



# COLORADO Banker

March/April 2010

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## **New Guidance for Transfers of Financial Assets Effective in Coming Periods**

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# I Encourage Bankers to Increase Their Participation in CBA

**Don't pass up the opportunity to provide your input**

**Dear CBA Members,**

As I write this today in the beginning of February, I find our industry operating in an environment unlike any other I've experienced in my 36 years of banking. The public's lack of distinction between the unregulated financial sector that operates on Wall Street and the highly regulated banking industry has subjected us to misdirected hostility. And many in the political world are taking advantage of that hostility.

Due to the strong leadership, dedication, and loyalty of our volunteer bankers and the CBA staff, our industry has been successful in blocking those industries attempting to act against us. We've continually stated that the focus of the 2010 State Legislative Session should be to create jobs and balance the state budget, and not consider special interest legislation.

On the State level the credit union industry was the first to try and take advantage of the current public sentiment, and ran a bill that would have allowed them to accept public deposits at lower standards and protections than currently required of banks. If undermining the protection of taxpayer funds wasn't enough, an initial version even tried to stick S&L's with the regulatory bill. By actively opposing this proposal since August of 2008, the credit unions' efforts were swiftly defeated in the first two weeks of the session, by the first Committee that considered the bill.

Federally, CBA continues to work with Colorado's Members of Congress to produce responsible regulatory reform – supporting many of the proposed fixes such as those that target derivative regulation, the creation of a systemic risk council, upholding preemption laws, and many others. In fact, CBA only strongly opposes one aspect: the creation of a separate consumer financial protection agency that would double regulate banks, separate safety and soundness consideration from consumer protection, and provide no consumer protection oversight over many of the unregulated companies that caused the financial industry problems.

Banker involvement and participation has been the key, and will continue to be a major factor moving throughout 2010. Providing the true hard facts about our industry, and clearing up the misconceptions to the public is where we need to continue to focus our efforts. That's why I was pleased to see a strong turnout at CBA's 4th Annual Legislative Economic Briefing featuring KC Federal Reserve President Dr. Tom Hoenig. About 100 bankers and legislators attended to hear Dr. Hoenig discuss regulatory reform, "too big to fail," the importance of the autonomy of the Federal Reserve, and the threats of inflation.

Coming up I encourage bankers to increase their participation in CBA. Urge your bank to be an active member, sit on a volunteer committee, attend a CBA daily lunch or two with legislators, and consider supporting CBA's PAC. 2010 could very well be the year that defines the next generation of the banking industry, don't pass up the opportunity to provide your input. ■

D. Edward Sauer, CBA Chairman  
President and CEO  
The Bank at Broadmoor

## A Word From CBA...

# Meeting the Challenge

Banking has never been so challenged. The last 16 months have presented you with enormous financial dilemmas for your bank. Your industry has obtained an under-served ugly reputation.

Banks and bankers are like a piñata these days – one whack after another from media, the president, and the general public. We know that our good industry and the fine people in it are being vilified by those who misunderstand the causes of the economic chaos or simply want someone to blame for hardships.

This hostile public attitude affects your mood and standing in the community, and government's reaction – which is setting the rules for years or decades on how you operate your bank. That determines the value of your bank. Little good can come from anger driven policies.

We've put a lot of energy into educating business and government decision-makers about the current lending environment – informing them about low demand, borrowers' creditworthiness, and regulatory pressures on banks. While we've accomplished a lot there is much work to be done – and it is vital, given the role of public attitudes in forming government policy.

At the state level we have major challenges protecting banks and bankers from bad law. So far we been able to defeat the credit unions' attempt to push further into banking, and we are now tackling fights with homebuilders who want to shift their losses to you, their lenders. We also have countless foreclosure bills detrimental to banking, and dozens of other bills on everything from regulating gift cards, to financial exploitation of elderly and at-risk adults, to government financing of energy efficiency home improvements. Our goal in all of this is to build and preserve a fair competitive environment with minimum interference in your business. CBA will defend your industry on at least 100 bills this year.

Nationally we spend a lot of time with members of Colorado's Congressional delegation informing them about good and bad proposals. The massive 1,200 page regulatory reform proposal with its ill-conceived Consumer Financial Protection Agency is just one subject. Another is the excessive regulatory reviews you are experiencing from examiners. And still others would limit your income from

overdraft charges and interchange fees. There doesn't seem to be an end to this list of federal issues.

CBA is working hard in your behalf to win these battles, keep you informed along the way, and request your assistance as seldom as possible. We are thankful for the 100+ volunteer bankers who make wise policy decisions for us. We also appreciate the hundreds of letters you deliver to public officials each time we ask you to do so. We keep you informed by urgent emails and our website: [www.coloradobankers.org](http://www.coloradobankers.org). It contains timely and brief updates on many issues and brief explanatory videos on appropriate subjects. Check it out often or call us at CBA whenever we can help: 303-825-1575.

Please contact us with suggestions, or comments and questions on any matter. Thanks. We like being your partner. ■

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# Colorado Bankers Association Forges New Partnership with Office Depot

## CBA Members can now access national account purchasing power

**T**he Colorado Bankers Association is proud to announce a new partnership with Office Depot which delivers an outstanding value proposition for CBA member banks and associate members. This program has helped save participants an average of 40% over their prior office product costs.

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As an Office Depot customer, CBA members will enjoy steep discounts on a core list of 100 high use commodity items and banking industry specific products. In addition to this core list, CBA members can add an additional 75 items tailored to the needs of their organization. This is where you would want to add specific items such as toner or ink jet cartridges. For miscellaneous items outside the core and custom tailored list receive a 10% discount on Office Depot's retail catalog pricing (some exclusions may apply).

But wait, there's more to the CBA - Office Depot program than just office supplies! CBA members will also receive discounts on office furniture, print/copy services, custom business forms, stationery supplies, promotional products, lunchroom provisions, and janitorial supplies.

And the benefits go beyond great pricing – customers will also receive free, next day delivery by Office Depot truck or UPS on all orders (depending on location), access to Office Depot's exclusive Business Services Division website, strategic brand name partnerships, and ease in economizing your organization's operations.

As a member of the powerful national account buying power coalition, CBA members will enjoy a higher level of support with a dedicated account manager and Office Depot's best, most

experienced customer service reps from the National Account Help Desk. Your Office Depot account manager will provide your organization with on-going creative and innovative procurement solutions by identifying preferred product and process improvement opportunities.

Still not convinced? How about extending this program to your employees, who will enjoy 10% off their retail store purchases?

In addition to all of these great benefits, don't forget that your participation in this program drives an essential stream of support to the Colorado Bankers Association. This provides the CBA with important non-dues revenue that directly supports key strategic initiatives including advocacy, education and media relations.

If you're ready to start taking advantage of this essential CBA program, visit <https://odams.officedepot.com/registrations/bancsource.php> or contact Patti Ward at 720-289-9064 or [patricia.ward@officedepot.com](mailto:patricia.ward@officedepot.com). ■

Founded in 1986, Office Depot is on the world's largest sellers of office products and an industry leader in every distribution channel, including stores, direct mail, contract delivery, the Internet and business-to-business electronic commerce.





FEATURE  
ARTICLE

**STEPHANIE CHAUMONT**  
Security+

# Managing Mobile Devices

**A**ccording to Fast Company magazine, a laptop is stolen every 53 seconds. To put that into perspective, around three and a half laptops will have been stolen while you're

reading this article. Only 3% of all stolen laptops are ever returned. If you're like the growing number of hyper-productive Americans today, you can see a great need for laptops and other mobile devices having access to your network. Reports are revised in the passenger seat of the car; research is done while waiting for a plane; emails are read and written while waiting in line for food. It is easy to see the value in such things, but how do you balance the risk associated with allowing these devices to access your confidential and valuable information, while also allowing them to leave the safety of your office? The cost of replacing a lost or stolen laptop or iPhone is really minimal compared to the loss of information or potential unauthor-

ized access to information. There are both technical and nontechnical solutions available to help you maintain security while still enjoying the benefits of mobile devices.

On the technical side, there are several ways to secure laptops. As with all network equipment, setting a sufficient password on the laptop prior to access will go a long way in keeping the average person out of your system. More determined attackers can bypass this protection. This is where whole disk encryption enters the scene. Whole disk encryption software will encrypt

■ **Mobile Devices**  
| continued on page 11

"Mobile devices like laptops and smart phones have greatly impacted the way we do business and the way we do life. We can continue to enjoy their convenience without sacrificing our privacy and confidentiality."

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FEATURE  
ARTICLEJON MCDOWELL, CPA  
BKD, LLP

# New Guidance for Transfers of Financial Assets Effective in Coming Periods

“Institutions should take a detailed look at loan participation agreements to determine whether their provisions would preclude sale treatment for transfers subject to application of FAS 166.”

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**I**n June 2009, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards No. 166, Accounting for Transfers of Financial Assets,

an amendment of FASB Statement No. 140 (FAS 166 or the statement). The statement amends the previous guidance issued in FAS 140 (codified as ASC 860) and addresses practices developed since FAS 140's issuance that are inconsistent with the requirements of that statement and concerns of financial statement users that many of the financial assets (and related obligations) that are no longer recognized should continue to be reported in the financial statements of transferors. The statement affects loan participation and the securing of financial assets and increases disclosures for such transactions.

### Loan Participations & Definition of a Participating Interest

FAS 166 defines participating interest as establishing specific conditions for reporting a transfer of a portion of a financial asset as a sale instead of a secured borrowing. The statement defines a participating interest as:

- Conveying proportionate ownership rights with equal priority to each participating interest holder
- Involving no recourse (other than standard representations and warranties) to, or subordination by, any participating interest holder

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- Not entitling any participating interest holder to receive cash before any other participating interest holder (reasonable servicing fees are not included in the cash flows for this determination nor are the proceeds received by the transferor as proceeds)
- Not allowing any party to pledge or exchange the entire financial asset unless all participating interest holders agree to pledge or exchange the entire financial asset

Upon adoption of this standard, institutions that sell loan participations must determine the loan participation meets the definition of a participating interest as well as the conditions for surrender of control specified by FAS 140. Both of these criteria must be satisfied for the sale to complete and get removed from the books of the transferor.

Certain provisions in loan participation agreements currently qualifying as sales will not qualify as a participating interest under the new guidance. One example is a so-called “last-in, first-out” provision allowing one participant to receive payments on its interest in the asset prior to another participant. This would not qualify because it allows a participating interest holder to receive disproportionate cash flows from the asset. Another example is a participation agreement with a pass-through interest rate to the participant that is substantially less than the contract rate. Most often, the difference between the pass-through rate and the contract rate is designed to compensate the transferor for servicing the loan. However, if the transferor is receiving an amount for servicing that is significantly above an amount that would compensate a substitute service provider, the participation would not qualify as a participating interest.

Any participations that do not qualify for sales treatment, either because they do not qualify as participating interests or because they do not effectively surrender control over the transferred asset, should be accounted for as secured borrowings.

### Securitizations & Qualified Special-Purpose Entities

FAS 166 removes the concept of a qualifying special-purpose entity from FAS 140 and removes the exception from applying FASB Interpretation No. 46 (revised December 2003), Consolidation of Variable Interest Entities, to qualifying special-purpose entities. Therefore, after the effective date of this standard, formerly qualifying special-purpose entities will need to be re-evaluated for consolidation in accordance with the applicable consolidation guidance. This could cause previously independent entities to consolidate. The pronouncement provides transition guidance for this circumstance.

The statement also removes the special provisions in FAS 140 and FASB Statement No. 65, Accounting for Certain Mortgage

### MOBILE DEVICES – continued

your entire C: drive and make information inaccessible without a pre-determined key. Laptops, just like all other systems, are also vulnerable to viruses and other malware, especially while connecting to unknown wireless networks. Good patch management procedures and current antivirus software with up-to-date virus definitions will help protect your bank’s laptops. Disabling Bluetooth discovery mode on your laptop will also provide great protection from Bluetooth hacking tools. These tools enable an attacker to view contacts or email and even enable file sharing from your laptop to theirs.

Other handheld devices and smart phones like iPhones and Blackberrys are also becoming more and more prominent, introducing vulnerabilities that did not exist a few years ago. Knowing how to manage these devices from your Blackberry server or Exchange server can prevent unauthorized access to your bank information or email from a lost or stolen phone. Consider the following:

- Enabling a password after a period of inactivity
- Enabling remote data wipe
- Disabling Bluetooth discovery mode

Never underestimate the value of nontechnical solutions like training, training, and training. It is said that the weakest link in any security program are the people. The reverse must then be true...that your employees can play a vital role in creating a secure network. This is especially true when managing mobile devices. Educate your users regarding the dangers of connecting to unknown wireless networks. They should never connect to an ad-hoc or peer-to-peer wireless network. On the physical side of security, train your users never to leave a laptop or handheld device unattended unless it is secured. You can use cable locks to attach your laptop to some large piece of furniture in a room. Thieves are much less likely to “sneak out” with a stolen laptop attached to an office chair. Train smart phone users to treat these phones with the care they would a laptop, taking care to not leave them lying around. This is a luxury left for those of us still using phones that are only capable of making phone calls.

Mobile devices like laptops and smart phones have greatly impacted the way we do business and the way we do life. We can continue to enjoy their convenience without sacrificing our privacy and confidentiality. We just need to be aware of the threats involved and be proactive about implementing mitigating controls. ■

Stephanie Chaumont, Security+, is a Security & Compliance consultant for CoNetrix ([www.conetrix.com](http://www.conetrix.com)), a provider of network consulting, security testing, and risk management and information security compliance software to financial institutions.

FEATURE  
ARTICLE

CENTRAL STATES OF  
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# Are Additional Stress Tests Needed?

**I**f you work for one of the nation's largest banking organizations, you may have been involved with the government's Supervisory Capital Assessment Program. Limited to

banking organizations with assets greater than \$100 billion, a series of "stress tests" were to be conducted to determine if the largest banking organizations have sufficient capital buffers to withstand the impact of economic environments more challenging than current conditions<sup>1</sup>.

The forward-looking financial stress tests were intended to evaluate the adequacy of an institution's finances in a recession under two scenarios<sup>1</sup>.

1. A baseline scenario which reflected a consensus expectation among private economic forecasters of the current recession.

2. A more adverse scenario which reflected a deeper and longer recession than the baseline<sup>2</sup>.

Pundits have showered praise and criticism on the government's Supervisory Capital Assessment Program. Time will tell if the two scenarios used in the government testing were effective in helping to predict the economic future and the adequacy of reserves in America's largest banks to weather future economic downturns.

■ **Stress Tests** | continued on page 14

12 "The new stress tests may help promote a win/win situation for the bank and the borrower. The tests give the borrower the chance to consider his or her current protection assets in light of the new loan and the added financial risk it may represent."

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**TRANSFERS** – continued

Banking Activities, for guaranteed mortgage securitizations and requires them to be treated the same as any other transfer of financial assets within the scope of FAS 140, as amended. The statement also clarifies the transferor must evaluate whether it, its consolidated affiliates included in the financial statements being presented, or its agents effectively control the transferred financial asset directly or indirectly for the transfer to meet the provisions related to surrender of control.

**Disclosures**

FAS 166 requires enhanced disclosures to provide financial statement users greater transparency about transfers of financial assets and a transferor's continuing involvement with transfers of financial assets accounted for as sales. The disclosures outlined in FAS 166 are only minimum required disclosures. Companies may need to supplement the required disclosures to meet objectives outlined in the statement.

**Effective Date & Transition**

The statement is effective as of the beginning of each reporting entity's first annual reporting period that begins after November 15, 2009, for interim periods within that first annual reporting period, and for interim and annual reporting periods thereafter. Earlier application is prohibited. The recognition and measurement provisions of the statement apply to transfers that occur on or after the effective date.

As discussed above, existing, qualifying special-purpose entities must be evaluated for consolidation by reporting entities in accordance with the applicable consolidation guidance.

The disclosure provisions of the statement are applicable to transfers that occurred both before and after the statement's effective date.

**Recent Federal Deposit Insurance Corporation (FDIC) Actions**

In response to FAS 166, the FDIC recently approved a joint rulemaking to provide an optional two-quarter implementation delay of the effect on risk-weighted assets from the implementation of FAS 166. This was because many existing qualifying special-purpose entities not currently consolidated may be consolidated upon adoption of the statement. Find the joint rule at [www.fdic.gov/news/board/DEC152009no2.pdf](http://www.fdic.gov/news/board/DEC152009no2.pdf).

In response to the statement's treating the FDIC as receiver or conservator of assets transferred by an institution in connection with a securitization or participation, the agency approved an Advanced Notice of Proposed Rulemaking. The FDIC seeks comments on standards to provide "safe harbor" treatment of these securitizations and participations after March 31, 2010, and

require loan originators to retain an ownership stake in loans they package and sell. Since 2000, the FDIC has provided safe-harbor protections to securitizations by confirming that in the event of a bank failure, the FDIC would not try to reclaim loans transferred into a securitization so long as an accounting sale had occurred. However, with the changes in FAS 166, most securitizations will no longer meet the off-balance-sheet standards for sale treatment when they took effect on January 1, 2010. On November 12, 2009, the FDIC approved a transitional safe harbor that grandfathered securitizations or participations in process through March 31, 2010. Find the advanced notice of proposed rulemaking at [www.fdic.gov/news/board/DEC152009no5.pdf](http://www.fdic.gov/news/board/DEC152009no5.pdf).

**Summary**

FAS 166 makes significant changes to the requirements for sale treatment of financial asset transfers. These revised requirements were effective for most institutions January 1, 2010. Institutions should take a detailed look at loan participation agreements to determine whether their provisions would preclude sale treatment for transfers subject to application of FAS 166. ■

Jon McDowell is a partner with BKD, LLP, one of the nation's 10 largest CPA & advisory firms. Contact the author at [jmcdowell@bkd.com](mailto:jmcdowell@bkd.com) consider publishing a special page on your Intranet that contains links to trusted Web resources that provide valuable tips on preventing the spread of the virus.

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**STRESS TESTS** – continued

In the meantime, given the current state of the economy, lenders may want to use the stress test concept with borrowers. If it is wise for financial entities with over \$100 billion in assets to perform stress tests and to assess sufficient capital, perhaps commercial and retail lenders should assist borrowers in performing economic stress tests based on the borrowers' financial situations.

Given independent community banks thrive on providing services through personal relationships, it is fitting for independent community banks to lead the charge and adopt these new stress tests. In addition, community banks have a long and proud history of providing start-up capital to small and mid-sized commercial businesses. The new stress tests are in harmony with relationship banking and the personal service the community banks provide.

**Commercial Borrower: “Joe the Plumber”**

For borrower “Joe the Plumber”, he and his banker should consider two simple stress tests for Joe’s business.

**Commercial Borrower Stress Test One:**

In a base line scenario, project Joe’s finances if he is injured or ill and can’t work. His business receipts shrink by 100%.

**Commercial Borrower Stress Test Two:**

In a more adverse scenario, project Joe’s business’ finances 30 days after Joe’s death.

Joe’s banker may have perfected the lien, have a liability policy in place and solid collateral. But, the loan is in jeopardy if the primary source of repayment – Joe – has not taken steps to protect his loan repayment during a disability and/or repay his loan if he dies. In Joe’s small business, if Joe can’t work –the business ceases to operate. And, unlike the government’s stress test scenarios, which center around an economy in recession, Joe’s economic world doesn’t simply shrink - it collapses.

**Retail Borrowers: “Bill and Jane”**

The same stress tests can apply to paycheck earners Bill and Jane:

**Retail Borrower Stress Test One:**

In a baseline scenario, project Bill and Jane’s finances if either Bill or Jane’s income is lost or reduced because of an illness or injury.

In today’s world, Bill and Jane often combine their incomes to qualify for a retail loan. In a perfect world, Bill and Jane would have 3 to 6 months of expenses set aside in savings for emergencies, like a short-term disability. But in the real world,

their savings balance is often meager or non-existent and the loan may be in jeopardy – along with Bill and Jane’s credit ratings.

**Retail Borrower Stress Test Two:**

In this scenario, have Bill and Jane consider the financial future 30 days after one of them suffers an untimely death. If Bill or Jane die and have not addressed loan repayment in their estate planning, the prospects for the survivor and the bank could be grim.

These new stress tests could be introduced to Joe, Bill and Jane by well structured questions designed to promote discussion concerning the “what if” scenarios of a disability or premature death. For example:

- What would you say is your most valuable financial asset?
- How much would you say your credit rating is worth?
- What are your feelings about leaving your survivors debt free?
- What plans have you made to repay this loan if you were to become disabled? Pass away?

The new stress tests and above questions are aimed at assisting the borrower in reaching an informed decision regarding the purchase of additional protection (life and disability protection). If it makes sense to purchase additional protection, debt cancellation is a possible solution for Joe, Bill and Jane.

In today’s economy - to better manage risk for the bank – debt cancellation should be considered as important as perfecting the lien, having a liability policy in place and holding solid collateral.

The new stress tests may help promote a win/win situation for the bank and the borrower. The tests give the borrower the chance to consider his or her current protection assets in light of the new loan and the added financial risk it may represent. If a disability or premature death occurs, the tests give commercial and retail borrowers the opportunity to consider protecting their businesses, families and credit ratings while the bank continues to build upon a history of relationship finance and personal service. ■

<sup>1</sup> Information obtained from a press release and answers provided by the Federal Reserve, Federal Deposit Insurance Corp., Office of the Comptroller of the Currency and Office of Thrift Supervision to frequently asked questions about the government’s Supervisory Capital Assessment Program. <http://www.fdic.gov/news/news/press/2009/pr09025a.pdf>

<sup>2</sup> Ibid.

For assistance in establishing the new stress tests and for additional “what if” questions, contact your Representatives, Scott Sexson (303-290-8901, email [ssexson@cso.com](mailto:ssexson@cso.com)), or Dave Ramos (719-250-0283, email [dramos@cso.com](mailto:dramos@cso.com)). CSO is one of the nation’s best service organizations with over 75 years in the debt protection business. Through a network of home office sales and training professionals and independent agents in more than 40 states, CSO markets credit related protection products and services to financial institutions and other lenders.

# Overcoming the Challenges

## of Implementing Reg E "Opt-in" Requirements

**B**y now, most bankers are aware of the final ruling on Reg E, approved by the Federal Reserve Board in November 2009. It prohibits banks from charging customers

fees for paying overdrafts on ATM withdrawals and one-time debit card transactions, unless the customer "opts in" to the service. The much anticipated regulation gained notoriety in 2009 as some financial institutions were criticized by regulators and consumer groups for creating consumer hardships with non-disclosed overdraft programs and excessive fees.

According to Fed Chairman Ben Bernanke, this change to Reg E "represents an important step forward in consumer protection...giving both new and existing account holders the opportunity to make informed decisions about whether to sign up for overdraft services."

With final approval in place, banks are required to educate their customers that these electronic transactions will be declined after August 15, 2010, unless the account holder has opted in for overdraft services for such transactions. In addition to the opt-in requirement, banks must provide their customers with an explanation of how their overdraft program works and the fees associated with its use.

### Does your bank have the procedures and materials in place to meet this deadline?

This timeframe provides a critical window of opportunity for banks to inform their customers about the changing regulatory environment and give them a chance to make an important decision about how to handle their

financial transactions going forward.

The tools you need include:

- correspondence explaining opt-in requirement to customers;
- a discretionary overdraft privilege policy;
- educational materials to display in bank facilities and use in customer mailings;
- opt-in confirmation documentation; and
- a business partner with compliance expertise to assist with implementing these strategies.

Customers may opt in verbally; electronically; in writing, using a model consent form; or in person. Once you have that authorization, you must confirm consent with a written notification.

And while there are still details being finalized regarding the regulatory procedures, it is important that you take steps to use materials that are in line with what Regulators have in mind – shortcuts could put you at risk of not being in compliance down the road.

### Is your staff up to speed with their role in educating customers?

In today's challenging environment, this is just one more example of how the profitability and success of a bank is due, in large part, to the expertise and skill of its employees. How your staff handles this situation can be the dif-

■ **Challenges** | continued on page 16

## FEATURE ARTICLE

**JOHN M. FLOYD**  
Chairman/CEO  
John M. Floyd & Associates

"Putting the proper training in place and acquiring the materials to inform your customers about changing regulations will give your bank a competitive advantage and improve its performance in 2010."

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**CHALLENGES** – continued

ference between keeping a satisfied, well-served customer who continues to see the value in your services and losing business because a customer has a purchase denied when not fully aware of the opt-in requirement. Plus, a knowledgeable staff can help to ensure that your bank is compliant and able to avoid increased regulatory scrutiny.

With the deadline fast approaching, it is imperative to act now. If your bank has an established overdraft service program in place – or if you charge any type of fee when honoring an ATM or POS transaction that causes an insufficient funds situation – you must follow these new regulations to be compliant. Putting the proper training in place and acquiring the materials to inform your customers about changing regulations will give your bank a competitive advantage and improve its performance in 2010. ■

John M. Floyd & Associates (JMFA), an Affiliate Business Partner of Colorado Bankers Association is a profitability and performance improvement consulting firm, serving more than 2,000 financial institutions in all 50 states and Central America. To learn more about JMFA, please contact Jared Cahill, JMFA national director of alliances at Jared.Cahill@jmfa.com or call him at (877) 510-5603.



## Did you know?

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# Community and Economic Development Partnership

JOE ROWAN, EXECUTIVE DIRECTOR, FUNDING PARTNERS, FORT COLLINS, CO

Meeting the credit needs of businesses, individuals and the public sector across our state is an invigorating process and one regulated institutions are particularly adept at tackling. Doing so in ways that deliver tangible benefit for each party and the community at large is heavily ingrained in most every banking transaction. However, occasionally, it does become a matter of minimizing pain. Recent history notwithstanding, the application of solid underwriting and portfolio management standards has engendered a strong banking ethic within our state that continues to fuel a relatively stable and vibrant statewide economy.

As we emerge from recession, the greater challenge to the industry might be categorized under two themes: How will the industry develop an effective campaign to fend off political accusation and public distrust that might otherwise impede a financial recovery? Are banks ideally positioned to expand the marketplace for financial services to support a broader economic base?

Known to some, but overlooked by many, Community Development Financial Institutions (CDFIs) represent an effective vehicle through which both challenges might be addressed.

CDFIs, in general, are unregulated non-profit organizations certified by the U.S. Treasury as a means to expand access to capital and credit to populations and geographic markets underserved by the mainstream financial services industry. These organizations develop and deliver products and services that seek to fill market needs while complimenting the offerings of regulated institutions. For instance, CDFIs are able to operate effectively at smaller scale to establish viability of products or services at larger scale or in conjunction with products offered through a bank partner.

A CDFI may be set up as a community development bank or credit union, a revolving loan fund, or a venture capital pool, though all are market-driven, locally controlled, private-sector organizations. Customers may include consumers, businesses, other non-profit entities, public authorities, or any combination of each. Whether set up as a non-profit or for-profit entity, a CDFI must primarily serve low and moderate income populations or communities.

As the vast majority of CDFIs hold capital of less than \$50 million, there is little capacity for such organizations to compete directly with banks. Rather, CDFIs are compelled to devote a

substantial portion of their services towards capacity building and technical assistance to the individuals and communities they serve. The key phrase is 'creating more bankable customers'.

So what role might CDFIs play in achieving the objectives of the banking industry here in Colorado? For starters, these organizations are natural allies in dispelling rhetoric and promoting greater appreciation for the importance of a sound political environment within which banks operate. CDFIs recognize that market dynamics require a healthy respect for Mr. Darwin's theories, coupled with robust application of existing regulation, competent oversight and the freedom to exploit opportunity. In supporting the efforts of CDFIs, banks are able to tap into markets that have not yet reached maturity or to provide a necessary source of capital that would allow bank financing to proceed.

Here in Colorado, several CDFIs are delivering tangible benefit to the banking industry through micro-finance, small business lending, housing development and home purchase finance; all targeting low and moderate-income populations. As customers are introduced to the discipline of managing credit and building wealth, they are encouraged to 'graduate' into the mainstream, allowing CDFI capital to go back to work for the next client.

To support this activity, CDFIs derive capital through multiple sources, most significantly banks, though also includes local and federal government, foundations, corporations and other socially-motivated investors. Through a vehicle known as Equity Equivalent Investment (EQ2), banks are able to inject long-term capital that is carried on its own books as a community reinvestment-eligible asset. These vehicles typically provide a fixed return and allow the bank to identify specific geographic markets and uses that are consistent with the bank's business objectives.

As the CDFI deploys invested capital, the bank is relieved of direct credit risk associated with the underlying borrower, relying instead upon the safety and soundness of the CDFI. With strong track records and highly-skilled management, the CDFI industry in Colorado is well positioned to re-establish a responsible and responsive financial services continuum across our state. We recognize the value proposition inherent to a vibrant economy for all Coloradans and the critical role of a strong banking sector. ■

# The BancInsure Helpline

# Question of the Month

Each month, the BancInsure Helpline delivers a new Question and Case Digest to foster proactive thinking about the human resource issues you face as an employer, saving you time and money...helping to keep you focused on what truly matters to your bank.

For BancInsure's Extended Professional Liability insurance policyholders already enrolled in the Helpline, you can view this month's Question and Case Digest as well as ask your bank's specific human resource and employment law questions directly to the HELPLINE attorneys through the BancInsure Helpline website – [www.hrhelpline.com/bancinsure](http://www.hrhelpline.com/bancinsure). If you've forgotten your access codes please contact the HELPLINE at toll-free 1-877-568-6655.

For members who would like more information on the valuable BancInsure Helpline and to also find this month's Question and Case Digest, please visit [www.hrhelpline.com/bancinsure/overview](http://www.hrhelpline.com/bancinsure/overview).

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**Question:**

We have an employee who has a doctor's note which is asking us to buy an ergonomic chair because he has back issues. Is this something we are required to do? And if so, is the type of chair up to our discretion as long as it's ergonomic as the doctor requested?

**Answer:**

Generally employers are required to provide a safe and healthful work environment under OSHA, including an appropriate chair for employees who do their work seated. This does not mean that the employer has to buy the most expensive chair around.

Rather, a chair that is well-designed and appropriately adjusted, even if moderately or even inexpensively priced, will still fit the bill of contributing to a safe and productive workstation.

According to OSHA, a "good chair provides necessary support to the back, legs, buttocks, and arms, while reducing exposures to awkward postures, contact stress, and forceful exertions." For more information, please see [http://www.osha.gov/SLTC/etools/computerworkstations/components\\_chair.html](http://www.osha.gov/SLTC/etools/computerworkstations/components_chair.html). Of course, if an employee is disabled and needs accommodation in the form of a more ergonomically sound chair than what you currently provide, you may need to change (or upgrade) the chair, or perhaps look into less expensive options such as supportive pillows, cushions, etc., if doing so is reasonable.

Denying an accommodation because the expense of doing so is not per se, in the budget may create exposure to a potential failure-to-accommodate claim under discrimination laws if the employee is disabled and the employer is unable to prove that an accommodation would cause it to suffer "significant difficulty or expense." Remember that a reasonable accommodation for purposes of the ADA is not necessarily one the employee wants (i.e., new chair) if there is another, less expensive option (i.e., cushions, etc.) available that achieves the same result. We encourage you to engage the employee in an interactive discussion to explore these options. For more information, please see <http://www.eeoc.gov/facts/accommodation.html>. ■

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