
Rules of Department of Economic Development

Division 140—Division of Finance

Chapter 6—Interpretive Rulings

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**Title 4—DEPARTMENT OF
ECONOMIC DEVELOPMENT**
Division 140—Division of Finance
Chapter 6—Interpretive Rulings

4 CSR 140-6.010 Late Charges
(Rescinded November 12, 1987)

4 CSR 140-6.020 Multiple Loans
(Rescinded November 12, 1987)

4 CSR 140-6.025 Variable Rate Credit

PURPOSE: Section 408.450, RSMo provides for variable rate consumer credit. Open-end variable rate accounts may vary rates monthly and must vary at least quarterly while closed-end variable rate accounts may vary rates quarterly and must vary at least annually. The maximum rate permitted is the lesser of twenty-four percent or two times the rate established at the previous auction of twenty-six week treasury bills. All of this leaves the question of what auction date is to apply to a given credit transaction since the auctions are weekly. Further, there remains a question concerning when fluctuations will take place. This rule establishes the guidelines the Division of Finance will follow in enforcing the variable rate provisions of section 408.450, RSMo.

(1) The Division of Finance will consider a variable rate credit transaction in compliance if it bears a rate up to twenty-four percent (24%) which does not exceed two (2) times the rate established by the treasury bill auction immediately preceding the beginning of the calendar quarter (January 1 through March 31, April 1 through June 30, July 1 through September 30, October 1 through December 31) or, with open-end credit, the calendar month, (January 1 through January 31, February 1 through February 28(29) and the like); unless the auction occurs on the last day of the period in which case the preceding auction sets the rate, or the rate is published in the *Wall Street Journal*. All these accounts must be adjusted on the first day of the new calendar period regardless of when the credit was extended.

(A) For example, assume the last auction during the first quarter of 19XX established the treasury bill rate to be nine percent (9%). Therefore, the maximum rate for a closed-end variable rate loan during the second quarter of 19XX would be two (2) times nine percent (9%), or eighteen percent (18%) whether the credit was established on the first or last day of that

second quarter. Likewise, assuming a quarterly fluctuation was agreed to, all variable rate closed-end credit extended during the second quarter would adjust rates on the first day of the third quarter of 19XX.

(B) The same approach would be followed for variable rate open-end contracts except that the rate may change as often as monthly and so the key auction might occur three (3) times as often.

(2) As an alternative, variable rate accounts may be tied to the rate established by the auction held immediately prior to the extension of credit. If this approach is followed, the rate would fluctuate based on a month, quarter or whatever, calculated as actual days, that is thirty (30) days for a month, ninety-one (91) days for a quarter, one hundred eighty-two (182) days for a half year and three hundred sixty-five (365) days for a year. This could result in fifty-two (52) different variable rates in effect at once and there could be adjustments every day. For example, the treasury bill rate on Friday, January 18, 19XX set the rate at nine and two-tenths percent (9.2%). The rate for all variable rate credit extended during the week of January 21, 19XX would be two (2) times that or eighteen and four-tenths percent (18.4%). If this contract, entered on January 23, calls for a quarterly fluctuation, the adjustment would be in ninety-one (91) days, on April 24.

(3) While either of these methods is available and a lender may use both, a given contract may not be subject to both. The approach to establishing and fluctuating the rate must be set at the beginning of the contract and maintained throughout.

(4) Fluctuations in rate are effective on the first day of each designated period.

*Auth: section 408.450, RSMo (1986).
Emergency rule filed July 12, 1984,
effective Aug. 13, 1984, expired Oct. 13,
1984. Original rule filed July 12, 1984,
effective Nov. 15, 1984.*

**Original authority 1984.*

4 CSR 140-6.030 Federal Usury Preemption

*Emergency rule filed Jan. 8, 1980, effective Jan. 18, 1980, expired May 9, 1980.
Emergency amendment filed Jan. 29, 1980, effective Feb. 8, 1980, expired May 9, 1980.*

4 CSR 140-6.031 Industrial Revenue Bonds

PURPOSE: The increasing use of revenue bonds as a vehicle for financing construction of business and industrial plants suggests a need for a policy statement by this office respecting the application of the loan limit statute to investments. Bonds are not backed by the taxing authority of any political subdivision and are payable only out of revenues derived from the completed project. Banks should consider these factors when assisting in financing.

(1) The purchase of industrial revenue bonds, which are generally of the kinds described in section 100.100 or 349.055, RSMo shall be considered an extension of credit subject to the loan limits of section 362.170, RSMo.

(2) The amounts invested in industrial revenue bonds shall be treated as extensions of credit to the beneficiary of the project whose payments provide the funds to retire the bonds. The bank shall combine the amount invested in revenue bonds with amounts loaned directly to the respective beneficiaries for purposes of section 362.170, RSMo.

*Auth: sections 362.105 and 362.170, RSMo (1986). *Original rule filed July 15, 1981, effective Oct. 25, 1981.*

**Original authority: 362.105, RSMo (1939), amended 1949, 1963, 1965, 1967, 1977, 1983, 1986; and 362.170, RSMo (1939), amended 1941, 1943, 1945, 1963, 1967, 1977, 1981, 1983, 1985.*

4 CSR 140-6.040 Retail Repurchase Agreements (Retail Repos)

PURPOSE: Because of the competition with the money market funds and other financial institutions, many state-chartered banks are aggressively marketing retail repos. The legal and practical problems of marketing retail repos make it absolutely essential that the bank obtain sound legal and financial advice before entering this program. This rule provides a very general guide to the legal pitfalls which await the bank entering the retail repo market without an understanding of the underlying transaction.



(1) Introduction. The eighty-nine (89)-day repurchase agreement, referred to as a retail repo, is a relatively new instrument, but it is used today by a substantial number of banks and is gaining in popularity as a result of the intense competition among the various financial institutions for the depositors' funds. It was created in August of 1973 as a result, ironically, of attempts by the federal regulatory agencies to curb the use of repurchase agreements which the agencies feared would become devices for evasion of limits on interest in Regulation Q. Prior to August 1979, repurchase agreements were exempt from Regulation Q because they were considered to be transactions in securities rather than deposits. In that month, however, the agencies limited the exemption, where the amount involved was less than one hundred thousand dollars (\$100,000), so that it now applies only to an evidence of indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by the United States or any agencies that the bank is obligated to repurchase, and is "in denominations of less than \$100,000, matures in less than ninety (90) days and cannot lie automatically renewed or extended." (12 CFR Section 329.10(b)(2))

(2) Power to Issue. State-chartered banks are authorized to engage in the retail repo market by section 362.105, RSMo. The first paragraph of that section authorizes every bank and trust company to conduct the business of "buying, investing in, selling and discounting negotiable and nonnegotiable paper of all kinds." Furthermore, section 362.170, RSMo specifically exempts from the legal loan limits evidences of debt of the United States and evidences of debt as to which the United States has "guaranteed or contracted to provide funds to pay both principal and interest." Banks can legally invest in government obligations without limitation and the power to buy in this context carries with it the power to sell.

(3) Areas of Concern.

(A) Banks which are marketing retail repos or which are considering retail repos are warned that the law governing these obligations is somewhat uncertain and nowhere is this more true than in the area of securities laws. Accordingly, it would be imprudent for banks to begin the marketing of retail repos without obtaining sound advice from legal counsel or a correspondent bank or other consultant knowledgeable in the field.

(B) Perhaps the most important thing to keep in mind about retail repos is that these instruments constitute securities under almost any definition of that term. While

bank-issued securities are exempt from the filing requirements of most securities laws, they are not exempt from the fraud provisions of those laws. The repo is an obligation of the bank and because it is a security the bank should disclose all facts which are material to a potential buyer's decision to invest or not invest. The bank should disclose that the obligation is not a deposit and, therefore, is not insured by the Federal Deposit Insurance Corporation. In addition, since the repos will be redeemed by the bank out of general funds, the principal security of the investor beyond the capital of the bank is the underlying government security. When the market value of the underlying government security is less than the aggregate amount owed by the bank pursuant to all repos matched to the underlying government security, investors should be advised that they will be unsecured creditors to the extent of their *pro rata* share of the difference. The bank should also disclose to investors their creditor status in the event of involuntary liquidation proceedings, which may take the form of straight receivership liquidations or so-called purchase and assumption liquidation proceedings. Any other facts relevant to the bank's ability to repay or the safety and security of the collateral should also be disclosed.

(C) The bank should arrange for a third party such as a correspondent bank or a Federal Reserve Bank to act as custodian or trustee of the underlying government securities. There are two (2) reasons for this procedure. First, if the bank continues to hold the underlying government securities, there has been no transfer of the government obligations and the repo will probably not be exempt from Regulation Q. In addition, if the bank continues to hold the securities, the security agreement protecting the customer has not been perfected, and it will be necessary to disclose to the customer that if s/he invests it in the repo, s/he will become an unsecured creditor of the bank.

(D) A bank is also well advised to apply some asset and liability management principles to the retail repo program to avoid interest rate and maturity gaps. If the bank purchases securities which have longer maturities than the repos themselves, rising interest rates may result in the bank paying more for its money than it is earning on the securities in which the money is invested. In addition, the liquidation value of government securities may drop during periods of rising interest rates and a bank may be unable to redeem a retail repo using only the proceeds from the sale of the security.

*Auth: sections 361.105, RSMo (1986), 362.105, RSMo (Cum. Supp. 1991) and 362.170, RSMo (Cum. Supp. 1989).** Original rule filed July 15, 1981, effective Nov. 15, 1981. Amended: Filed Aug. 7, 1992, effective Feb. 26, 1993.

**Original authority: 361.105, RSMo (1967); 362.105, RSMo (1939), amended 1949, 1963, 1965, 1967, 1977, 1983, 1986, 1990, 1991; and 362.170, RSMo (1939), amended 1941, 1943, 1945, 1959, 1963, 1967, 1977, 1981, 1983, 1985, 1989.*

4 CSR 140-6.050 Contingent Additional Interest or Stock Purchase Warrants

PURPOSE: The legal separation of deposit taking from investment banking prevents banks from investing in the stock of other corporations. It has also raised a question whether banks can contract to receive additional interest or stock purchase warrants from a borrower contingent upon the success of the borrower's business. This rule authorizes contract provisions to receive additional interest or stock purchase warrants from the borrower contingent upon the success of the borrower's business. Further, it permits a new business to negotiate a loan agreement with a commercial bank which may substantially reduce interest expense in the early years until a date when the business is more established.

(1) A bank may contract to receive additional interest on any loan for business purposes contingent only upon the profitability and successful operation of the business receiving the proceeds of the loan. In no event shall the repayment of principal be subject to any contingency.

(2) A bank may contract to receive stock purchase warrants in lieu of part of the interest on any loan. The bank, however, may not use these warrants to purchase the stock of any private corporation.

*Auth: sections 361.105 and 362.105.3., RSMo (1986).** Original rule filed June 14, 1982, effective Sept. 11, 1982.

**Original authority: 361.105 RSMo (1967); and 362.105.3., RSMo (1939), amended 1949, 1963, 1965, 1967, 1977, 1983, 1986.*

4 CSR 140-6.055 Bank Investment in Mutual Funds

PURPOSE: This rule announces a change in division policy concerning mutual funds. Since 1976, this office has held that banks, which are prohibited by law from investing in equity securities, may not invest in mutual funds. A change in that policy is justified by events since that time. The modification of Regulation Q has increased bank dependence upon rate sensitive liabilities necessitating investments which increase liquidity in the bank's asset portfolio without jeopardizing the diversification of risk and return on investments which would enable banks to compete with unregulated financial intermediaries. Investor demand has led to the establishment of investment companies investing entirely in bank-eligible securities, such as United States Government and municipal obligations. Finally, the comptroller of the currency has authorized national banks to invest in money market mutual funds and certain privately-sponsored funds, placing state-chartered banks at a competitive disadvantage. This ruling authorizes state-chartered banks to make the same investments. Since this rule is issued under the so-called "wild card" provisions of section 362.105.3., RSMo, the powers authorized in this rule cannot be significantly more liberal than those granted to national banks.

(1) A bank subject to the limitations set forth in this rule may invest in the shares of mutual funds which have been registered with the Securities and Exchange Commission; provided, those investments have been approved by the bank's board of directors and approval is noted in the minutes of the board's meetings.

(2) A bank may invest only in the shares of a company or fund (the fund) whose portfolio consists of assets which the bank could purchase directly. The bank's investment in shares of any such funds shall not exceed the amount which could be loaned to one (1) borrower under section 362.170, RSMo.

(3) Banks, at all times, shall maintain sufficient records to enable state and federal regulatory authorities to make a determination of the quality and carrying value of this investment. The regulatory reporting of holdings in funds must be consistent with standards for marketable equity securities as established by the federal Financial Institutions Examination Council Instructions for

Filing Consolidated Reports of Condition and Income.

*Auth sections 361.105, 362.105 and 362.106, RSMo (1986). *Original rule filed June 12, 1984, effective Nov. 15, 1984. Amended: Filed Jan. 5, 1987, effective April 1, 1987.*

**Original authority: 361.105, RSMo (1967); 362.105, RSMo (1939), amended 1949, 1963, 1965, 1967, 1977, 1983, 1986; and 362.106, RSMo (1981), amended 1985.*

4 CSR 140-6.056 Tax Preparation Services

PURPOSE: The comptroller of the currency has authorized national banks to engage in tax preparation activities. Absent similar powers, state-chartered banks are at a competitive disadvantage. This rule authorizes state-chartered banks to engage in the same activities. Since this rule is issued under the so-called "wild card" provisions of section 362.105.3., RSMo, the powers authorized in this rule cannot be significantly more liberal than those granted to national banks.

State-chartered banks, either directly or through a subsidiary, may provide individuals, businesses and nonprofit organizations tax preparation services.

*Auth: sections 361.105 and 362.105.3., RSMo (1986). *Original rule filed Jan. 5, 1987, effective April 1, 1987.*

**Original authority: 361.105, RSMo (1967); and 362.105.3., RSMo (1939), amended 1949, 1963, 1965, 1967, 1977, 1983, 1986.*

4 CSR 140-6.057 Check Guaranty Services

PURPOSE: The comptroller of the currency has authorized national banks to engage in check guaranty services for their own customers. To the extent the state-chartered banks do not have the same power, they are at a competitive disadvantage. These services, whether offered to the bank's customers or to others, appear to be among the incidental powers granted to banks. This rule authorizes state-chartered banks to engage in check guaranty services.

State-chartered banks, directly or through a subsidiary, may authorize a subscribing merchant to accept personal checks tendered by the merchant's customers in payment for goods and services, and purchase from the merchant validly authorized checks that are subsequently dishonored.

*Auth: sections 361.105, 362.105.3. and 11., RSMo (1986). *Original rule filed Jan. 5, 1987, effective April 1, 1987.*

**Original authority: 361.105, RSMo (1967); and 362.105.3. and 362.105.11., RSMo (1939), amended 1949, 1963, 1965, 1967, 1977, 1983, 1986.*

4 CSR 140-6.058 Collection Agencies

PURPOSE: The comptroller of the currency has authorized national banks to operate collection agencies. To the extent that state-chartered banks do not have the same power, they operate at a competitive disadvantage. In addition, these powers appear to be included in the express and incidental powers granted by law to state-chartered banks. This rule authorizes state-chartered banks to engage in collection agency activity.

State-chartered banks, either directly or through a subsidiary, may collect overdue accounts receivable, either retail or commercial, provided the collection agency does not obtain the names of customers of competing collection agencies from an affiliated depository institution that maintains accounts for those agencies.

*Auth: sections 361.105 and 362.105.3., RSMo (1986). *Original rule filed Jan. 5, 1987, effective April 1, 1987.*

**Original authority: 361.105, RSMo (1967); and 362.105.3., RSMo (1939), amended 1949, 1963, 1965, 1967, 1977, 1983, 1986.*

4 CSR 140-6.059 Credit Bureaus

PURPOSE: The comptroller of the currency has authorized national banks to operate credit bureaus. To the extent that state-chartered banks are not permitted to engage in the same activity, they are at a competitive disadvantage. This rule authorizes state-chartered banks to operate credit bureaus.



Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

State-chartered banks, either directly or through a subsidiary, may maintain files on the past credit history of consumers and provide that information to third parties under circumstances permitted by the Fair Credit Reporting Act (15 USC 1681b).

*Auth: sections 361.105 and 362.105.3., RSMo (1986). * Original rule filed Jan. 5, 1987, effective April 1, 1987.*

**Original authority: 361.105, RSMo (1967); and 362.105.3., RSMo (1939), amended 1949, 1963, 1965, 1967, 1977, 1983, 1986.*

4 CSR 140-6.060 Purchase of Bank Employee's Residence

PURPOSE: A major obstacle to the relocation of bank employees is the difficulty in disposing of their residences which increases in direct proportion to the prevailing interest rates. This rule sets forth the position of the Division of Finance that a bank may legally purchase an employee's residence to facilitate a transfer.

(1) A bank or trust company, to facilitate the transfer of an employee, may purchase the employee's residence. Any residence so acquired should be sold as soon after that as possible and, in no event, no later than six (6) years from the date of purchase.

(2) Any residence purchased shall be entered on the bank's books as Other Real Estate at a value as would be permissible under 4 CSR 140-2.070 if it were formerly used for bank premises.

*Auth: sections 361.105, 362.105 and 362.165, RSMo (1986). * Original rule filed Dec. 10, 1981, effective April 1, 1982.*

**Original authority: 361.105, RSMo (1967); 362.105 RSMo (1939), amended 1949, 1963, 1965, 1967, 1977, 1983, 1986; and 362.165, RSMo (1939), amended 1967, 1983.*

4 CSR 140-6.063 Investment in Federal Agricultural Mortgage Corporation

PURPOSE: Congress recently established the Federal Agricultural Mortgage Corporation, "Farmer Mac," to establish a secondary market in farm real estate loans. The comptroller of the currency has authorized national banks to invest in the stock of this agency to the extent necessary to participate in the secondary market. State-chartered banks must have the same authority in order to compete on an equal basis.

(1) State-chartered banks and trust companies may invest in the stock of the Federal Agricultural Mortgage Corporation to the same extent as national banks in this state are permitted to do so by the comptroller of the currency.

*Auth: sections 361.105 and 362.105, RSMo (1986). * Original rule filed May 17, 1988, effective Aug. 26, 1988.*

**Original authority: 361.105, RSMo (1967); and 362.105 RSMo (1939), amended 1949, 1963, 1965, 1967, 1977, 1983, 1986.*

4 CSR 140-6.070 Customer Financial Services

PURPOSE: Banks have recently faced competitive pressures from money market funds offering services similar to banking services. In response, a new service has been designed by banks; the sweep account which sweeps or pours over into a money market fund. The new service is consistent with the purpose for which state banks are chartered, is offered by national banks and, in the interest of banking competition, should be made available to state banks. This rule provides guidelines for this financial service.

(1) In connection with any customer account, a bank may enter this contract by which the bank agrees that periodically it will review the account and transfer all money in excess of a set minimum balance to repurchase agreements or money market funds. Before entering into this contract with respect to any money market fund, the bank should determine that the fund is administered by a financially responsible concern and in a safe and sound manner.

(2) All transfers to and withdrawals from the money market fund shall be undertaken only upon instructions contained in a written and

executed agreement entered into with the customer at the time the account is established or as subsequently amended.

*Auth: sections 361.105, RSMo (1986) 362.105.3., RSMo (Cum. Supp. 1991) and 362.106, RSMo (Cum. Supp. 1990). * Original rule filed June 14, 1982, effective Sept. 11, 1982. Amended: Filed Aug. 7, 1992, effective Feb. 26, 1993.*

**Original authority: 361.105, RSMo (1967); 362.105.3., RSMo (1939), amended 1949, 1963, 1965, 1967, 1977, 1983, 1986, 1990, 1991; and 362.106, RSMo (1981), amended 1985, 1990.*

4 CSR 140-6.075 Loan Production Offices

PURPOSE: The comptroller of the currency, with a brief interruption, has authorized national banks to maintain loan production offices since 1966. This rule extends that power to state-chartered banks.

(1) Any bank, whether organized or established under the laws of this state or of another state, or under the laws of the United States, subject to the provisions of this rule, may establish one (1) or more loan production offices in Missouri.

(2) Loans which are originated at a loan production office must be approved or denied at the main office or branch office of the lending bank and the proceeds of these loans must be disbursed from the main office or a branch office of the lending bank; disbursement may not be effected by or through the loan production office. No payments may be accepted at a loan production office.

(3) It shall be a condition of the right to establish and maintain a loan production office in Missouri that each bank which does so, by January 1 of each year, must report to the commissioner of finance stating the location of the loan production office maintained, the volume of income generated by each loan production office, the number of officers and other personnel employed at each location, as well as the address of the office at which loans are approved or denied and disbursement made. In addition, all loan production offices presently operating in Missouri shall file a report containing this information within sixty (60) days (January 14, 1985) of the effective date of this rule (November 15, 1984). Reports shall be filed with the Commissioner of Finance, Division of Finance, P.O. Box 716, Jefferson City, MO 65102.

*Auth. sections 361.105, RSMo (1986) and 362.105, RSMo (Cum. Supp. 1991).**
Original rule filed June 12, 1984, effective Nov. 15, 1984. Amended: Filed Aug. 7, 1992, effective Feb. 26, 1993.

**Original authority: 361.105, RSMo (1967) and 362.105, RSMo (1939), amended 1949, 1963, 1965, 1967, 1977, 1983, 1986, 1990, 1991.*

4 CSR 140-6.080 Automated Teller Network Interchanges
(Rescinded February 26, 1993)

4 CSR 140-6.090 Securing Private Deposits

PURPOSE: This rule publicizes an interpretation of law which has long been followed by the Division of Finance. The statutes repeatedly authorize and direct banks to pledge securities to support public deposits. The lack of any such authorization or direction concerning private deposits is a strong indication that banks lack that power. It is noted that national banks are likewise prohibited from pledging securities to support the deposits of private individuals or enterprises.

(1) No bank may pledge assets to secure or collateralize deposits other than deposits of public moneys held by or for the benefit of a public officer or a political subdivision.

*Auth: sections 30.270, 110.060, 361.105, 362.170, 362.190 and 362.490, RSMo (1986).** *Original rule filed Aug. 18, 1987, effective Nov. 12, 1987.*

**Original authority: 30.270 (1939), amended 1945, 1957, 1959, 1965, 1969, 1973, 1975, 1979, 1983; 110.060, RSMo (1939), amended 1953; 361.105, RSMo (1967); 362.170, RSMo (1939), amended 1941, 1943, 1945, 1959, 1963, 1967, 1977, 1981, 1983, 1985; and 362.190 and 362.490, RSMo (1939).*