, on the CAMELS rating assigned to the bank or trust company at the completion of the previous full scope examination.

Banks or depository trust companies with assets less than \$500 million that received a CAMELS rating of “1” or “2” on their previous full scope examination and do not have any enforcement actions imposed by the Board are scheduled for full scope examinations every 18 months.<sup>67</sup>

However, banks or depository trust companies with assets less than \$500 million that have had a change in ownership within the past 12 months, a formal enforcement action imposed by the Board or federal banking regulators or received a CAMELS rating of “3” on their previous full scope examination are scheduled for a full scope examination every 12 months.<sup>68</sup>

Banks or depository trust companies with assets of more than \$500 million with a CAMELS rating of “1” or “2” on their previous full scope examination that do not have any enforcement actions imposed by the Board are scheduled for a full scope examination every 12 months.<sup>69</sup>

Banks or depository trust companies that received a CAMELS rating of “4” or “5” regardless of their assets are scheduled for a full scope examination every 12 months, and they are given priority on scheduling.<sup>70</sup>

Target examinations are completed by the Division staff within the first four months of operation as a new or converted state charter.

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<sup>65</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p.3.

<sup>66</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p.3.

<sup>67</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p.3.

<sup>68</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p.3.

<sup>69</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p.3.

<sup>70</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p.3.

Table 4 illustrates the total number of safety and soundness examinations in fiscal years 06-07 through 10-11.

**Table 4  
Total Number of Safety and Soundness Examinations in Fiscal Years 06-07  
through 10-11**

<b>Safety and Soundness Examinations</b>	<b>FY 06-07</b>	<b>FY 07-08</b>	<b>FY 08-09</b>	<b>FY 09-10</b>	<b>FY 10-11</b>
Commercial Banks	41	47	46	49	55
Industrial Banks	1	1	0	0	0
Trust Companies	4	5	3	5	6
<b>Total</b>	<b>46</b>	<b>53</b>	<b>49</b>	<b>54</b>	<b>61</b>

The data in Table 4 show the number of safety and soundness examinations for commercial banks increased from 41 in fiscal year 06-07 to 55 in fiscal year 10-11. The increase is attributable to certain banks receiving a lower composite rating, which increases the safety and soundness examination frequency. For example, a bank that previously had a composite rating of “1” or “2” may have been rated a “3,” “4” or “5,” which increases the examination frequency from every 18 months to every 12 months.

Table 5 provides a breakdown of the safety and soundness full scope and target examinations for banks and trust companies completed in fiscal years 06-07 through 10-11.

**Table 5  
Safety and Soundness Full Scope and Target Examinations for Banks and Trust  
Companies in Fiscal Years 06-07 through 10-11**

<b>Safety and Soundness</b>	<b>FY 06-07</b>		<b>FY 07-08</b>		<b>FY 08-09</b>		<b>FY 09-10</b>		<b>FY 10-11</b>	
	Full Scope	Target	Full Scope	Target	Full Scope	Target	Full Scope	Target	Full Scope	Target
Bank	48	2	55	4	46	4	44	1	56	2
Trust Company	4	0	5	1	3	0	6	0	4	0
<b>Total</b>	<b>52</b>	<b>2</b>	<b>60</b>	<b>5</b>	<b>49</b>	<b>4</b>	<b>50</b>	<b>1</b>	<b>60</b>	<b>2</b>

#### Information Technology Examinations

The Division and the federal banking regulators utilize the Uniform Rating System for Information Technology (URSIT) when conducting IT examinations. The URSIT is used to assess the overall performance of IT systems within an organization. There are two types of IT examinations: IT examinations for independent IT servicers located in Colorado and non-independent IT centers. Independent IT servicers essentially enter into an agreement with a bank to provide data services such as processing deposits and withdrawals at a data center.

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In-house data processing refers to the hardware and software systems that a bank uses to process its “core” accounting and record-keeping functions, such as deposit processing, loan processing, and general ledger processing. Bank personnel operate (schedule and initiate programs to perform record-keeping functions) the software on bank-owned hardware. The software may be purchased (“off-the shelf” or “turnkey” systems) or developed by the bank’s programming staff. In contrast, banks may “outsource” the accounting and record-keeping functions to an independent company. The bank contracts with an independent technology service provider (TSP) for the “core” functions. TSP personnel operate the software on TSP-owned hardware.

The URSIT is based on a risk evaluation of four critical components:<sup>71</sup>

- Audit;
- Management;
- Development and acquisition; and
- Support and delivery.

New independent IT servicers located in Colorado must undergo a full scope examination within the first 12 months of operation.<sup>72</sup>

Similar to the safety and soundness full scope examinations, the frequency of IT examinations is based on the most recent composite rating from the previous examination. Independent IT servicers that receive composite ratings of either “1” or “2” are placed on a 24-month full scope examination cycle.<sup>73</sup>

Independent IT servicers that receive a composite rating of “3,” “4” or “5” are placed on a 12-month full scope examination cycle.<sup>74</sup>

Also, new non-independent IT centers must undergo a full scope examination within the first 12 months of operation.<sup>75</sup>

Non-independent IT centers with a composite rating of “1” or “2” that have assets of less than \$500 million are placed on an 18-month full scope examination cycle.<sup>76</sup>

Non-independent IT centers that receive a composite rating of “3,” “4” or “5” are placed on a 12-month full scope examination cycle.<sup>77</sup>

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<sup>71</sup> Federal Register. Federal Financial Institutions Examination Council. p. 3.

<sup>72</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p. 4.

<sup>73</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p. 4.

<sup>74</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. pp. 4-5.

<sup>75</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p. 5.

<sup>76</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p. 5.

<sup>77</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p. 5.

New servicers and new IT centers must also undergo a target examination within the first four months of operation. The purpose of the examination is to ensure that all of the necessary operational processes and personnel are in place to operate in a safe and sound manner.<sup>78</sup>

Table 6 delineates the total number of information technology examinations in fiscal years 06-07 through 10-11.

**Table 6**  
**Total Number of Information Technology Examinations in Fiscal Years 06-07 through 10-11**

Information Technology Examinations	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11
Commercial Banks	10	11	5	9	11
Industrial Banks	1	1	0	0	0
Trust Companies	1	1	1	1	2
<b>Total</b>	<b>12</b>	<b>13</b>	<b>6</b>	<b>10</b>	<b>13</b>

Table 6 shows a decrease in the total number of IT examinations in fiscal year 08-09. This is attributable to the cyclical nature of the examination schedule, with some independent IT servicers and non-independent IT centers being on a 12-, 18- or 24-month examination schedule.

Table 7 provides a breakdown of the IT examinations for banks, trust companies and technology service providers.

**Table 7**  
**IT Examinations for Banks, Trust Companies and Technology Service Providers**

Information Technology	FY 06-07		FY 07-08		FY 08-09		FY 09-10		FY 10-11	
	Full Scope	Target	Full Scope	Target	Full Scope	Target	Full Scope	Target	Full Scope	Target
Bank	11	1	12	0	5	0	9	0	11	0
Trust Company	0	1	1	0	0	0	0	0	1	0
Technology Service Provider	2	0	3	1	1	0	1	1	1	0
<b>Total</b>	<b>13</b>	<b>2</b>	<b>16</b>	<b>1</b>	<b>6</b>	<b>0</b>	<b>10</b>	<b>1</b>	<b>13</b>	<b>0</b>

<sup>78</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p.3.

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## Trust Department Examinations within Banks and Depository Trust Companies

The Division and the federal banking regulators utilize the Uniform Interagency Trust Rating System (UITRS) to evaluate trust departments in banks and depository trust companies. The Division and FDIC are also authorized to conduct UITRS examinations within industrial banks; however, at the present time, there are zero industrial banks in Colorado.

The UITRS measures the following components:<sup>79</sup>

- Capability of management;
- Adequacy of operations, controls and audits;
- Quality and level of earnings;
- Compliance with applicable law and fiduciary principles; and
- Management of trust assets.

New trust departments must undergo a full scope examination within the first 12 months of exercising trust powers.<sup>80</sup>

Trust departments that receive a composite rating of “1” or “2” are placed on an 18-month full scope examination cycle.<sup>81</sup> Trust departments that receive a composite rating of “3” are placed on a 12-month full scope examination cycle.<sup>82</sup>

Composite ratings of “4” or “5” are also placed on a 12-month full scope examination, but all “3,” “4” and “5” rated institutions are given priority when scheduling examinations.<sup>83</sup>

Trust departments must also undergo a target examination within the first four months of operation.<sup>84</sup>

Table 8 highlights the total number of trust department examinations in fiscal years 06-07 through 10-11.

**Table 8**  
**Total Number of Trust Department Examinations in Fiscal Years 06-07 through 10-11**

<b>Trust Department Examinations</b>	<b>FY 06-07</b>	<b>FY 07-08</b>	<b>FY 08-09</b>	<b>FY 09-10</b>	<b>FY 10-11</b>
Commercial Banks	6	5	7	7	5
Trust Companies	0	1	0	1	2
<b>Total</b>	<b>6</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>6</b>

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<sup>79</sup> Division of Banking. Examination Manual 060.1. p.1.

<sup>80</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p.6.

<sup>81</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p.7.

<sup>82</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p.7.

<sup>83</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p.7.

<sup>84</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p.6.



The data reveal that the total number of trust department examinations in fiscal years 06-07 through 10-11 remained fairly constant.

Table 9 provides a breakdown of trust department examinations for banks and trust companies in fiscal years 06-07 through 10-11.

**Table 9  
Trust Department Examinations for Banks and Trust Companies in Fiscal Years  
06-07 through 10-11**

	FY 06-07		FY 07-08		FY 08-09		FY 09-10		FY 10-11	
<b>Trust Department</b>	Full Scope	Target	Full Scope	Target	Full Scope	Target	Full Scope	Target	Full Scope	Target
Bank	6	1	5	1	8	0	6	1	5	0
Trust Companies	0	0	1	0	0	0	1	0	0	0
<b>Total</b>	<b>6</b>	<b>1</b>	<b>6</b>	<b>1</b>	<b>8</b>	<b>0</b>	<b>7</b>	<b>1</b>	<b>5</b>	<b>0</b>

PDPA Examinations

Generally, the Division utilizes target, not full scope examinations, for commercial banks (federal and state chartered) concerning PDPA. THE CAMELS rating system is used to evaluate the soundness of PDPA-approved federally and state chartered banks.

New commercial banks that are able to receive, and hold, public deposits are required to undergo a target examination within the first four months of operations.<sup>85</sup>

Commercial banks with a composite CAMELS rating of “1” or “2” with less than \$500 million in assets are placed on a 36-month examination cycle.<sup>86</sup>

Commercial banks with a composite CAMELS rating of “1” or “2” with greater than \$500 million are placed on a 24-month examination cycle.<sup>87</sup>

Commercial banks with a composite CAMELS rating of “4” or “5” must undergo a full scope examination every 12 months.<sup>88</sup>

<sup>85</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p.5.

<sup>86</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p.5.

<sup>87</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p.5.

<sup>88</sup> Colorado Division of Banking. Risk-Based Examination Scheduling. p.6.

Table 10 illustrates the total number of PDPA examinations in fiscal years 06-07 through 10-11.

**Table 10  
Total Number of PDPA Examinations in Fiscal Years 06-07 through 10-11**

<b>PDPA Examinations</b>	<b>FY 06-07</b>	<b>FY 07-08</b>	<b>FY 08-09</b>	<b>FY 09-10</b>	<b>FY 10-11</b>
Commercial Banks	40	48	44	38	44
National Banks	16	20	24	20	35
Industrial Banks	0	1	0	0	0
<b>Total</b>	<b>56</b>	<b>69</b>	<b>68</b>	<b>58</b>	<b>79</b>

The data in Table 10 show that the total number of PDPA examinations increased from 56 in fiscal year 06-07 to 79 in fiscal year 10-11. The increase is attributable to certain banks (state or federal charter) that received a lower composite rating during an examination, which increases the frequency of PDPA examinations.

Table 11 provides a breakdown of PDPA examinations of banks (federally and state chartered) and escrow accounts. Escrow banks are depository institutions that are authorized to hold the collateral protecting public deposits in eligible public depositories such as commercial banks.

**Table 11  
PDPA Examinations of Banks, National Banks and Escrow Accounts in Fiscal Years 06-07 through 10-11**

<b>PDPA</b>	<b>FY 06-07</b>		<b>FY 07-08</b>		<b>FY 08-09</b>		<b>FY 09-10</b>		<b>FY 10-11</b>	
	Full Scope	Target	Full Scope	Target	Full Scope	Target	Full Scope	Target	Full Scope	Target
State Banks	1	38	1	46	3	47	11	22	19	25
Federal/Inter-State Bank	1	16	0	24	1	23	8	12	6	29
Escrow	4	2	5	1	6	0	6	1	6	0
<b>Total</b>	<b>6</b>	<b>56</b>	<b>6</b>	<b>71</b>	<b>10</b>	<b>70</b>	<b>25</b>	<b>35</b>	<b>31</b>	<b>54</b>

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## **Complaints/Enforcement Actions**

There have been a number of complaints to the Board concerning banks and trust companies. Table 12 highlights the total number of complaints to the Board in fiscal years 06-07 through 10-11.

**Table 12**  
**Total Number of Complaints to the Board Concerning Banks and Trust Companies in Fiscal Years 06-07 through 10-11**

<b>Number of Complaints</b>	<b>FY 06-07</b>	<b>FY 07-08</b>	<b>FY 08-09</b>	<b>FY 09-10</b>	<b>FY 10-11</b>
Commercial Banks	33	32	34	42	39
Industrial Banks	1	0	8	7	0
Trust Companies	5	11	3	5	16
<b>Total</b>	<b>39</b>	<b>43</b>	<b>45</b>	<b>54</b>	<b>55</b>

Table 12 shows that the number of complaints for banks, industrial banks and trust companies has increased 29 percent in fiscal years 06-07 through 10-11, which is attributable, by and large, to the increase in complaints concerning trust companies.

The nature of complaints to the Board concerning commercial banks, industrial banks and trust companies are grouped into eight categories:

- Check/Money Order;
- Fee/Charge/Refund;
- Unauthorized Transaction/Fraudulent Scheme;
- Access to Funds/Hold on Funds;
- Internet Banking/Wire Transfer;
- Consumer/Commercial/Overdraft/Mortgage;
- Individual Retirement Account (IRA)/401K/Investments; and
- Other/Statement/Personnel/Legal.

Check/Money Order complaints from consumers vary, but some examples include issues where consumers' checks were lost or stolen or consumers' dispute garnishments were automatically withdrawn from their account.

Fee/Charge/Refund complaints include consumers disputing fees related to loans or if a trust company increases its fees.

Unauthorized Transaction/Fraudulent Scheme complaints typically include unauthorized automated teller machines, check and bank charges or the unauthorized opening or closing of an account.

Access to Funds/Hold on Funds complaints include issues such as when consumers are denied access to funds or accounts are frozen due to loan default.

Internet Banking/Wire Transfer complaints include consumer requests for expedited refunds when they cancel wire transfer transactions.

Consumer/Commercial/Overdraft/Mortgage complaints are related to issues such as foreclosure and loans in default.

IRA/401-K/Investment complaints are related to retirement and investment products, and these complaints include delayed fund transfers and incorrect valuation of an IRA.

The Other/Statements/Personnel/Legal category is related to complaints such as identity theft and banks not providing proper documents to consumers (i.e., from 1099 tax documents).

Table 13 provides a breakdown of the nature of complaints to the Board and the number of complaints received concerning commercial banks as well as dollars saved, which generally refers to refunds to consumers, in fiscal years 06-07 through 10-11.

**Table 13**  
**Nature and Number of Complaints to the Board Concerning Commercial Banks**

Nature of Complaints	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11
Check/Money Order	3	1	1	3	6
Fee/Charge/Refund	2	11	4	2	1
Unauthorized Transaction/Fraudulent Scheme	11	10	8	7	2
Access to Funds/Hold on Funds	7	3	2	1	2
Internet Banking/Wire Transfer	1	0	0	2	5
Consumer/Commercial/Overdraft/Mortgage	3	0	6	13	7
IRA/401K/Investments	3	0	1	1	3
Other/Statement/Personnel/Legal	3	7	12	13	13
<b>Total</b>	<b>33</b>	<b>32</b>	<b>34</b>	<b>42</b>	<b>39</b>
Money Saved for Consumers	\$40,290	\$52,441	\$75,793	\$26,102	\$66,665

The number of complaints to the Board concerning commercial banks increased to its highest level in fiscal year 09-10. The increase was due to an overall increase in Consumer/Commercial/Overdraft/Mortgage and Other/Statement/Personnel/Legal categories.

Table 14 provides a breakdown of the nature of complaints to the Board and the number of complaints received concerning industrial banks as well as dollars saved in fiscal years 06-07 through 10-11.

**Table 14**  
**Total Number of Complaints to the Board Concerning State Chartered Industrial Banks in Fiscal Years 06-07 through 10-11**

<b>Nature of Complaint</b>	<b>FY 06-07</b>	<b>FY 07-08</b>	<b>FY 08-09</b>	<b>FY 09-10</b>	<b>FY 10-11</b>
Check/Money Order	0	0	0	0	0
Fee/Charge/Refund	0	0	0	4	0
Unauthorized Transaction/Fraudulent Scheme	0	0	0	0	0
Access to Funds/Hold on Funds	1	0	0	0	0
Internet Banking/Wire Transfer	0	0	0	0	0
Consumer/Commercial/Overdraft/Mortgage	0	0	2	0	0
IRA/401K/Investments	0	0	6	3	0
Other/Statement/Personnel/Legal	0	0	0	0	0
<b>Total</b>	<b>1</b>	<b>0</b>	<b>8</b>	<b>7</b>	<b>0</b>
Money Saved for Consumers	\$0	\$0	\$3,663	\$1,273	\$0

The number of complaints to the Board concerning industrial companies reached its highest level in fiscal years 08-09 (eight) and 09-10 (seven), which is attributable to an increase in Fee/Charge/Refund and Consumer/Commercial/Overdraft/Mortgage and IRA/401K/Investments categories.

Table 15 provides a breakdown of the nature of complaints to the Board and the number of complaints received concerning trust companies as well as dollars saved in fiscal years 06-07 through 10-11.

**Table 15**  
**Total Number of Complaints to the Board Concerning State Chartered Trust Companies in Fiscal Years 06-07 through 10-11**

Nature of Complaint	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11
Check/Money Order	0	0	0	0	0
Fee/Charge/Refund	1	7	3	2	10
Unauthorized Transaction/Fraudulent Scheme	0	1	0	0	0
Access to Funds/Hold on Funds	0	0	0	0	0
Internet Banking/Wire Transfer	0	0	0	0	0
Consumer/Commercial/Overdraft/Mortgage	0	0	0	0	0
IRA/401K/Investments	4	3	0	3	6
Other/Statement/Personnel/Legal	0	0	0	0	0
<b>Total</b>	<b>5</b>	<b>11</b>	<b>3</b>	<b>5</b>	<b>16</b>
Money Saved for Consumers	\$917	\$1,250	\$1,599	\$1,273	\$16,545

The two highest fiscal years for complaints to the Board concerning trust companies were 07-08 and 10-11. This was due to an increase in the number of complaints in the Fee/Charge/Refund category.

Additionally, Table 16 highlights the total number of enforcement actions imposed on commercial banks in fiscal years 06-07 through 10-11. In fiscal years 06-07 through 10-11, there were no enforcement actions imposed by the Board on industrial banks or trust companies.

**Table 16**  
**Total Number of Enforcement Actions Imposed on Banks in Fiscal Years 06-07 through 10-11**

Type of Enforcement Action	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11
Board Resolution	3	7	2	2	0
Memorandum of Understanding (MOU)	3	5	7	10	10
Cease and Desist	0	0	5	10	2
Written Agreement	0	1	1	5	1
Closure	0	0	1	0	1
<b>Total</b>	<b>6</b>	<b>13</b>	<b>16</b>	<b>27</b>	<b>14</b>

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As Table 16 illustrates, there was an increase in enforcement actions concerning commercial banks beginning in fiscal year 07-08 through 10-11. The increase is attributable to Colorado's, and the nation's, declining economic condition, which correlated with worsening conditions experienced by commercial banks. The deteriorating economic conditions of commercial banks necessitated an increase in enforcement actions by the Board.

The Board utilizes two types of enforcement actions: informal and formal. Informal actions include board resolutions and MOUs. Formal enforcement actions include cease and desist orders, written agreements and closures.

Board resolutions are essentially assurances by a bank or trust company that it will implement a strategy(s) to comply with certain regulatory requirements, such as the lack of adequate policies.

MOUs are utilized by the Board in instances where a bank is in significant non-compliance with laws and regulations.

The Board is authorized to issue cease and desist orders in instances such as banks that are in significant non-compliance with laws and regulations, and when the risk management practices of the financial institution are generally unacceptable relative to the institution's size, complexity and risk profile.

Also, the Board is authorized to enter into written agreements with financial institutions in an attempt to assist them with issues such as compliance with laws and regulations.

Table 16 also delineates that there were two commercial bank closures, one in fiscal year 08-09 and one in fiscal year 10-11. In both instances, the FDIC acted as the liquidator.

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## Analysis and Recommendations

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### ***Recommendation 1 – Continue the Banking Board and the Division of Banking for 11 years, until 2024.***

The first sunset criterion asks whether regulation is necessary to protect the health, safety and welfare of the public. The Colorado Banking Code (Banking Code) requires commercial and industrial banks and trust companies (depository and non-depository) to obtain a state charter from the Colorado Banking Board (Board) prior to conducting business.

One of the most important regulatory requirements for banks and trust companies is the examination process. Specifically, banks and trust companies are subject to a variety of examinations, which, for the most part, are completed by the Division of Banking (Division) and Federal Deposit Insurance Corporation (FDIC) staffs. The examinations vary in scope and frequency (e.g., safety and soundness examinations). However, ultimately the Board and the Division are charged with the responsibility to ensure, to the extent practicable, that banks and trust companies are in sound financial condition to provide services to consumers as well as protect their assets.

The various examinations utilize a composite rating system from “1” to “5,” where “1” is the best and “5” is the worst. Typically, the frequency of examinations is determined based on the composite rating from the most recent examination.

There are also two types of examinations: full scope and target. A full scope examination is a comprehensive examination of a bank or trust company to ensure, among other things, compliance with existing federal and state laws and regulations.

A target examination, as the name implies, focuses on certain areas related to banks and trust companies. A target examination determines whether a bank or trust company has all of the necessary operational processes and personnel to operate in a safe and sound manner.

Colorado, as well as virtually every other state, has experienced a tumultuous economic climate in the recent past, and as the data show in the Program Description Section of this sunset review, there has been a noticeable increase in the number of examinations completed by the Division and federal banking regulators.



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Generally, the increase in examinations is attributable to the composite rating of institutions decreasing to an extent that it necessitates more frequent examinations. For example, a commercial bank with a historical composite rating of “1” or “2” was previously required to undergo a safety and soundness examination every 18 months. However, in light of the economic downturn, the same commercial bank may now have a composite rating of a “3” on its most recent examination. A “3” composite rating increases the frequency of a safety and soundness examination from every 18 months to a 12-month schedule.

Periodic examinations of banks and trust companies by Division and federal banking regulators are an effective mechanism to ensure regulatory compliance with the Banking Code and applicable rules, including the financial stability.

Additionally, in order to ensure consumer protection, the Board is authorized to use both informal (e.g., memorandum of understanding) and formal (e.g., closure of a bank) enforcement actions for banks and trust companies.

Informal enforcement actions by the Board are used to assist banks and trust companies in making necessary changes in issues such as business practices to ensure the viability, which, in turn, translates to enhanced consumer protection.

Formal enforcement actions, meanwhile, carry more severe penalties for banks and trust companies. In fiscal years 06-07 through 10-11, the Board imposed formal enforcement actions on commercial banks in a limited capacity, including closure of two commercial banks.

The Board’s ability to utilize enforcement actions, informal and formal, on banks and trust companies is an important mechanism to provide protection to consumers.

The absence of regulatory oversight of banks and trust companies in Colorado would likely compromise consumer protection as well as Colorado’s short-term and long-term economic stability.

In order to continue to ensure that banks and trust companies are viable and solid businesses that are important elements to Colorado’s economy, which, in turn, provide protection to consumers, the General Assembly should continue the Board and the Division for 11 years, until 2024.

***Recommendation 2 – Repeal the regulation of industrial banks from the Banking Code.***

Currently, section 11-108-101, *et seq.*, Colorado Revised Statutes (C.R.S.), enables industrial banks to obtain a state charter, and thus, come under the regulatory oversight of the Board. Industrial banks have been in existence in Colorado since 1923. Originally, they served as finance companies specializing in consumer loans and second mortgages.

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Initially, industrial banks belonged to the Industrial Bank Guaranty Corporation, which was a statutorily created entity that assessed members to provide a private insurance fund for depositors. At one time, there were approximately 150 industrial banks in Colorado, but a number of failures in the 1980s contributed to the collapse of the Industrial Bank Guaranty Corporation. Subsequent legislation required industrial banks to obtain FDIC insurance and largely eliminated differences between industrial banks and commercial banks.

House Bill 07-1175 (HB 1175) implemented restrictions on industrial bank ownership. Specifically, HB 1175 required industrial banks to be owned by a financial holding company in order to accept deposits or loans at a commercial location. This largely eliminated the perceived advantages of the industrial bank charter. This is evidenced by the fact that there were five industrial banks in Colorado during the 2003 sunset review of the Board and Division. Since 2010, there have been none.

In the past, industrial banks served an important purpose in providing loans to consumers. However, the industry has changed over the years and the scope of banking products and services that may be offered by industrial banks now closely matches those that can be offered by commercial banks. As a result, industrial banks have become obsolete and the statutory provisions that authorize them should be repealed from the Banking Code.

The General Assembly should repeal section 11-108-101, *et seq.*, C.R.S. Doing so will not limit the types of bank loans available to consumers in Colorado. Instead, doing so removes an unnecessary and obsolete type of bank.

**Recommendation 3 – Extend the amount of time the Board has to approve or disapprove a merger agreement between banks from 30 to 60 days.**

Currently, section 11-103-703(3), C.R.S., states that once the Board receives a merger agreement between banks, it has 30 days to approve or disapprove the agreement.

Since the Board meets on a monthly basis, there have been issues associated with the Board reviewing and ultimately approving or disapproving the agreement within the 30-day requirement during the normal (monthly) scheduled meetings.

Expanding the timeframe the Board has to approve or disapprove a merger agreement does not compromise regulatory oversight of banks seeking to merge; instead, it affords additional time for the Board to ultimately approve or disapprove a merger agreement during normally scheduled Board meetings.

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As a result, the General Assembly should amend section 11-103-703(3), C.R.S., to allow the Board 60 days, rather than 30 days, to approve or disapprove a merger agreement between banks. As previously stated, expanding the timeframe does not compromise regulatory oversight of banks; instead, it extends the administrative requirement for the Board to approve or disapprove a merger agreement highlighted in the Banking Code.

**Recommendation 4 – Repeal the regulation of private family trust companies from the Banking Code.**

Sections 11-109-1001 through 11-109-1007, C.R.S. (Part 10), provide the regulatory oversight framework, and regulatory exemptions, of private family trust companies. Senate Bill 08-33 added Part 10 of Article 109 creating private family trust companies.

Private family trust companies, essentially, are trusts owned or controlled by family members.<sup>89</sup> The purpose of establishing a private trust company varies, but some families establish private trust companies to have more control over how their trust assets are handled, while others may want to consolidate several family trusts under one umbrella.<sup>90</sup>

Private family trust companies are typically utilized by the extremely wealthy, and most private family trust companies have at least \$250 million in assets.<sup>91</sup> Experts estimate there are only a couple hundred private trust companies in the United States.<sup>92</sup>

Since the authorization of private family trust companies in 2008, the Division has not received any applications to establish such a company. Therefore, repealing Part 10 of Article 109 would not appear to pose any hardship or inconvenience to the banking public.

Due to the lack to interest in private family trust companies in Colorado, the General Assembly should repeal Part 10 of Article 109 in the Banking Code.

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<sup>89</sup> The Wall Street Journal. *Matter of Trust: Super-Rich Set Up Companies*. Retrieved July 27, 2012, from <http://online.wsj.com/article/SB118618514414987894.html>

<sup>90</sup> The Wall Street Journal. *Matter of Trust: Super-Rich Set Up Companies*. Retrieved July 27, 2012, from <http://online.wsj.com/article/SB118618514414987894.html>

<sup>91</sup> The Wall Street Journal. *Matter of Trust: Super-Rich Set Up Companies*. Retrieved July 27, 2012, from <http://online.wsj.com/article/SB118618514414987894.html>

<sup>92</sup> The Wall Street Journal. *Matter of Trust: Super-Rich Set Up Companies*. Retrieved July 27, 2012, from <http://online.wsj.com/article/SB118618514414987894.html>

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**Recommendation 5 – Update the Banking Code to reflect the Dodd-Frank Wall Street Reform and Consumer Protection Act, which allows de novo interstate banking.**

The passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) of 2010 eliminated some state prohibitions toward *de novo* (new) interstate branching, thereby enabling state and federally chartered banks to branch into Colorado without limitation. These prohibitions are currently reflected in the Banking Code.

As currently written, the Banking Code expressly prohibits *de novo* interstate branching. Interstate branching is allowed only through the acquisition of an insured financial institution that has been in existence for at least five years. However, section 613 of the Dodd-Frank Act allows out-of-state banks to establish interstate *de novo* branches under circumstances in which in-state banks are authorized to establish intrastate *de novo* branches. Colorado has had unrestricted intrastate banking since 1997. Therefore, with the passage of the Dodd-Frank Act, *de novo* interstate branching is permissible in Colorado under the same circumstances in which Colorado banks are authorized to establish intrastate *de novo* branches.

In order to update the Banking Code to reflect the changes in interstate banking under the Dodd-Frank Act, in particular *de novo* interstate branching, the General Assembly should update the Banking Code to reflect the aforementioned change.

**Recommendation 6 – Amend the Banking Code to preclude a commercial bank exercising trust powers from holding fiduciary funds for an extended period without investing them.**

Currently, section 11-109-906, C.R.S., requires funds held by a trust company in a fiduciary capacity that are awaiting investment or distribution to not be held any longer than is reasonable in an attempt to generate income for the grantor of the trust and the beneficiaries. The Banking Code, however, does not have the same requirement for commercial banks exercising trust powers.

Division staff, through periodic examinations of commercial bank trust departments, has identified issues where funds awaiting investment or distribution were not invested. As a result, consumers have been adversely affected by the amount of income the funds would have potentially earned had the funds been invested.

In an attempt to mitigate the issue highlighted above, the General Assembly should add language similar to that of section 11-109-906, C.R.S., to Article 106. Article 106 outlines the parameters by which banks conduct fiduciary business, including their fiduciary powers and authorization to invest in securities.