



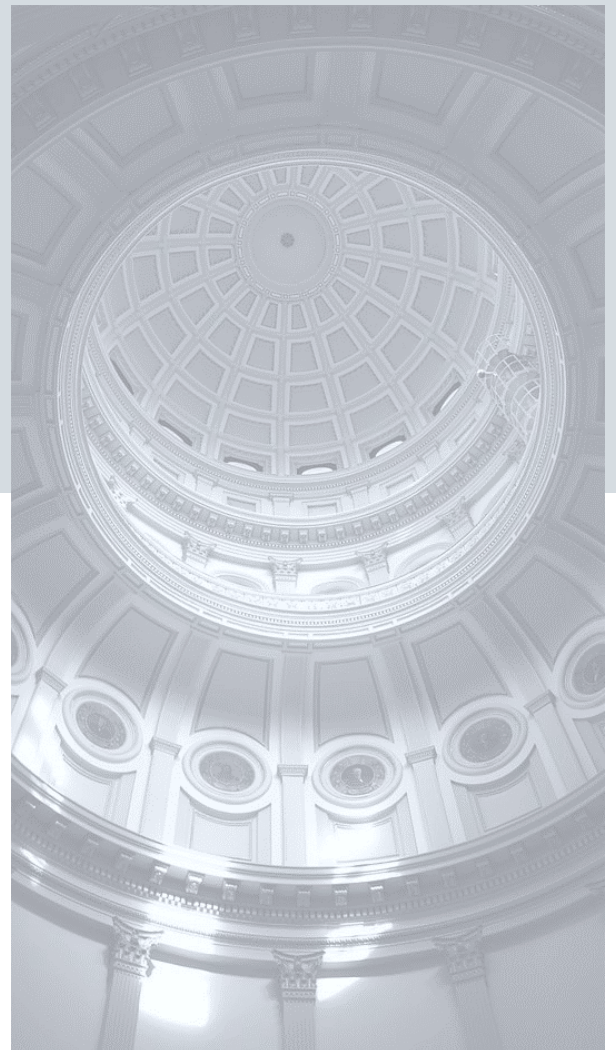
COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2023 Sunset Review

Division of Banking and the State
Banking Board



October 13, 2023



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 13, 2023

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 Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Pursuant to section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year on October 15.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient, and inclusive regulations that reduce barriers to entry into various professions and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed an evaluation of the Division of Banking and the State Banking Board (Board). I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2024 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Articles 101 through 109 of Title 11, C.R.S. The report also discusses the effectiveness of the State Bank Commissioner and the Board in carrying out the intent of the statutes and makes recommendations for statutory changes for the review and discussion of the General Assembly.

To learn more about the sunset review process, among COPRRR's other functions, visit coprrr.colorado.gov.

Sincerely,

Patty Salazar
Executive Director





Sunset Review: Division of Banking & the State Banking Board

Background

What is regulated?

A bank is a financial institution whose primary role is to accept deposits and lend money. A bank uses the funds from deposits to offer loans, and it profits from various fees for services and interest garnered from loans. A trust company may be engaged by an individual or a business to act as an agent, fiduciary or trustee in the administration, management and transfer of assets to beneficiaries. A commercial bank may also offer trust services through a trust department.

Why is it regulated?

Supervision of state-chartered banks (state banks) and state-chartered trust companies (trust companies) is necessary to evaluate whether the financial institutions are operating in a safe and sound manner, to identify problems and to work with management to correct them. Effective supervision is also critical to preserving public confidence in the financial system, which directly affects the state economy and the wellbeing of Colorado residents.

Who is regulated?

In 2022, the State Banking Board (Board) chartered a total of 51 state banks and 9 trust companies.

How is it regulated?

The Board protects the public by chartering state banks and trust companies and through rulemaking. The State Bank Commissioner (Commissioner) protects the public by overseeing examinations of state banks and trust companies, and the Board and the Commissioner protect the public by taking enforcement action against anyone who violates the Banking Code or the Board rules.

Over a five-year period, from fiscal year 18-19 to fiscal year 21-22, the Division of Banking (Division) conducted a total of 118 examinations of state banks and 43 examinations of trust companies.

What does it cost?

In fiscal year 21-22, the Division expended \$5,077,638 on the supervision of state banks and trust companies and dedicated 37.5 full-time equivalent employees to enforce the Banking Code.

What disciplinary activity is there?

Over the five-year period reviewed, from fiscal year 18-19 to fiscal year 21-22, the Commissioner issued one board resolution and 13 memorandums of understanding with state banks. Also, during this period, the Board issued one cease and desist order.

Key Recommendations

- Continue the Division and the Board for nine years, until 2033.
- Authorize a credit union to purchase the assets and liabilities of a state bank.
- Amend the Board composition by repealing the requirement that two members represent banks with less than \$150 million in total assets and instead require two members to represent state banks in the 40th percentile based on total asset size.
- Extend the authority for the Board and the Commissioner to share information regarding compliance with money laundering and other financial crime laws with the U.S. Secretary of Treasury and other jurisdictions.

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Background

Sunset Criteria

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 Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are guided by statutory criteria and sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether the program under review is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To address the second sunset criterion—whether conditions that led to the initial creation of the program have changed—the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the fifth sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program’s operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency or the agency’s board performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the fourteenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

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

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review. While not necessarily exhaustive, the table below indicates where these criteria are applied in this sunset report.

Table 1
Application of Sunset Criteria

Sunset Criteria	Where Applied
(I) Whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare.	<ul style="list-style-type: none"> • Profile of the Industry • History of Regulation • Recommendations 1 and 8
(II) Whether the conditions that led to the initial creation of the program have changed and whether other conditions have arisen that would warrant more, less, or the same degree of governmental oversight.	<ul style="list-style-type: none"> • History of Regulation • Recommendation 3
(III) If the program is necessary, whether the existing statutes and regulations establish the least restrictive form of governmental oversight consistent with the public interest, considering other available regulatory mechanisms.	<ul style="list-style-type: none"> • Legal Summary • Recommendations 2, 5, 7 and 8
(IV) If the program is necessary, whether agency rules enhance the public interest and are within the scope of legislative intent.	<ul style="list-style-type: none"> • Legal Summary • Recommendation 4
(V) 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.	<ul style="list-style-type: none"> • Legal Summary • Program Description and Administration • Recommendations 5, 6 and 9
(VI) Whether an analysis of agency operations indicates that the agency or the agency’s board or commission performs its statutory duties efficiently and effectively.	<ul style="list-style-type: none"> • Program Description and Administration • Examinations • Recommendation 9
(VII) 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.	<ul style="list-style-type: none"> • Legal Summary • Program Description and Administration
(VIII) Whether regulatory oversight can be achieved through a director model.	<ul style="list-style-type: none"> • Program Description and Administration • Consumer Complaints • Recommendation 1
(IX) The economic impact of the program and, if national economic information is not available, whether the agency stimulates or restricts competition.	<ul style="list-style-type: none"> • Profile of the Industry

Sunset Criteria	Where Applied
(X) If reviewing a regulatory program, 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 or regulated entity.	<ul style="list-style-type: none"> • Consumer Complaints • Enforcement Activity
(XI) If reviewing a regulatory program, whether the scope of practice of the regulated occupation contributes to the optimum use of personnel.	<ul style="list-style-type: none"> • Not Applicable
(XII) Whether entry requirements encourage equity, diversity, and inclusivity.	<ul style="list-style-type: none"> • Not Available
(XIII) If reviewing a regulatory program, whether the agency, through its licensing, certification, or registration process, imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses, certifications, or registrations that the agency denied based on the applicant's criminal history, the number of conditional licenses, certifications, or registrations issued based upon the applicant's criminal history, and the number of licenses, certifications, or registrations revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification.	<ul style="list-style-type: none"> • Collateral Consequences
(XIV) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.	<ul style="list-style-type: none"> • Recommendations 1-10

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 on COPRRR's website at coprrr.colorado.gov.

The functions of the Division of Banking (Division) and the State Banking Board (Board), as enumerated in Article 102 of Title 11, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2024, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Division and the Board under review pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued and to evaluate the performance of the Division and the Board. During this review, the Commissioner of Banking must demonstrate that the Division

serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff interviewed Division staff, federal regulators, industry professionals, officials with state professional associations and other stakeholders, and reviewed Colorado statutes and rules and the laws of other states.

The major contacts made during this review include, but are not limited to:

- Association of Trust Companies,
- Attorney General's Office,
- Colorado Bankers Association,
- Division of Banking,
- Federal Deposit Insurance Corporation,
- Federal Reserve Bank of Kansas City,
- Financial Crimes Enforcement Network,
- Go West Credit Union Association, and
- State Banking Board.

In July 2023, COPRRR staff conducted a survey of all state-chartered commercial banks (state banks) and state-chartered trust companies (trust companies). The survey was sent to 60 individuals representing state banks and trust companies, and no emails were returned as undeliverable. The survey received 11 responses, which is an 18.33 percent response rate. Survey results may be found in Appendix A.

Profile of Banks and Trust Companies

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks whether regulation or program administration by the agency is necessary to protect the public health, safety and welfare.

To understand the need for regulation, it is first necessary to recognize what the industry does and who it serves.

A bank is a financial institution whose primary role is to accept deposits and lend money.² Generally, a bank uses the funds from deposits to offer loans, and it profits from various fees for services and interest garnered from loans.³

Most people are familiar with commercial banks, which offer basic banking services, such as:⁴

- Savings accounts,
- Checking accounts,
- Certificates of deposit,
- Automobile loans,
- Business loans,
- Personal loans,
- Mortgages, and
- Safe deposit boxes.

Some commercial banks may also offer credit card lending even though the default rates on credit cards are much higher than they are for secured lending, such as mortgages and car loans.⁵

While most commercial banks have brick-and-mortar locations and offer some online services, some commercial banks only offer online banking services.⁶

² Encyclopedia Britannica. *Bank*. Retrieved November 8, 2022, from www.britannica.com/topic/bank

³ Forbes. *What is a Bank and How Does It Work?* Retrieved November 8, 2022, from www.forbes.com/advisor/banking/how-do-banks-work/

⁴ Investopedia. *How Do Commercial Banks Work and Why Do They Matter?* Retrieved November 8, 2022, from www.investopedia.com/terms/c/commercialbank.asp

⁵ Investopedia. *How Do Commercial Banks Work and Why Do They Matter?* Retrieved November 8, 2022, from www.investopedia.com/terms/c/commercialbank.asp

⁶ Investopedia. *How Do Commercial Banks Work and Why Do They Matter?* Retrieved November 8, 2022, from www.investopedia.com/terms/c/commercialbank.asp

State banks are, for the most part, permitted to operate as commercial banks.⁷ In some states, state banks may also offer insurance services, private banking and wealth management services.⁸

Banks that are authorized to operate in more than one state are referred to as interstate banks. Historically, interstate and nationwide banks were prohibited in the United States, but in the 1990s, federal legislation repealed these bans.⁹

Thrift institutions, such as credit unions or savings and loan associations, while similar to commercial banks, are regulated separately and are the subject of a separate sunset report. The subject of this sunset report is the supervision of Colorado-chartered banks and Colorado-chartered trust companies.

The United States has a dual banking system, in which banks may choose to be chartered by the federal government or by the states where they operate.¹⁰

All national banks must be members of the Federal Reserve, and state banks may also choose to join the Federal Reserve. National banks are regulated and supervised by the Office of the Comptroller of the Currency (OCC). State banks that are members of the Federal Reserve are regulated and supervised by the Federal Reserve and the states where they are chartered. State banks that are not members of the Federal Reserve are regulated and supervised by the Federal Deposit Insurance Corporation (FDIC) and the states where they are chartered. Generally, all national and state depository banks must be insured by the FDIC.¹¹

A trust company may be engaged by an individual or a business to act as an agent, fiduciary or trustee in the administration, management and transfer of assets to beneficiaries.¹² A commercial bank may also offer trust services through a trust department.

Like banks, trust companies may obtain a federal or a state charter. A national trust company is regulated by the OCC. National and state trust companies are only required to be insured by the FDIC if they accept deposits, which is authorized in Colorado.

⁷ Investopedia. *State Bank*. Retrieved November 8, 2022, from www.investopedia.com/terms/s/state-bank.asp#:~:text=State%20banks%20are%20financial%20institutions,wealth%20management%20and%20insurance%20services.

⁸ Investopedia. *State Bank*. Retrieved November 8, 2022, from www.investopedia.com/terms/s/state-bank.asp#:~:text=State%20banks%20are%20financial%20institutions,wealth%20management%20and%20insurance%20services.

⁹ Investopedia. *Interstate Banking*. Retrieved November 8, 2022, from www.investopedia.com/terms/i/interstate-banking.asp

¹⁰ Tim Todd, *State Banking and the Dawn of the U.S. Economy*, Public Affairs Department of the Federal Reserve Bank of Kansas City (2018), p. XI.

¹¹ *An Analysis of Bank Charters and Selected Policy Issues*, Congressional Research Service (2022), pp. 2-3.

¹² Investopedia. *Trust Company: Definition, What It Does, and About Its Services*. Retrieved November 15, 2022, from www.investopedia.com/terms/t/trustcompany.asp

The ninth sunset criterion questions the economic impact of the program and whether the agency stimulates or restricts competition. One way this may be accomplished is to review the financial condition and growth in the industry.

As of December 31, 2022, 51 commercial banks were chartered in Colorado, and they held a total of \$79.8 billion in assets, \$74.2 billion in liabilities and \$6 billion in equity capital. Compared to the previous year, this represented an increase of 10.91 percent in assets and 12.63 percent in liabilities and a decrease of 7.79 percent in equity capital.¹³

As of December 31, 2022, nine trust companies were chartered in Colorado, and they held a total of \$240.0 million in assets, \$76.9 million in liabilities and \$163.1 million in equity capital. Compared to the previous year, this represented an increase of 3.53 percent in assets, 51.92 percent in liabilities and a decrease of 9.97 percent in equity capital. In that same year, Colorado-chartered trust companies held a total of 922,133 trust accounts and \$948 billion in total trust assets.¹⁴

¹³ *113th Annual Report of the State Bank Commissioner of the State of Colorado*, Colorado Division of Banking (2022), p. 9.

¹⁴ *113th Annual Report of the State Bank Commissioner of the State of Colorado*, Colorado Division of Banking (2022), p. 14.

Legal Framework

History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset and second sunset criteria question:

Whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare; and

Whether the conditions that led to the initial creation of the program have changed and whether other conditions have arisen that would warrant more, less or the same degree of governmental oversight.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

In Colorado, the regulation of banks commenced in 1877, one year after statehood was granted. The original legislation codified the process by which banking associations could be chartered and operated.

Since enactment of the Colorado Banking Code (Banking Code), the regulatory oversight of the industry has continually evolved. The Department of Regulatory Agencies completed sunset reviews of the State Banking Board (Board) and the Division of Banking (Division) in 1993, 2003 and 2012.

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 individuals and banks that are engaging in unsafe and unsound banking practices. The General Assembly subsequently passed the recommendation during the following legislative session.

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

In 2013, following a sunset review, the General Assembly adopted several changes to the Banking Code, such as repealing:

- The authority for industrial banks,
- The regulation of private family trust companies, and
- The prohibition against interstate banking.

Legal Summary

The third, fourth, fifth and seventh sunset criteria question:

Whether the existing statutes and regulations establish the least restrictive form of governmental oversight consistent with the public interest, considering other available regulatory mechanisms;

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; and

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.

A summary of the current statutes and rules is necessary to understand whether regulation is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

Federal Laws

Many federal laws influence the overall regulation of federally and state-chartered commercial banks (state banks), such as:

- The Federal Deposit Insurance Corporation Act (FDIC Act), enacted in 1933;
- The Bank Secrecy Act (BSA), enacted in 1970;
- The Community Reinvestment Act, enacted in 1977;
- The Money Laundering Control Act, enacted in 1986;
- The Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), enacted in 1989;
- The Truth in Savings Act, enacted in 1991;
- The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA Patriot Act), enacted in 2001;
- The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), enacted in 2010; and
- The Economic Growth, Regulatory Relief and Consumer Protection Act, enacted in 2018.

THE FDIC ACT

The FDIC Act governs the Federal Deposit Insurance Corporation,¹⁵ an independent government agency, and establishes depository insurance of up to \$250,000 for each individual, for each type of account, at each insured institution. FDIC insurance protects the following types of accounts in case of a bank failure: checking accounts, savings accounts, certificates of deposit, money market accounts, individual retirement accounts, revocable and irrevocable trust accounts and employee benefit plans. However, some accounts are not covered by FDIC insurance, including mutual funds, annuities, life insurance policies, stocks and bonds. Nearly all commercial banks are covered by the FDIC.¹⁶

THE BANK SECRECY ACT

The purpose of the BSA is to prevent money laundering and other financial crimes.¹⁷ Money laundering may be used to enable drug trafficking, terrorism and other criminal activity, and it can be detrimental to the global economy.¹⁸ The BSA has been amended several times since it was enacted.

Among other things, the BSA requires banks and other financial institutions to keep records and report certain currency transactions and suspicious activity. Specifically, the BSA requires reports and documentation to be filed related to any suspicious cash transactions and transactions above \$10,000.¹⁹

The Financial Crimes Enforcement Network (FinCEN), which is located within the U.S. Department of the Treasury, is responsible for implementing the BSA. Among its duties, FinCEN is responsible for analyzing and sharing financial transaction data to fight against money laundering and the financing of terrorism.²⁰

THE COMMUNITY REINVESTMENT ACT

The Community Reinvestment Act was established with the goal of preventing redlining and to encourage banks and savings and loan associations to provide credit to all

¹⁵ 12 U.S.C.1811, *et seq.*

¹⁶ Investopedia. *Federal Deposit Insurance Corp. (FDIC): Definition & Limits*. Retrieved July 13, 2023, from www.investopedia.com/terms/f/fdic.asp

¹⁷ Investopedia. *Bank Secrecy Act (BSA): Definition, Purpose and Effects*. Retrieved February 21, 2023, from www.investopedia.com/terms/b/bank_secrecy_act.asp

¹⁸ Financial Crimes Enforcement Network. *History of Anti-Money Laundering Laws*. Retrieved February 21, 2023, from www.fincen.gov/history-anti-money-laundering-laws

¹⁹ Encyclopedia Britannica. *Bank Secrecy Act*. Retrieved February 21, 2023, from www.britannica.com/print/article/1977999

²⁰ Financial Crimes Enforcement Network. *What We Do*. Retrieved February 21, 2023, from www.fincen.gov/what-we-do

segments of the communities, including low- and moderate-income neighborhoods and individuals, where they are located.²¹

THE MONEY LAUNDERING CONTROL ACT

The Money Laundering Control Act amended the BSA and established money laundering as a federal crime. It also prohibited structuring transactions in order to evade reporting currency transactions, authorized civil and criminal forfeiture for violations of the BSA and required banks and other financial entities to monitor compliance with BSA recordkeeping and reporting requirements.²²

THE TRUTH IN SAVINGS ACT

The Truth in Savings Act was established to help consumers make informed decisions about bank accounts, and it requires banks to disclose to consumers the terms and costs of deposit accounts.

THE USA PATRIOT ACT

The USA Patriot Act, among other things, created a voluntary information sharing program, which allows financial institutions to share information with one another with the goal of improving the identification of money laundering and terrorist activities.²³

THE DODD-FRANK ACT

The Dodd-Frank Act adopted extensive reforms that sought to strengthen the regulation of financial institutions. Its focus was primarily on sectors of the financial industry that led to the 2008 financial crisis. Among its many reforms, the Dodd-Frank Act established additional regulations and oversight for banks that were deemed too big to fail. It also established the Volker Rule, which placed restrictions on how banks could invest, limited speculative and proprietary trading, and prohibited banks from investing in or sponsoring hedge funds or private equity firms. The Volker Rule also addressed the regulation of derivatives, including credit default swaps, which were widely held to have contributed to the 2008 financial crisis.²⁴

²¹ Federal Reserve History. *Community Reinvestment Act of 1977*. Retrieved July 5, 2023, from www.federalreservehistory.org/essays/community-reinvestment-act

²² Financial Crimes Enforcement Network. *History of Anti-Money Laundering Laws*. Retrieved February 21, 2023, from www.fincen.gov/history-anti-money-laundering-laws

²³ *Telegraphs, Steamships, and Virtual Currency: An Analysis of Money Transmitter Regulation*, Congressional Research Service (2020), p. 8.

²⁴ Investopedia. *Dodd-Frank Act: What It Does, Major Components, and Criticisms*. Retrieved October 9, 2023, from www.investopedia.com/terms/d/dodd-frank-financial-regulatory-reform-bill.asp

THE ECONOMIC GROWTH, REGULATORY RELIEF AND CONSUMER PROTECTION ACT

The Economic Growth, Regulatory Relief and Consumer Protection Act amended the Dodd-Frank Act by, among other things, increasing the threshold that banks must meet before being considered too big to fail and, therefore, subject to certain additional regulations and oversight. The threshold established under the Dodd-Frank Act was \$50 billion in assets, and the new threshold is \$250 billion in assets. It also eliminated the Volcker rule for financial institutions with assets below \$10 billion.²⁵

State Laws

The Banking Code, located in Article 101 through 110 of Title 11, Colorado Revised Statutes (C.R.S.), provides regulatory oversight of state-chartered commercial banks (state banks), state-chartered trust companies (trust companies) and money transmitters. Article 110 of Title 11, C.R.S., is dedicated to the regulation of Money Transmitters, which is the subject of a separate sunset review.

Additionally, the Board has regulatory oversight of national and state banks that are approved to accept the deposit of public funds from governmental entities via the Public Deposit Protection Act, which is located in section 11-10.5-101, *et seq.*, C.R.S.

ARTICLE 101 OF TITLE 11: GENERAL PROVISIONS

Generally, Article 101 of Title 11, C.R.S., defines a multitude of banking related terms that are used throughout the Banking Code. For example, banking transactions are defined as:

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.²⁶

ARTICLE 102 OF TITLE 11: DIVISION OF BANKING

This article creates the Division and defines the powers and duties of the State Bank Commissioner (Commissioner) and the Board.

²⁵ Investopedia. *Dodd-Frank Act: What It Does, Major Components, and Criticisms*. Retrieved October 9, 2023, from www.investopedia.com/terms/d/dodd-frank-financial-regulatory-reform-bill.asp

²⁶ § 11-101-401(9), C.R.S.

POWERS OF THE COMMISSIONER

The Commissioner serves as the administrative head of the Division.²⁷ The Commissioner's principal responsibility is to administer the examination and enforcement functions of the Division.²⁸ In carrying out these responsibilities, the Commissioner has the power to require a bank to:²⁹

- Adhere to standards established by the Board to determine the value of assets;
- Charge off an asset if it could not be acquired through legal means;
- Write down³⁰ an asset to conform to its market value;
- File, record or make effective liens and other interests in property;
- Secure a financial statement from a person with liability to the bank;
- Secure title insurance for real estate used as security; and
- Carry sufficient insurance, as determined by the Commissioner and the Board, to protect depositors and the public.
-

BOARD COMPOSITION AND RESPONSIBILITIES

The Board is composed of nine members, appointed by the Governor with the consent of the Senate.³¹ The membership must include:³²

- Five executive officers of state banks, each of whom is required to have at least five years of experience as an executive officer of a bank;
- One licensed money transmitter;
- One executive officer of a trust company; and
- Two public members who have expertise in finance through their current experience in agriculture, business, education or industry.

Of the five executive officers of state banks, at least two of these members must represent banks having less than \$150 million in total assets at the time of their appointment.³³

At least one member of the Board is required to reside west of the Continental Divide.³⁴

The Board is authorized to adopt rules necessary to administer and enforce the Banking Code and the Public Deposit Protection Act.³⁵

²⁷ § 11-102-102(1), C.R.S.

²⁸ § 11-102-102(3), C.R.S.

²⁹ § 11-102-102(3), C.R.S.

³⁰ Reduce the book value of an asset because it is overvalued.

³¹ § 11-102-103(1), C.R.S.

³² § 11-102-103(1), C.R.S.

³³ § 11-102-103(1)(a), C.R.S.

³⁴ § 11-102-103(3), C.R.S.

³⁵ § 11-102-104(1), C.R.S.

The Board has the authority to initiate formal actions to enforce the Banking Code and applicable rules:³⁶

- 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 penalties up to \$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.³⁷ 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:³⁸

- A memorandum of understanding,
- An informal commitment letter,³⁹ or
- A strongly worded letter of reprimand.

The Commissioner also has the authority to initiate informal actions.⁴⁰

ASSESSMENTS AND FEES

The Board must establish an annual assessment, which must be collected semi-annually, to cover the funds appropriated to the Division each fiscal year, by the General Assembly, for the regulation of state banks and trust companies.⁴¹

ARTICLE 103 OF TITLE 11: ORGANIZATION AND CORPORATE FUNCTIONS

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

³⁶ § 11-102-104(7), C.R.S.

³⁷ § 11-102-507, C.R.S.

³⁸ § 11-102-507, C.R.S.

³⁹ The Division refers to informal commitment letters as “Board Resolutions.”

⁴⁰ § 11-102-507, C.R.S.

⁴¹ §§ 11-102-401 and 11-109-303, C.R.S.

CAPITAL REQUIREMENTS

The Banking Code requires the Board to establish, by rule, minimum capital requirements for state banks.⁴² Accordingly, Colorado Banking Rule CB101.52 requires state banks to maintain capital consistent with the requirements established by the Federal Reserve.

STATE CHARTER

An applicant for a state charter is required to submit an application, which must include:⁴³

- The names, business and residence addresses, and business and professional affiliations of the directors and executive officers;
- The names, residences, citizenships and occupations of the shareholders and the shares they own;
- The current and previous connection with any bank of each director and each shareholder with more than five percent of the capital stock;
- The amount to be borrowed, and from whom borrowed, on any stock issued to a shareholder with more than five percent of stock;
- The address where the bank will do business; and
- A statement that the bylaws are included in the application.

An applicant for a state charter is also required to submit its proposed articles of incorporation to the Board, including:⁴⁴

- The name of the state bank,
- A statement about whether it intends to exercise trust powers,
- The community where it will be located, and
- The amount of capital it has.

Within six months after receiving an application for a state charter, the Board is required to hold a public hearing to consider the application.⁴⁵ At the hearing, the applicant must prove that, in the community of the proposed bank:

- It will serve the public need and advantage, and
- It will be profitable based on the projected volume of business.

⁴² § 11-103-201, C.R.S.

⁴³ § 11-103-303(1)(b), C.R.S.

⁴⁴ § 11-103-303(1)(a), C.R.S.

⁴⁵ § 11-103-304(3)(a), C.R.S.

LIQUIDATION, DISSOLUTION AND REORGANIZATION OF STATE BANKS

A state bank must obtain approval from the Board to voluntarily liquidate and dissolve.⁴⁶ The Board is required to grant approval if the following conditions are met:⁴⁷

- The proposal has been approved by a vote of two-thirds of the outstanding voting stock,
- The capital of the state bank is sufficient, and
- The bank has the liquid assets necessary to pay off depositors and creditors.

Within 30 days after approval from the Board to voluntarily liquidate, a liquidation notice must be sent to each depositor, creditor, person interested in funds held as a fiduciary, lessee of a safe deposit box and bailor of property.⁴⁸

In case of a bank failure, the FDIC is named the receiver and the bank is forced to liquidate. After payment of federal deposit insurance, the priority for paying claims is:⁴⁹

1. Obligations incurred by the Board, fees and assessments due to the Division and expenses of liquidation;
2. Claims of depositors;
3. Claims of general creditors;
4. Claims otherwise proper that were not filed within the time established by the Colorado Banking Code;
5. Claims of subordinate creditors; and
6. Claims of stockholders of the bank.

ARTICLE 104 OF TITLE 11: HOLDING COMPANIES

This article provides the regulatory framework for holding companies in Colorado, including the requirements for holding companies in acquiring control of state 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. Also, subject to certain limitations, an out-of-state bank holding company is permitted to acquire control of Colorado-chartered financial institutions.⁵⁰

⁴⁶ § 11-103-801(1), C.R.S.

⁴⁷ § 11-103-801(1), C.R.S.

⁴⁸ § 11-103-801(2)(b), C.R.S.

⁴⁹ § 11-103-805(5)(a), C.R.S.

⁵⁰ § 11-104-202(1), C.R.S.

ARTICLE 105 OF TITLE 11: BANKING PRACTICES

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

GENERAL PROVISIONS

The Banking Code authorizes state banks to maintain the same types of accounts that national banks are authorized to maintain, such as checking, savings and certificate of deposit accounts.⁵¹

LOANS, ACCEPTANCES, INVESTMENTS AND LETTERS OF CREDIT

State banks are authorized to make loans, both secured and unsecured, accept drafts, make investments and issue letters of credit.⁵²

ARTICLE 106 OF TITLE 11: FIDUCIARY BUSINESS

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

GENERAL FIDUCIARY POWERS

A state bank acting as a fiduciary has all of the rights, powers, privileges and immunities as an individual fiduciary.⁵³

INVESTMENT IN SECURITIES

A state 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 1940.⁵⁴

⁵¹ § 11-105-102(1), C.R.S.

⁵² § 11-105-302, C.R.S.

⁵³ § 11-106-103, C.R.S.

⁵⁴ § 11-106-106, C.R.S.

ARTICLE 107 OF TITLE 11: CRIMINAL OFFENSES

This article defines acts that are criminal offenses, such as the unauthorized conduct of banking business, the receipt of deposits while insolvent and the embezzlement or misrepresentation of funds. It also establishes the penalties for criminal offenses.

UNAUTHORIZED CONDUCT OF BANKING BUSINESS

Under the Banking Code, it is considered criminal conduct to engage in the following conduct without the authority to carry on banking business:

- Acting as a state bank,
- Representing that they are a state bank or acting for a state bank, and
- Using an artificial or corporate name that is the name of a state bank.

RECEIPT OF DEPOSITS WHILE INSOLVENT

If a state bank receives a deposit while insolvent or if an officer, director or employee who knows of the insolvency, or should know of it, receives or authorizes a deposit, it is a criminal offense. It is also a criminal offense for a bank or person within a state bank to knowingly conceal or misstate material facts regarding the insolvency of the bank from the Board, Commissioner or the Division.⁵⁵

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, or cause to be embezzled, abstracted, or misapplied, any of the funds or securities or other property of or under the control of the bank with intent to deceive, injure, cheat, wrong, or defraud any person.⁵⁶

PENALTIES FOR UNLAWFUL ACTS OR OMISSIONS

Any person who commits a criminal offense under the Banking Code is guilty of a Class 2 misdemeanor, punishable by a maximum fine of \$750, by imprisonment of up to 120 days, or both. It is a Class 6 felony if the act or omission was meant to defraud, punishable by imprisonment of between a year and 18 months and one year probation.⁵⁷

⁵⁵ § 11-107-102, C.R.S.

⁵⁶ § 11-107-107, C.R.S.

⁵⁷ § 11-107-108(1), C.R.S.

ARTICLE 109 OF TITLE 11: TRUST COMPANIES

This article highlights the regulatory framework for trust companies and grants the Commissioner and the Board the same powers, duties and functions established under Article 102 of Title 11,⁵⁸ which creates the functions of the Division and the powers and duties of the Commissioner and the Board, in addition to other powers specific to Article 109.⁵⁹

TRUST COMPANIES

To apply for a state charter, the incorporators of a trust company must submit a completed application to the Board with a draft of the proposed articles of incorporation.⁶⁰

As required by statute, the Board has established capital requirements for trust companies.⁶¹ The Board requires non-depository trust companies to maintain total capital of at least \$750,000 or one-tenth of one percent of the fiduciary assets that it manages, whichever is greater.⁶²

PUBLIC DEPOSIT PROTECTION ACT

In order to act as a public depository or hold public funds, a state, interstate or national bank must be designated as an eligible public depository by the Board.⁶³

To be designated as an eligible public depository by the Board, a bank must:⁶⁴

- Have its deposits insured or guaranteed by the FDIC;
- Comply with the Board's capital standards; and
- Agree, in writing, to abide by all regulatory reporting requirements and examination requirements.

Specifically, the Board requires by rule an eligible public depository to have and maintain a minimum level of total capital to risk-weighted assets equal to or greater than eight percent.⁶⁵

Once a designation as an eligible depository is approved by the Board, it may be retained as long as the Board does not take action to suspend, revoke or otherwise limit the designation.⁶⁶

⁵⁸ § 11-109-103, C.R.S.

⁵⁹ § 11-109-104, C.R.S.

⁶⁰ § 11-109-305(1), C.R.S.

⁶¹ 3 CCR 701-6 § TC13, State Banking Board Trust Company Rules.

⁶² 3 CCR 701-6 § TC13.5(D), State Banking Board Trust Company Rules.

⁶³ § 11-10.5-106(1), C.R.S.

⁶⁴ § 11-10.5-106(2), C.R.S.

⁶⁵ 3 CCR 701-4 § PDP1(A), State Banking Board Public Deposit Protection Act Rules.

⁶⁶ § 11-10.5-106(3)(b)(II), C.R.S.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The fifth, sixth and seventh sunset criteria question:

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 or the agency's board or commission performs its statutory duties efficiently and effectively; and

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.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

The regulation and supervision of state-chartered commercial banks (state banks) and state-chartered trust companies (trust companies) is vested in the State Banking Board (Board) and the Division of Banking (Division) in the Department of Regulatory Agencies (DORA). The Board has rulemaking authority and holds charter application hearings.

The State Bank Commissioner (Commissioner) oversees the Division, and the Division is responsible for examining state banks and trust companies and enforcing the banking laws. The Division is also responsible for the administration and enforcement of the Public Deposit Protection Act (PDPA) that protects public entity deposits held by state and national banks.

The Division works closely with the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Bank of Kansas City (Federal Reserve) to supervise state banks.

While the Board also regulates money transmitters, a separate sunset report is dedicated to the regulation of money transmitters.

The Board consists of nine members: five executive officers of state banks, an executive officer of a money transmitter, an executive officer of a trust company and two public members. At least two of the state-bank members must represent institutions with less than \$150 million in total assets and one member must be located on the Western Slope.

Board members are appointed by the Governor to four-year terms. The Board conducts monthly meetings, which are open to the public.

The Division is cash funded by assessments charged to state banks, trust companies and public deposit institutions.

Table 2 illustrates the program expenditures and the full-time equivalent (FTE) employees dedicated to the regulation of state banks and trust companies over a five-year period.

**Table 2
Program Expenditures and Staffing**

Fiscal Year	Total Expenditures	FTE
17-18	\$4,317,499	41.0
18-19	\$4,384,663	40.5
19-20	\$4,668,587	40.5
20-21	\$4,807,001	40.5
21-22	\$5,077,638	37.5

The increases in expenditures from fiscal year 17-18 to 21-22 are attributed to personnel services and travel. In fiscal year 18-19 and 21-22, the Division reallocated 3.0 FTE to the regulation of money transmitters.

While the Division also regulates money transmitters, the data reported in Table 2 do not include expenditures or FTE for the regulation of money transmitters, which is the subject of a separate sunset report.

Division Staff

In fiscal year 21-22, the Division dedicated 37.5 FTE to conduct examinations and provide administrative support for the supervision of state banks and trust companies.

The **State Bank Commissioner** (1.0 FTE, Commissioner) is the administrative head of the Division, responsible for the day-to-day operations of the Division, including personnel matters, records, reports, systems and procedures, and all examination and enforcement functions of the Division, subject to the policymaking and rulemaking authority of the Board.

The **Deputy State Bank Commissioner** (1.0 FTE, Program Management III) provides administrative oversight of the Division and is responsible for the day-to-day operations of the Division, including budgeting, the Public Deposit Protection Act (PDPA) program, and all examination and enforcement functions, subject to the policymaking and rulemaking authority of the Board; advises the Commissioner on appropriate levels of

regulatory measures to implement in supervising problem institutions; supervises staff; reviews all reports of examination independently and ensures quality standards are met, ratings are accurate, enforcement actions are appropriate and interpretations of statutes and regulations are accurate and consistent; drafts and revises rules, policies and procedures; and communicates with federal agencies to ensure cooperation and consistent supervision of regulated entities.

Director of Examinations (1.0 FTE, Financial/Credit Examiner V) is responsible for the Division's examination activities for state banks, trust departments, trust companies and information technology (IT) examinations; supervises staff; provides guidance to ensure compliance with goals and objectives; reviews reports of examination as needed to ensure interpretations of statutes and regulations are consistent; oversees daily operations of the Examination Unit; provides input on changes to rules, policies and procedures applicable to the Examination Unit; communicates with federal agencies to ensure cooperation and consistent regulation; works closely with the Deputy Commissioner and the appointing authority in examiner recruitment and hiring decisions; and provides examination status reports as requested.

Program and Operations Director (1.0 FTE, Program Management II) serves as the program director of the PDPA; develops goals and tactical plans to achieve program objectives, procedures and staffing needs; manages the separately funded program budget; and oversees the Division's automation and technology development and the Division's training program.

PDPA Administrator (1.0 FTE, Administrator IV) is the program administrator for PDPA; schedules PDPA examinations; prepares regulatory plans for each regulated institution, including monitoring the financial condition of those institutions; ensures compliance with all internal operating procedures related to the PDPA through periodic audits and reviews, as well as compliance with all PDPA program requirements; identifies and addresses ongoing concerns with public deposits held in banks; educates both the public and the institutions; serves as the work leader for assigned staff, which includes reviewing work product, overseeing activities and advising, coaching and training staff; and provides recommendations on policy and rulemaking issues.

Caseload Managers (4.0 FTE, Financial/Credit Examiner IV) manage a portfolio of assigned financial institutions, which includes conducting a quality assurance review of all reports of examination and quarterly monitoring, conducting reviews of progress reports and conducting a review of audit and director examinations to ensure regulatory compliance; supervise and appraise team performance; attend board of director and management exit conferences to discuss the results of examinations and any corrective actions; and interpret statutes, rules, policies and procedures for staff, financial institutions, federal banking regulatory authorities and the public.

Applications Manager (1.0 FTE, Financial Credit Examiner III) reviews and presents applications received for charter, merger, conversion and licensing for approval by the

Board; manages the resolution of consumer complaints; and serves as the Division's subject matter expert by providing regulatory clarity regarding emerging products.

Examination Scheduler (1.0 FTE, Financial Credit Examiner III) determines safety and soundness of financial institutions by scheduling examinations of regulated entities in cooperation with other regulatory agencies for the Division; completes various examination-related duties associated with state bank, trust company and IT examinations; and, when necessary, acts as an examiner-in-charge to determine safety and soundness of state banks by planning, organizing and conducting regular examinations.

Field Examiners (10.0 FTE, Financial Credit Examiner III) act as examiners-in charge and are responsible for regulating and reporting on the safety and soundness of financial institutions by planning, organizing and managing assigned examination personnel; supervising the preparation of the report of each examination; ensuring the examination is thorough and complete; independently evaluating the adequacy, effectiveness and efficiency of the systems within a financial entity and assessing the quality of ongoing operations; and providing reasonable assurance that financial institution assets are safeguarded, information is timely and reliable, and that errors and violations are corrected promptly to safeguard the public interest.

Field Examiners (6.5 FTE, Financial Credit Examiner II) determine safety and soundness of financial institutions by planning, organizing and conducting regular examinations and performing off-site monitoring; assisting the examiner-in-charge during on-site examinations and performing off-site monitoring; preparing the work papers and determining if the information is sufficient for inclusion in the examination; interviewing and investigating all areas of the state bank; and communicating examination findings to the examiner-in-charge.

Field Examiners (3.0 FTE, Financial Credit Examiner I) determine safety and soundness of financial institutions by conducting regular examinations and performing off-site monitoring; investigate all areas of the state bank and communicate examination findings to the examiner-in-charge; perform off-site monitoring on a caseload of state banks, which includes preparing written reports on findings.

IT Auditors (2.0 FTE, Auditor IV) analyze and evaluate IT operations in financial institutions and third-party service providers; review and appraise the soundness, adequacy and application of IT and other operating controls; assign IT ratings; prepare written reports, which detail examination findings, regulatory violations and recommendations for correction of problems identified during the examination; and act as Division's subject matter experts for information security at regulated institutions and service providers.

Stakeholder and Innovations Strategist (1.0 FTE, Marketing & Communications Specialist IV) provides leadership and direction for the Financial Engagement Unit; plans and develops the objectives for the Financial Engagement Unit based on priorities and

performance objectives established by the Banking and Financial Services Commissioners and DORA's Executive Director; and directs staff in the development of communications and outreach plans.

Marketing and Communications Specialist (1.0 FTE, Marketing and Communications III) conducts communications and outreach activities.

Communications and Board Administrator (1.0 FTE, Program Assistant II) supports the website, intranet and other public facing online and digital applications; designs, develops and disseminates information; administers online events and Board meetings; maintains the official record of the Board; ensures all public notice requirements are met; edits, prepares and amends policies and procedures; prepares and processes rulemaking documentation and communication of the Board and the Division; serves as an assistant to the Commissioner; and provides application and operational support.

PDPA Assistant (1.0 FTE, Program Assistant I) supports the PDPA Program Administrator in maintaining daily operation of the PDPA Unit to ensure public entity funds are protected; acts as a liaison with bankers and public entities regarding the PDPA; provides customer service; provides backup coverage and assistance to other administrative positions; may also work on special projects for Division staff.

Office Manager (1.0 FTE, Office Manager I) manages the daily accounting, procurement, travel and vendor activities of the Division; assists in monitoring the expenditures and revenue; assists the Program and Operations Director by coordinating programs and functions; submits expense reports to accounting for payment and files expense reports; and provides back-up support to the operations team.

The Division charges an assessment to each state bank and trust company to cover the cost of regulation. Assessments are made semi-annually on June 30 and December 31 and are based on each institution's total assets and a fee schedule approved by the Board. The assessments are then reduced to align with the Division's spending authority.

State Charters

The eleventh sunset criterion questions whether the scope of practice of the regulated occupation contributes to the optimum use of personnel.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

In the United States, commercial banks and trust companies may obtain either a state or a federal charter. The Board grants state charters to commercial banks and trust companies.

State banks are supervised to ensure that they control risks and meet adequate capital and liquidity requirements and to preserve consumer trust in the banking industry. The Division works closely with the FDIC and the Federal Reserve to supervise state banks. The Division also supervises trust companies to ensure they are able to fulfill their trustee and fiduciary responsibilities.

Table 3 demonstrates the total number of state banks and trust companies and their total assets over a five-year period.

**Table 3
Number of Charters and Total Assets
As of September 30, 2022**

Calendar Year	State Banks	Total Assets*	Trust Companies	Total Fiduciary Assets*	Total Charters
2018	57	\$56,122,963	11	\$406,771,454	68
2019	53	\$50,695,336	11	\$553,252,567	64
2020	53	\$62,744,834	10	\$691,228,955	63
2021	52	\$71,943,357	10	\$944,986,484	62
2022	51	\$79,795,574	9	\$948,066,008	60

* 000's omitted.

While the total number of state banks declined over the five-year period, the total amount of assets in state banks increased. The decrease in the total number of state banks was related to mergers. This is consistent with the trend in state banks and other financial institutions across the country.

A bank may be granted a new state charter in three ways:

- By applying for a new charter (*de novo*);
- By converting to a different type of charter, such as a national charter to a state charter or a charter in another state to a Colorado charter; or
- By merging with another bank.

Table 4 provides the total number of new charters by type of charter over a five-year period.

**Table 4
New Charters by Calendar Year**

Type	2018	2019	2020	2021	2022
State Banks					
<i>De Novo</i>	0	0	0	0	0
Conversion	0	0	0	0	0
Merger	2	4	0	1	1
Trust Companies					
<i>De Novo</i>	0	1	0	1	0
Conversion	0	0	0	0	0
Merger	1	0	1	1	1

Over the five-year period, the Board granted eight mergers to state banks, but it did not receive any *de novo* or conversion charter applications. During this same period, the Board granted four trust company mergers and one *de novo* trust company charter.

Public Deposit Protection Act

The Division enforces the PDPA to protect public funds held by commercial banks, whether they have national or state charters.

According to state law, public funds can only be deposited into financial institutions that are certified as eligible public depositories to hold such funds. In order to be certified to take public deposits, a financial institution must submit an application and meet certain standards. Public funds can be for small entities, such as a fire district, or larger ones, such as a city or county.

Public depositories may be Colorado-chartered state banks, interstate banks, national banks or escrow companies. Savings and loan associations may also hold public funds, but the supervision of public funds held in savings and loan associations is supervised by the Division of Financial Services, which charters savings and loan associations.

Public depositories must pledge securities above the \$250,000 threshold established by the FDIC to ensure that, in case of a bank failure, sufficient collateral is set aside to protect public funds. Additionally, financial institutions must obtain Board authorization to act as escrow institutions in order to hold the securities that are pledged as collateral for public deposits.

Table 5 demonstrates the total eligible public depositories supervised by the Division, escrow institutions authorized by the Board, and the total uninsured public deposits and pledged collateral held by Colorado commercial banks.

Table 5
PDPA Institutions, Public Deposits and Pledged Collateral

Calendar Year	Eligible Public Depositories	Escrow Institutions	Total Uninsured Public Deposits	Total Pledged Collateral*
2018	101	21	\$5,175,299,166	\$6,531,391,949
2019	101	21	\$5,239,984,793	\$6,638,737,624
2020	101	21	\$7,578,132,380	\$8,675,591,382
2021	102	21	\$8,661,909,921	\$11,275,006,767
2022	100	26	\$8,326,316,489	\$11,727,764,527

*Refers to the total amount of collateral that is pledged to protect uninsured public deposits in Colorado.

While the total number of eligible public depositories decreased slightly over the five-year period, the total amount of uninsured public deposits increased significantly. In 2022, five additional institutions were authorized by the Board to act as escrow institutions to hold securities pledged as collateral for public deposits.

Consumer Complaints

The eighth and tenth sunset criteria require COPRRR to examine whether regulatory oversight can be achieved through a director-model program, and 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 or regulated entity.

In part, COPRRR utilizes this section of the report to evaluate the program according to these criteria.

While a consumer may file a complaint with the Division, the supervision of state banks and trust companies is not driven by consumer complaints. Since most consumer complaints do not relate to violations of statutes or rules, the Division typically works as an intermediary to help consumers resolve their complaints with state banks and trust companies. The Division, however, does monitor consumer complaints and may consider them during an examination of a state bank or trust company.

Supervision of state banks and trust companies is largely driven by examinations rather than consumer complaints.

Table 6 provides the total number of consumer complaints filed with the Division over a five-year period.

**Table 6
Number of Consumer Complaints**

Type	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
State Banks	27	21	17	13	17
Trust Companies	6	2	0	1	6
Total	33	23	17	14	23

Few consumer complaints are filed with the Board. While the majority of consumer complaints are filed against state banks compared to trust companies, state banks represent 85 percent of the financial institutions chartered by the Board.

Table 7 shows, over a five-year period, the total number of consumer complaints, by type of complaint, that were filed against state banks.

**Table 7
Consumer Complaints by Type
State Banks**

Nature of Complaints	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Check/Money Order	2	6	7	0	0
Fee/Charge Refund	5	3	3	3	4
Unauthorized Transaction/Fraudulent Scheme	8	6	1	3	3
Access to Funds/Hold on Funds	5	1	0	2	1
Internet Banking/Wire Transfer	3	0	0	0	0
Consumer/Commercial/Overdraft/Mortgage	0	0	1	0	3
IRA/401K/Investments	0	0	0	1	0
Statement/Personnel/Legal/Other	4	5	5	4	6
Total	27	21	17	13	17
Dollar amount included in complaint	\$326,543	\$596,800	\$43,936	\$3,575,588	\$71,044

The Division receives few consumer complaints against state banks. While a large percentage of the consumer complaints falls under the “Statement/Personnel/Legal/Other” category, this is exceedingly broad category and, therefore, not particularly revealing.

About 22 percent of the complaints concern unauthorized transactions or fraudulent schemes, and 19 percent of the complaints concern fees or charge refunds. Sixteen percent of complaints concern checks or money orders.

The total dollar amounts reported in the above table refer to the dollar amounts included in the complaints received by the Division; they do not necessarily reflect money that the Division saved consumers. However, it demonstrates that while few complaints are filed with the Division, the complaints may concern large dollar amounts.

In fiscal year 20-21, for instance, the total amount included in the complaints totaled over \$3.5 million. The high dollar amount reported that year was, for the most part, connected to two consumer complaints, one filed by a consumer who was a victim of fraud and crypto asset purchase, and another filed by a consumer who was dissatisfied with an investment. The amounts associated with these two complaints were much higher than complaints typically received by the Division.

Table 8 shows, over a five-year period, the total number of consumer complaints, by type of complaint, filed against trust companies.

**Table 8
Consumer Complaints by Type
Trust Companies**

Nature of Complaints	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Check/Money Order	1	0	0	0	0
Fee/Charge Refund	0	0	0	0	1
Unauthorized Transaction/Fraudulent Scheme	1	0	0	0	0
Access to Funds/Hold on Funds	0	1	0	0	3
Internet Banking/Wire Transfer	0	0	0	0	0
Consumer/Commercial/Overdraft/Mortgage	0	0	0	0	0
IRA/401K/Investments	2	1	0	0	1
Statement/Personnel/Legal/Other	2	0	0	1	1
Total	6	2	0	1	6
Dollar amount included in the complaint	\$1,629	\$1,420	\$0	\$100,000	\$273,276

Similar to state banks, few consumer complaints are filed against trust companies. The category titled “Statement/Personnel/Legal/Other” in this table is an extremely broad category, so it is not particularly informative. In addition to this category, complaints

against trust companies typically concern access to funds, a hold on funds, retirement accounts or investments.

As in the previous table, the total dollar amounts reported in Table 8 refer to the dollar amounts included in the complaints received by the Division; they do not necessarily reflect money that the Division saved consumers.

While the consumer complaints filed against trust companies may not always concern large dollar amounts, in fiscal year 21-22, the total amount included in the consumer complaints filed that year totaled \$273,276. Only six consumer complaints were filed that year, so the total amount connected to each of the complaints could have been fairly substantial for some or all of the individual account holders.

When a consumer files a complaint against a state bank or trust company, the Division endeavors to help resolve the complaint as quickly as possible. A state bank or trust company is provided 14 days to respond to the complaint.

Table 9 demonstrates the total number of days that consumer complaints were open after they were filed with the Division.

Table 9
Average Time to Close Complaints

Fiscal Year	Number of Days
17-18	25
18-19	19
19-20	15
20-21	21
21-22	15

In two of the fiscal years, the Division did not meet its goal of closing complaints within 20 days. However, on average, the Division was able to meet this goal, and in fiscal years 19-20 and 21-22, it closed complaints within 15 days on average, which is well below its goal.

Occasionally, a consumer files a complaint against an institution that the Division does not regulate, such as a national bank or a bank chartered in another state. In these cases, the Division will forward the complaint to the appropriate regulatory authority.

Examinations

The sixth sunset criteria questions whether the agency performs its statutory duties efficiently and effectively. In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

The Division conducts examinations of state banks to assess the safety and soundness of each institution and to determine compliance with federal and state laws.

State banks may join the Federal Reserve. If they choose to become Federal Reserve member banks, the Federal Reserve is the primary federal regulator. The FDIC is the primary federal regulator of state banks that are not members of the Federal Reserve.⁶⁷

In Colorado, the Division, the Federal Reserve Bank of Kansas City and the FDIC monitor the financial condition of state banks according to their respective jurisdictions through examinations.

There are several types of examinations conducted by state and federal regulators. The Division and federal regulators conduct safety and soundness examinations, IT and trust department examinations of state banks. The Division also conducts safety and soundness examinations and IT examinations of non-depository trust companies. Trust companies with state charters are not regulated at the federal level unless they accept deposits and then they must undergo examinations by state and federal regulators.

Finally, the Division conducts Public Deposit Protection Act (PDPA) examinations of national, interstate and state banks that are authorized to hold state and local government funds.

Examination activities of state banks focus on evaluating an institution's capital, assets, management, earnings, liquidity and sensitivity to market risk. Examinations also consider a bank's compliance with laws and regulations.

State and federal regulators assign ratings based on the results of an examination. For examinations assessing the safety and soundness of state banks, the ratings are based on the CAMELS system. The ratings are from 1 to 5, with 1 being the best.⁶⁸

⁶⁷ *An Analysis of Bank Charters and Selected Policy Issues*, Congressional Research Service (2022), p. 2.

⁶⁸ Investopedia. *Bank Ratings: What They Are and How They Work*. Retrieved September 27, 2023, from www.investopedia.com/terms/b/bank-rating.asp#:~:text=A%20bank%20rating%20is%20a,soundness%20of%20certain%20financial%20institutions

The CAMELS system refers to the different categories that the Division assesses during an examination:⁶⁹

- Capital adequacy,
- Asset quality,
- Management capabilities,
- Earnings sufficiency,
- Liquidity position, and
- Sensitivity to market risk.

State banks that receive a rating of 1 or 2 are in satisfactory condition. State banks with a rating of 3 have some concerning issues, and state banks with a rating of 4 or 5 have more serious issues that warrant careful monitoring or immediate action.⁷⁰

Within state banks, an examination of a trust department focuses on whether the administration of its accounts have led to possible or contingent liabilities or estimated losses, which could reduce the bank's capital accounts. To do this, an examination of a trust department considers whether the terms of the trust instruments are being met, whether laws are being complied with and whether the trust department is adhering to generally accepted fiduciary standards.

Trust departments are also rated on a scale of 1 to 5, based on the MOECA ratings, which assess:

- Management;
- Operations, Internal Controls and Audits;
- Earnings;
- Compliance; and
- Asset Management.

A trust company provides fiduciary services to its clients, which includes administering trust accounts, settling estates and providing other types of investment management or agency services. A financial institution that provides trust services has a fiduciary relationship with its clients, so it must always act in the best interests of its clients.

Unlike state banks, non-depository trust companies do not have a federal regulator, so they only undergo examinations by the Division. Examinations assess the safety and soundness of trust companies, and the Division assigns ratings based on the results of the examinations. The Division uses the CAMEL system to determine a trust company's rating. The CAMEL ratings are from 1 to 5, with 1 being the best.

⁶⁹ Investopedia. *Bank Ratings: What They Are and How They Work*. Retrieved September 27, 2023, from www.investopedia.com/terms/b/bank-rating.asp#:~:text=A%20bank%20rating%20is%20a,soundness%20of%20certain%20financial%20institutions

⁷⁰ Investopedia. *Bank Ratings: What They Are and How They Work*. Retrieved September 27, 2023, from www.investopedia.com/terms/b/bank-rating.asp#:~:text=A%20bank%20rating%20is%20a,soundness%20of%20certain%20financial%20institutions

In an examination of a trust company, the CAMEL rating system is based on the following categories:

- Capital,
- Asset and account administration,
- Management,
- Earnings, and
- Liquidity.

The Division also considers compliance with laws during a trust company examination.

An examination of a state bank or trust company may be a full-scope examination or a target examination. A full-scope examination is a comprehensive examination to ensure the state bank or trust company is operating in a safe and sound manner and in compliance with state and federal laws. A target examination, on the other hand, is a more focused examination that explores specific areas of interest.

The Board has developed a schedule for examinations of state banks and trust companies based on, among other things:

- Whether the charter is new or recently converted,
- Whether the control of the state bank or trust company has recently changed, and
- Whether the state bank or trust company has a low rating.

According to the Board's examination schedule, a state bank may undergo a full-scope examination every 12 or 18 months. State banks that have a 3, 4 or 5 rating must be examined every 12 months. If a state bank or trust company has a low rating, it also has more supervisory actions, such as target examinations.

Generally, the Division alternates with federal regulators to conduct examinations of state banks.

Table 10 illustrates, over five fiscal years, the total number of safety and soundness examinations conducted by the Division.

Table 10
Safety & Soundness Examinations

Type	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Full-Scope Examinations					
State Banks	25	23	17	22	20
Trust Companies	9	7	7	8	5
Total	34	30	24	30	25
Target Examinations					
State Banks	4	3	2	2	0
Trust Companies	1	1	1	1	3
Total	5	4	3	3	3
Total Examinations					
State Banks	29	26	19	24	20
Trust Companies	10	8	8	9	8
Total	39	34	27	33	28

In fiscal years 19-20 and 21-22, the Division conducted fewer full-scope examinations than in other years. As previously mentioned, the Division conducts examinations according to the Board’s examination schedule, so some state banks undergo full-scope examinations every 12 months while others undergo full-scope examinations every 18 months. As a result, the Division conducts more examinations in some years compared to others.

During the COVID-19 pandemic, the Division took a brief pause to create processes to conduct examinations remotely. Following this, the Division was able to conduct 95 percent of the examination work remotely. The ability to conduct examinations remotely largely depended on the institution’s ability to provide information electronically.

Today, the Division has incorporated more offsite examinations into its processes, which has resulted in increased productivity. Conducting examinations remotely allows meetings to be scheduled more easily since nearly everyone can join meetings virtually, and staff does not need to travel to another location before or after the meeting. It is also easier to share documents. As a consequence, work may be completed in a more timely manner.

Security of workpapers and documents is always a priority with the Division, and now that they are being shared electronically, the Division has taken additional steps to ensure they are protected.

In addition to safety and soundness examinations, the Division also conducts IT examinations of financial institutions and IT service providers. IT examinations are focused on the financial institution’s risk management practices to determine whether appropriate controls are in place to protect sensitive and critical records. Staff who conduct IT examinations must have specialized training.

As with other types of examinations, a financial institution is rated on a scale of 1 to 5, based on the results of an IT examination, which evaluates four categories:

- Auditing,
- Management,
- Development and acquisition, and
- Support and delivery.

The Division attempts to conduct an IT examination at the same time it conducts a safety and soundness examination of a financial institution. However, the scheduling of IT examinations is sometimes hampered by resource issues. Also, the Division and federal regulators jointly conduct IT examinations of any bank with a 3, 4 or 5 rating.

Table 11 demonstrates the total number of IT examinations conducted by the Division over five fiscal years.

**Table 11
IT Examinations**

Type	FY 17- 18	FY 18- 19	FY 19- 20	FY 20- 21	FY 21- 22
Full-Scope Examinations					
State Banks	18	21	14	19	16
Trust Companies	9	7	2	7	3
Information Technology Service Providers	2	1	1	2	1
Total	29	29	17	28	20
Target Examinations					
State Banks	3	1	0	0	1
Trust Companies	1	0	5	3	2
Information Technology Service Providers	0	0	0	0	0
Total	4	1	5	3	3
Total Examinations					
State Banks	21	22	14	19	17
Trust Companies	10	7	7	10	5
Information Technology Service Providers	2	1	1	2	1
Total	33	30	22	31	23

In fiscal years 19-20 and 21-22, the Division conducted fewer IT examinations than in other years. As previously mentioned, the scheduling of these examinations depends on resources and the ratings of the banks, among other things.

The Board requires a trust department to undergo an examination every 18 months. If an examination uncovers problems, the Board may require the trust department to undergo an examination every 12 months, and it may also require target examinations to be conducted every six months.

Table 12 provides the total number of trust department examinations at state banks and trust companies conducted by the Division over five fiscal years.

**Table 12
Trust Department Examinations**

Type	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Full-Scope Examinations					
State Banks	3	6	2	3	6
Trust Companies	0	0	0	0	0
Total	3	6	2	3	6
Target Examinations					
State Banks	0	0	0	0	1
Trust Companies	1	0	0	0	0
Total	1	0	0	0	1
Total Examinations					
State Banks	3	6	2	3	7
Trust Companies	1	0	0	0	0
Total	4	6	2	3	7

Like other examinations, the number of trust department examinations varies from year to year because the schedule depends on several factors, such as the condition of the bank or trust company.

Examinations of public depositories are separate from other bank examinations, and the Division has a team of examiners who only conduct PDPA examinations. The Board requires public depositories to undergo a target examination on a periodic basis. If the bank has a low rating, it must also undergo a full-scope examination.

Table 13 illustrates the total number of PDPA examinations conducted by the Division over five fiscal years.

**Table 13
PDPA Examinations**

Type	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Full-Scope Examinations					
State Banks	0	0	0	0	0
Interstate Banks	0	0	0	0	1
National Banks	0	0	0	0	0
Escrow Institutions	7	6	7	7	7
Total	7	6	7	7	8
Target Examinations					
State Banks	21	22	13	21	18
Interstate Banks	3	10	15	2	8
National Banks	5	10	15	5	9
Escrow Institutions	0	1	0	0	0
Total	29	43	43	28	35
Total Examinations					
State Banks	21	22	13	21	18
Interstate Banks	3	10	15	2	9
National Banks	5	10	15	5	9
Escrow Institutions	7	7	7	7	7
Total	36	49	50	35	43

PDPA examinations are conducted on a periodic basis, so in some years, the Division conducts fewer examinations than in other years, depending on the examination schedule. Also, the total number of public depositories changes from year to year, which impacts the examination schedule.

Enforcement Activity

The tenth sunset criterion requires COPRRR to examine 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 or regulated entity.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

The Board and the Commissioner may take formal or informal actions against a state bank or trust company.

The Board has the authority to issue a cease and desist order, which is a formal action that may be used to stop illegal, unsafe or unsound activities. A cease and desist order is a public enforcement action. The Board may also issue an order to require affirmative corrective action, such as filing special reports or making restitution.⁷¹

If a state bank has a poor rating, the Board may require the institution to enter into a Written Agreement, which is considered a formal action. The Board also has the authority to remove or suspend bank management personnel for a violation of law, rule or an agreement.⁷²

If an institution has multiple deficiencies, a memorandum of understanding (MOU), which is an informal action, may be required by the Commissioner. In this case, each member of the institution’s board of directors must sign the MOU, and the MOU outlines the steps that the institution must take to improve its condition and the deadlines for completing each step.

If the institution is not in serious jeopardy of failure and the institution is cooperating with the Board, the Commissioner is authorized to issue a board resolution, which is also an informal action. For example, the institution may need to improve its compliance with the Bank Secrecy Act or improve its risk management concerning liquidity.

Table 14 demonstrates the total number of enforcement actions taken against state banks over a five-year period.

**Table 14
Enforcement Actions
State Banks**

Type of Action	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Revocations	0	0	0	0	0
Board Resolutions	0	0	1	0	0
Memorandums of Understanding	6	4	1	1	1
Cease and Desist Orders	1	0	0	0	0
Written Agreements	0	0	0	0	0
Closures	0	0	0	0	0
Total Enforcement Actions	7	4	2	1	1

⁷¹ 70-1 Enforcement Policy, Division of Banking.

⁷² 70-1 Enforcement Policy, Division of Banking.

The Board took relatively few actions against state banks over the five-year period. The Commissioner entered into MOUs with state banks the vast majority of the time. Other than MOUs, the Commissioner issued one board resolution, and the Board issued one cease and desist order.

According to the Division, during the sunset review, all state banks in Colorado were in a satisfactory condition; none had a poor rating.

The Board did not revoke the charter of any state banks over the five-year period. It is unusual for the Board to close a state bank. The last time a state bank was closed by the Board was in 2015. The state bank declined over a period of years during which it was struggling with asset quality problems and liquidity. Ultimately, it was sold to an out-of-state bank.

Table 15 demonstrates the total number of enforcement actions taken against trust companies over a five-year period.

**Table 15
Enforcement Actions
Trust Companies**

Type of Action	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Revocation	0	0	0	0	0
Board Resolution	0	0	0	0	0
Memorandum of Understanding	1	0	0	2	2
Cease and Desist Order	0	0	0	0	0
Written Agreement	0	0	0	0	0
Closure	0	0	0	0	0
Total Enforcement Actions	1	0	0	2	2

The Board took few enforcement actions against trust companies since it uncovered few problems with the trust companies during the examinations. The Board did not revoke the charters of any trust companies over the five-year period. The only enforcement actions taken against trust companies were MOUs, which are considered informal actions. Like a state bank, when the Division uncovers some problems during an examination, the Commissioner may require a trust company to enter into an MOU.

Civil Money Penalties

The tenth sunset criterion requires COPRRR to examine 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 or regulated entity.

The Board has the authority to assess a civil money penalty against a state bank or an individual participating in the conduct of the affairs of the state bank for a violation of a cease and desist order, the Banking Code, a Board rule or for engaging in an unsafe or unsound practice related to the bank. The Board may only assess a civil money penalty after notice and a hearing and after finding that no other governmental agency has taken a similar action against the individual or institution for the same act or practice. The maximum civil money penalty allowed is \$1,000 for each day a violation continues.⁷³

The Board has the same authority to issue civil money penalties against trust companies or individuals participating in the conduct of the affairs of a trust company.⁷⁴

The Board also has the authority to issue a penalty against a state bank that fails to file reports detailing the resources and liabilities of the bank and any special reports deemed necessary to demonstrate a full and complete picture of the bank's condition.⁷⁵

Finally, the Board is authorized to assess a penalty of up to \$25 for failing to notify the Division of a change of management, control or operations of the state bank or trust company.⁷⁶

No civil money penalties or other penalties were issued against a state bank or a trust company from fiscal year 17-18 to fiscal year 21-22.

Collateral Consequences - Criminal Convictions

The thirteenth sunset criterion requires COPRRR to examine whether the agency, through its licensing, certification or registration process, imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests.

COPRRR utilizes this section of the report to evaluate the program according to this criterion.

⁷³ §§ 11-102-503(1)(a)(I)(A) and (B), C.R.S.

⁷⁴ §§ 11-109-602(1)(a)(I)(A) and (B), C.R.S.

⁷⁵ § 11-102-302(3), C.R.S.

⁷⁶ §§ 11-102-303(8) and (9) and 11-109-402(5) and (6), C.R.S.

While the Board may disqualify an individual from being employed at or acting as a director of a state bank or trust company based on their criminal history, the Board did not disqualify any individuals based on criminal history from fiscal year 17-18 to fiscal year 21-22.

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

Recommendation 1 – Continue the Division and the Board for nine years, until 2033.

The Colorado Banking Code (Banking Code), located in Article 101 through 110 of Title 11, Colorado Revised Statutes (C.R.S.), vests the State Banking Board (Board) in the Division of Banking (Division) with the supervision of state-chartered commercial banks (state banks) and state-chartered trust companies (trust companies). Specifically, the Banking Code authorizes the Board to grant charters and adopt rules.

The Governor appoints the members of the Board to four-year terms, and the membership includes:

- Five executive officers of state banks,
- One executive officer of a trust company,
- One executive officer of a money transmitter company, and
- Two public members.

The State Bank Commissioner (Commissioner) and the Division are responsible for conducting examinations of state banks and trust companies and enforcing the Banking Code. The Division is also responsible for the administration and enforcement of the Public Deposit Protection Act (PDPA), which protects public entity deposits held by state and national banks.

The Division works closely with the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Bank of Kansas City (Federal Reserve) to supervise state banks.

Sunset reviews are guided by statutory criteria established in section 24-34-104, C.R.S., and the first criterion questions whether regulation is necessary to protect the public health, safety and welfare.

A bank is a financial institution whose primary role is to accept deposits and lend money.⁷⁷ A bank uses the funds from deposits to offer loans, and it profits from various fees for services and interest garnered from loans.⁷⁸

⁷⁷ Encyclopedia Britannica. *Bank*. Retrieved November 8, 2022, from www.britannica.com/topic/bank

⁷⁸ Forbes. *What is a Bank and How Does It Work?* Retrieved November 8, 2022, from www.forbes.com/advisor/banking/how-do-banks-work/

A trust company may be engaged by an individual or a business to act as an agent, fiduciary or trustee in the administration, management and transfer of assets to beneficiaries.⁷⁹ A commercial bank may also offer trust services through a trust department.

Supervision of state banks and trust companies is necessary to evaluate whether the financial institutions are operating in a safe and sound manner, to identify problems and to work with management to correct them, and effective supervision is also critical to preserving public confidence in the financial system, which directly affects the state economy and the wellbeing of Colorado residents. Considering this, the Division is necessary to protect the public, and it should be continued.

The eighth sunset criterion questions whether regulatory oversight could be achieved through a director-model program. While much of the Board's authority has been delegated to the Commissioner, the expertise of the nine Board members is essential to the oversight of state banks and trust companies in Colorado, and the Board should be continued.

The Board protects the public through its rulemaking and charter functions. As of 2022, Colorado had 51 state banks with combined assets of nearly \$80 billion and nine trust companies with trust assets of \$948 billion. From 2018 to 2022, the total number of state charters declined by about 12 percent. However, this decrease was related to mergers rather than closures or conversions, and the total amount of assets increased significantly.

The Commissioner protects the public by overseeing the examination of state banks and trust companies to verify that they are operating in a safe and sound manner and are compliant with the Banking Code and by working closely with banks to correct any problems that are identified during the examination process.

Over a five-year period, from fiscal year 18-19 to fiscal year 21-22, the Division conducted a total of 118 examinations of state banks and 43 examinations of trust companies.

The Board and the Commissioner also protect the public through their enforcement authority.

Over the five-year period, from fiscal year 18-19 to fiscal year 21-22, the Commissioner issued one board resolution and 13 memorandums of understanding (MOUs) with state banks. Also, during this period, the Board issued one cease and desist order. The Board did not revoke any charters or close any state banks.

⁷⁹ Investopedia. *Trust Company: Definition, What It Does, and About Its Services*. Retrieved November 15, 2022, from www.investopedia.com/terms/t/trustcompany.asp

During the same five-year period, the Commissioner entered into five MOUs with trust companies. Neither the Commissioner nor the Board took any other enforcement actions against trust companies.

The Board has limited authority to assess penalties against banks and trust companies. From fiscal year 17-18 to fiscal year 21-22, the Board issued no penalties against a state bank or trust company.

While state banks in Colorado are in good condition, recent bank failures in other states demonstrate the importance of effective supervision of state banks and trust companies.

This report contains several recommendations for changes to the Banking Code. However, most of these recommendations are somewhat minor changes that are intended to clean up ambiguity or modernize the law. As such, a nine-year continuation would be reasonable and would align with the continuation of the Money Transmitter Act, which is also enforced by the Board and the Commissioner.

Therefore, the General Assembly should continue the Division and the Board for nine years, until 2033.

Recommendation 2 – Authorize a credit union to purchase the assets and liabilities of a state bank.

In 2020, the Board voted against a proposal by Elevations Credit Union to purchase Cache Bank and Trust. The purchase of the state bank by the state-chartered credit union had previously been approved by the credit union members, the Financial Services Board and the National Credit Union Association (NCUA).

The reason provided for denying the purchase was the ambiguity in the Banking Code, which is silent on whether such purchases are allowed.

Sunset criteria question whether the least restrictive form of regulation is established, taking into consideration other available regulatory mechanisms.

The Financial Services Commissioner and the Financial Services Board have a responsibility to determine whether a purchase of a bank by a credit union would be safe, taking into consideration the condition of the credit union and any assets and liabilities that the credit union would be absorbing. The NCUA, a federal agency that provides depository insurance to credit unions, also evaluates the risks associated with such a purchase and must approve the purchase prior to it taking place. The credit union members, who would be affected by such a purchase, must also agree to the purchase.

Considering this, it appears that the public would not be at an increased risk of harm if a credit union is allowed to purchase the assets and liabilities of a state bank.

Some stakeholders voiced concerns over the loss of revenue from non-taxpaying entities purchasing taxpaying entities. However, while credit unions are exempt from paying federal income tax based on their non-profit status, they do pay other taxes, including state income tax and sales tax. As such, the state government would not lose tax revenue from these purchases.

Allowing credit unions to purchase banks increases the number of potential buyers, and stockholders benefit from a purchase going to the highest bidder, whether it is a credit union or a bank. The customers of the bank would not be required to become members of the credit union if they do not wish to join. Just like any other service, a customer may choose to use a for-profit business or a non-profit business.

Finally, purchases of banks by credit unions do occur in other states, such as New Mexico and Washington. In 2022, 16 credit union purchases of banks were announced in other states.

Therefore, the General Assembly should create an affirmative authorization in the Banking Code for credit unions to purchase state banks.

Recommendation 3 – Amend the Board composition by repealing the requirement that two members represent state banks with less than \$150 million in total assets and instead require two members to represent state banks in the 40th percentile based on total asset size.

The Banking Code sets aside two board seats for representatives of state banks with less than \$150 million in total assets. When this definition was established nearly 20 years ago,⁸⁰ it encapsulated many state banks. Today, only nine banks in Colorado meet this definition. As banks are increasing in size, the pool of banks that will meet this definition will only continue to shrink.

The second and seventh sunset criterion question whether:

- Conditions that led to the creation of the program have changed, and
- The composition of the agency’s board or commission adequately represents the public interest.

The size of state banks has increased substantially over the last few years. This is consistent with trends in the size of banks throughout the country over the last few decades.

⁸⁰ House Bill 04-1111

The purpose of setting aside board seats for banks of a certain size is to ensure that the perspectives of these institutions is not overlooked when the Board is making decisions. The issues and concerns of smaller state banks may be different than those of larger state banks. At this time, however, less than 20 percent of state banks may participate. This is also problematic because it may be difficult to recruit members to serve on the Board.

One idea that was proposed is to increase the total asset size to \$400 million. Currently, about 40 percent of state banks meet this definition. Doing this would temporarily increase the pool of potential Board members, but as banks increase in size, the number of banks that meet this definition will again continue to shrink.

Rather than base the definition on a specific dollar amount, it might be better to set aside two board seats for representatives of state banks whose asset size fall within a specific percentile compared to other state banks. By doing this, the pool of state banks that may participate will not continue to shrink, and two Board seats will always be set aside for small to mid-size state banks.

Therefore, the General Assembly should amend the Board composition by setting aside two board seats for representatives of state banks in the 40th percentile based on total asset size.

Recommendation 4 – Extend the authority for the Board and the Commissioner to share information regarding state bank and trust company compliance with money laundering and other financial crime laws with the U.S. Secretary of the Treasury and agencies specified in sections 11-102-305(1)(a)(IV) and 11-102-306(2)(c), C.R.S.

The Banking Code currently allows the Board to share information related to the activities of money transmitters regarding federal money laundering and other financial crimes with the U.S. Secretary of the Treasury and other jurisdictions. However, it does not provide this authority for the Board in relation to state banks and trust companies.

As the Banking Code allows state banks to act as money transmitters without being licensed as such, it is reasonable to question whether the authority to share information related to such activities should also include them.

The Financial Crimes Enforcement Network (FinCEN), which is located within the U.S. Department of the Treasury, is responsible for implementing the Bank Secrecy Act. Among its duties, FinCEN is responsible for analyzing and sharing financial transaction data to combat money laundering and the financing of terrorism.⁸¹ Colorado law

⁸¹ Financial Crimes Enforcement Network. *What We Do*. Retrieved February 21, 2023, from www.fincen.gov/what-we-do

requires banks and trust companies to comply with the BSA, and FinCEN is charged with enforcing it.

FinCEN currently has an MOU for the exchange of this information with all states except for Colorado and one other state. If the Banking Code provided explicit authority for the Board to share this information, as it does with money transmitters, Colorado could establish an MOU with FinCEN, and it would be able to provide information connected to a federal investigation involving money laundering without delay.

The fourth sunset criterion questions whether the agency operates in the public interest and whether its operations are impeded by existing statutes.

Money laundering is used by terrorist and criminal organizations to hide the sources of their revenue and to fund illegal activities, and the goal of the BSA is to prevent money laundering to the greatest extent possible from taking place in the U.S. financial system.

In order to protect the public, the Banking Code should be amended to provide clear authority to the Board to share information regarding money laundering and other financial crime laws with the authorities that are charged with investigating them.

Therefore, the General Assembly should extend the authority established under sections 11-102-305(1)(a)(IV) and 11-102-306(2)(c), C.R.S., for the Board and the Commissioner to share information regarding state bank and trust company compliance with money laundering and other financial crime laws with the U.S. Secretary of the Treasury and other agencies specified in statute.

Recommendation 5 – Clarify that changes of any executive officer, director or other person who is responsible for the management, control or operations of a state bank or trust company must be reported to the Board within 60 days.

Changes in executive leadership can affect the safety and soundness of a bank or trust company. For this reason, the Banking Code requires banks and trust companies to *promptly* report changes of any executive officer, director or other person who is responsible for the management, control or operations of a state bank or trust company.

“Promptly,” however, is an ambiguous term. Some might consider 48 hours to be prompt while others might consider 30 or 60 days to be prompt. Rather than require notice to be provided promptly, it would be better to establish a time period by which banks and trust companies must report this information.

Sunset criteria question whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes.

Establishing a time period would remove ambiguity from the Banking Code, making it easier for banks and trust companies to comply with the law and for the Board to enforce it. Sixty days is a reasonable amount of time to expect financial institutions to report this information to the Board.

Therefore, the General Assembly should clarify that changes of any executive officer, director or other person who is responsible for the management, control or operations of a state bank or trust company, as required in sections 11-102-303(9) and 11-109-402(6), C.R.S., must be reported to the Board within 60 days.

Recommendation 6 – Modernize the penalty to fail to report a change of any executive officer, director or other person who is responsible for the management, control or operations of a state bank or trust company to the Board.

Under the Banking Code, the Board has the authority to issue a penalty of \$25 a day if a bank or trust company fails to report to the Board a change of “any executive officer, director, or other person who, directly or indirectly, is responsible for the management, control or operations” of the state bank or trust company.

The Board’s authority to issue a penalty for failure to report a change in management is outdated and, consequently, may no longer be meaningful. Considering this, the penalty amount should be modernized to ensure that the Banking Code continues to deter state banks and trust companies from failing to submit this information to the Board.

Sunset criteria ask whether the Board operates in the public interest and whether its operation is impeded by existing statutes.

Changes in executive leadership should be reported to the Board since such changes can impact the safety and soundness of a state bank or trust company, and the Commissioner needs to know who is in control of a financial institution in case a problem arises. Recommendation 6 would require this information to be reported within 60 days, which provides state banks and trust companies with a reasonable amount of time to report this information.

It is not difficult for financial institutions to report changes in management. Typically, a financial institution automatically sends notice to the Board as part of the hiring

process. If the financial institution fails to report, however, the Board should have the authority assess a meaningful penalty.

Given that the penalty accrues for each day of noncompliance, a penalty of \$100 may be reasonable. If a financial institution is noncompliant for 30 days for example, the total amount of the penalty would be \$3,000, which is more meaningful than \$750, the total penalty amount for 30 days of noncompliance today.

Therefore, the General Assembly should modernize the Board's authority to issue a penalty established under sections 11-102-303(8) and (9) and 11-109-402(5) and (6), C.R.S., for failure to report by increasing it to \$100 per day.

Recommendation 7 – Modernize the Board's authority to issue civil money penalties.

Currently, the Board may require anyone who violates the Banking Code, a Board rule or a cease and desist order, or for engaging in an unsafe or unsound practice related to a financial institution to pay a civil money penalty up to \$1,000 per violation, per day.

The Board's authority to assess a civil money penalty was established in 1990, and it has not increased since that time.

The purpose of issuing a civil money penalty is to deter misconduct that may negatively impact the financial system. A civil money penalty of \$1,000 was a much stronger deterrent several decades ago than it is today. In order to ensure that the civil money penalties issued by the Commissioner act as a deterrent, the maximum fine amount should be modernized.

Sunset reviews are guided by statutory criteria found in section 24-34-104, C.R.S., and the third criterion questions whether the agency operates in the public interest and whether its operation is impeded by existing statutes.

To ensure that the Banking Code continues to effectively protect the public from the misconduct which may be harmful to the financial system, the Board's authority to assess civil money penalties should be increased to a more meaningful amount. Considering the significant growth in the size of banks over the last few decades, a civil money penalty up to \$5,000 per day would be reasonable.

The Board would not be required to issue a civil money penalty and if it did, it could take into account the severity of the violation, the size of the bank and its ability to pay a civil money penalty prior to assessing one. Additionally, the Board may only assess a civil money penalty after notice and a hearing and after finding that no other governmental agency has taken a similar action against the individual or institution for the same act or practice.

Therefore, the General Assembly should modernize the Board's authority by increasing the maximum civil money penalty to \$5,000 per violation, per day.

Recommendation 8 – Clarify that a trust company may discontinue its trust business if it provides evidence of its release and discharge of all trust-related obligations prior to surrendering its trust charter.

Currently, a trust company that is no longer providing trust services must submit to the Board evidence of its release and discharge from all obligations and trusts prior to surrendering its charter.

Recently, when a trust company surrendered its charter to the Board, the Board examined whether it must monitor the wind up of all obligations of the trust company, as the Banking Code seems to require, or only those obligations that the Board regulates.

Once a trust company has surrendered its charter, it may no longer act as a trust company or refer to itself as a trust company. At that point, the company may operate as any other business, and it may have other obligations, such as paying its lease or utilities bills. However, as a regulatory body, the Board no longer has a stake in supervising its operations.

Sunset criteria question:

- Whether regulation is necessary to protect the health, safety and welfare of the public; and
- Whether existing regulations establish the least restrictive form of governmental oversight.

The Board does not have an interest in monitoring the wind up of all the operations of a trust company once its trust-related obligations have been met, and doing so would likely be a waste of state resources.

Instead, the Banking Code should simply require a trust company to provide evidence of release and discharge of all trust-related obligations. A trust company could then surrender its charter and wind up any other business obligations without Board supervision.

For these reasons, the General Assembly should clarify in section 11-109-701(1), C.R.S., that a trust company may discontinue its trust business if it provides evidence of its release and discharge of all trust-related obligations prior to surrendering its trust charter.

Recommendation 9 – Codify requirements related to the review of fiduciary accounts to ensure that the assets are appropriate for the account as described in the trust agreement, and require the Board to adopt a rule to clarify what “appropriate” means in this context.

Recently, the Board has taken actions to correct problems with trust companies that were not acting as responsible fiduciaries.

At a bare minimum, responsible trust companies should:

- Review a prospective account to determine whether it can properly administer the account before accepting a fiduciary account;
- Conduct a prompt review of all assets of the account to evaluate whether they are appropriate for the account upon the acceptance of a fiduciary account for which a trust company has investment discretion; and
- Conduct a review of all assets of each fiduciary account for which the trust company has investment discretion, at least once during every calendar year, to evaluate whether they are appropriate, individually and collectively, for the account.

While established trust companies and trust departments in Colorado already adhere to these industry standards, the Division has uncovered issues with new trust companies. The Banking Code, however, is silent on the fiduciary responsibilities of trust companies.

Sunset criteria question whether the agency operates in the public interest, whether its operation is impeded or enhanced by existing statutes and whether the agency performs its statutory duties efficiently and effectively.

A trust company has the ability to buy and sell securities and other assets for their clients, so it is important that a trust company evaluates whether it has the resources to manage each account properly and annually reviews the investments to determine whether they are appropriate for each account. Otherwise, clients who rely on these services are at an increased risk of serious financial harm.

Codifying the basic responsibilities of a fiduciary would clarify what is expected of a trust company, and it would also provide the Board with clear authority to take action when a financial institution, whether a trust company or a trust department, that is providing trust services fails to meet these basic fiduciary responsibilities. Doing so would also align the requirements of state trust companies and banks with those of federally chartered trust companies and banks.

Additionally, as the word “appropriate” is ambiguous, it would be reasonable to require the Board to adopt a rule to clarify its meaning. Doing so would make it easier for trust companies and trust departments to comply with the law, and it would also provide clarification to Division staff during an examination.

Therefore, the General Assembly should codify requirements related to review of fiduciary accounts to ensure that the assets are appropriate for the account as described in the trust agreement, and it should also require the Board to promulgate a rule to clarify what “appropriate” means in this context.

Recommendation 10 – Make technical amendments to the Banking Code.

The Banking Code has been in place for nearly 150 years. As with any law, it contains instances of outdated, duplicative and confusing language, and the Banking Code should be revised to eliminate obsolete references and to reflect current terminology and administrative practices. These changes are technical in nature, so they will have no substantive impact on the supervision of banks.

The General Assembly should make the following technical changes:

- Amend the Banking Code to make it gender neutral by replacing terms, such as “him,” “her,” “he” and “she” with a gender-neutral term;
- Modernize language in sections 11-102-301 and 11-109-104, C.R.S., which refers to data processing centers and instead refer to information technology function or third-party service provider, as appropriate;
- Repeal the requirement in sections 11-102-301 and 11-109-104, C.R.S., for the examination reports to be mailed since they are now sent electronically; and
- Repeal the requirement in section 11-103-301, C.R.S., for a charter application to be filed in triplicate.

Appendix A – Customer Service Survey

In July 2023, COPRRR staff conducted a survey of all state-chartered commercial banks (state banks) and state-chartered trust companies (trust companies). The survey was sent to 60 individuals representing state banks and trust companies, and no emails were returned as undeliverable. The survey received 11 responses, which is an 18.33 percent response rate. Survey results may be found below.

What is your relationship to the Division of Banking?

Relationship	Percentage
Commercial Bank	91.7%
Trust Company	8.3%

In the past year, how many times have you interacted with the Division of Banking? Please count all forms of interaction (telephone, e-mail, internet or website, regular mail, in person).

Number of Interactions	Percentage
I have not interacted	0%
1 to 2 times	9.1%
2 to 4 times	18.2%
4 to 6 times	36.4%
6 to 8 times	9.1%
8 or more times	27.3%

If you have interacted with the Division of Banking, what was your primary purpose in doing so?

Purpose of Interaction	Percentage
Licensing or registration	0%
Inspection, audit or examination	9.1%
To file a complaint	0%
To learn about the requirements for a profession/occupation	0%
To learn about the functions of (insert name of program/agency)	0%
To obtain help with an issue	54.5%
Respond to a complaint	0%
Respond to a request made to you	0%
Participate in a Division of Banking, committee, commission, taskforce or working group for the agency	9.1%
Comment on or learn about existing/proposed rules or legislation	9.1%
Continuing education	0%
Update my information	18.2%
Questions about the scope of practice	0%
Not applicable	0%
Other	0%

Overall please rate the service provided by the Division of Banking.

Service Provided	Percentage
Excellent	90.9%
Good	9.1%
Fair	0%
Poor	0%
Unacceptable	0%
Not Applicable	0%

Please rate the usefulness of the Division of Banking's website in answering your questions or providing needed information.

Website Usefulness	Percentage
Excellent	36.4%
Good	36.4%
Fair	0%
Poor	0%
Unacceptable	0.4%
Not Applicable	27.3%

Please rate the usefulness of the Division of Banking's communications in answering your questions or providing needed information.

Communications Usefulness	Percentage
Excellent	72.7%
Good	27.3%
Fair	0%
Poor	0%
Unacceptable	0%
Not Applicable	0%

Regardless of the outcome of your most recent issue, do you feel the Division of Banking listened to your concerns?

Listening to Concerns	Percentage
Excellent	90.9%
Good	9.1%
Fair	0%
Poor	0%
Unacceptable	0%
Not Applicable	0%

Please rate the timeliness of the Division of Banking in responding to your issues.

Response Timeliness	Percentage
Excellent	72.7%
Good	27.3%
Fair	0%
Poor	0%
Unacceptable	0%
Not Applicable	0%

Please provide the number and types of interactions that were required to resolve or address your most recent issue. (Please select all applicable types of interactions used AND the number times for each type OF interaction selected.)

Number of Interactions	Type of Interaction				
	Phone	Website	E-mail	In Person	Regular Mail
0 times	1	2	0	0	2
1 to 2 times	8	1	5	3	2
3 to 4 times	0	0	1	1	0
5 to 6 times	0	0	1	0	0
7 or more times	0	0	0	1	0

Please rate the helpfulness of the Division of Banking in resolving your issue or need.

Helpfulness	Percentage
Excellent	72.7%
Good	27.3%
Fair	0%
Poor	0%
Unacceptable	0%
Not Applicable	0%

Please rate the professionalism of the Division of Banking.

Professionalism	Percentage
Very professional	81.8%
Professional	18.2%
Somewhat professional	0%
Not very professional	0%
Unprofessional	0%
Not applicable	0%

Please rate the accuracy of information provided by the Division of Banking.

Professionalism	Percentage
Very accurate	72.7%
Accurate	27.3%
Somewhat accurate	0%
Not very accurate	0%
Inaccurate	0%
Not applicable	0%