

POLICY FOR ESTABLISHING A BANK SUBSIDIARY

I.C. 28-1-1-3(17) defines "subsidiary" as a foreign or domestic corporation or limited liability company in which the parent bank, savings bank, savings association, or industrial loan and investment company had at least eighty percent (80%) ownership before July 1, 1999, or is formed or acquired in accordance with IC 28-13-16 after June 30, 1999.

IC 28-13-16 allows for two types of subsidiaries. A "qualifying subsidiary" is a subsidiary in which a financial institution has more than fifty percent (50%) ownership. A "nonqualifying subsidiary" is a subsidiary in which a financial institution has fifty percent (50%) or less ownership.

The Members of the Department of Financial Institutions establish the following formal procedures for the establishment of a qualifying and nonqualifying subsidiary:

1. Qualifying Subsidiary

Prior to the formation or acquisition of a qualifying subsidiary, the financial institution shall file a letter of notification with the Department of Financial Institutions. The notification shall contain information regarding the capital of the qualifying subsidiary, the authorized powers of the qualifying subsidiary and the amount of investment by the financial institution. The activities of the qualifying subsidiary shall be limited to those activities authorized by the Indiana Financial Institutions Act or authorized by 12 CFR 5.34(e).

The letter of notification shall have attached a copy or proposed copy of the Articles of Incorporation, or Articles of Organization and Operating Agreement if a limited liability company, of the subsidiary and a current balance sheet of the parent financial institution.

The Deputy Director of Depository Institutions shall review the information received in the letter of notification for compliance with applicable statutes. Unless notified by the Department otherwise, the qualifying subsidiary may begin operations thirty days after the Department receives the letter of notification. The Director shall apprise the Members of the Department at the next regularly scheduled Members' meeting of any subsidiary notification filed the Department. If the qualifying subsidiary is not deemed to be in compliance with applicable statutes, the Deputy Director shall notify the financial institution within 30 days of receiving the letter of notification and the subsidiary shall not be established until such time as compliance is achieved.

2. Nonqualifying Subsidiary

Prior to the formation or acquisition of a nonqualifying subsidiary, the financial institution shall file an application with the Indiana Department of Financial Institutions detailing the information requested in IC 28-13-16-5. The notification shall contain information regarding the capital of the nonqualifying subsidiary, the authorized powers of the nonqualifying subsidiary and the amount of investment by the financial institution. The activities of the nonqualifying subsidiary shall be limited to those activities

authorized by the Indiana Financial Institutions Act, authorized by 12 CFR 5.34(e), or are considered a part of or incidental to the business of banking as determined by the Director of the Department.

The applicant shall attach a copy of the Articles of Incorporation, or Articles of Organization and Operating Agreement if a limited liability company, of the subsidiary and a current balance sheet for the parent financial institution.

If the financial institution intends to have a minority interest in a nonqualifying subsidiary, the investment must conform to the standards imposed upon national banks for such investments. The Office of the Comptroller of the Currency (“OCC”) permits national banks to make minority investments in subsidiaries if the following standards are met:

1. The activities of the subsidiary must be limited to the activities that are part of or incidental to, the business of banking;
2. The bank must be able to prevent the subsidiary from engaging in activities that do not meet the foregoing standard;
3. The bank’s loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the subsidiary; and
4. The investment must be convenient or useful to the bank in carrying out its business and not a mere passive investment unrelated to that bank’s banking business.

The financial institution must demonstrate to the Department that all four standards are met and will be maintained throughout the financial institution’s investment in the subsidiary.

The Deputy Director of Depository Institutions shall review the information received in the application for compliance with applicable statutes and submit the application to the Director for consideration. Within 60 days from receipt of the application, the financial institution will be notified if the application was approved or disapproved. If the application is approved, the Director shall apprise the Members of the Department at the next regularly scheduled Members’ meeting of any nonqualifying application filed with the Department. If the nonqualifying subsidiary is not deemed to be in compliance with applicable statutes, the Deputy Director shall notify the financial institution and the nonqualifying subsidiary shall not be established until there is compliance.

3. Examination of the Subsidiary

Each subsidiary shall be subject to examination by the department and by appropriate federal banking supervisory authorities to the same extent as though it were comprised within the legal entity of the bank or trust company.

This policy has been formerly adopted by the Members of the Indiana Department of Financial Institutions on December 9, 1999.

Norman Lowry, Chairman