

IB45**Qualifications for Independent Person(s) Assuming Responsibility for Due Care of Directors' Examinations** [Section 11-103-502(3)(b), C.R.S.]

A. Qualifications

The following persons may qualify to be responsible for conducting a directors' examination of state-chartered banks:

1. A Certified Public Accountant(s) who holds an active certificate under the laws of this state, or who may practice in this state under a reciprocal agreement between Colorado and the holder's state of certification.
2. A qualified independent person(s) or firm whose credentials have been submitted to and approved by the Colorado State Banking Board to conduct such examinations. The Banking Board will take into consideration such things as past proven work of the person or firm, professional reputation, training and education, and capacity to perform the examination in a timely manner.
3. The Banking Board reserves the right to revoke any previously approved qualification for due cause.

B. Independence

A person who conducts or reviews and/or approves a directors' examination (person) of a state-chartered bank (institution) must be independent with respect to the institution in fact and appearance.

Independence will be considered impaired if, for example, during the period of the directors examination, or at the time of the issuing of the report, the person:

1. Had or was committed to acquire any direct or material indirect financial interest in the institution;
2. Was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the institution;
3. Had any joint closely-held business investment with the institution or any officer, director, or principal stockholder thereof that was material in relation to the net worth of either the institution or the person; or
4. Had any loan to or from the institution or any officer, director, or principal shareholder thereof other than loans of the following kinds made by a financial institution under normal lending procedures, terms and requirements:
 - a. Loans obtained by the person that are not material in relation to the net worth of the borrower;
 - b. Home mortgages; and
 - c. Other secured loans, except those secured solely by a guarantee of the person.

Independence will also be considered to be impaired if, during the period covered by the financial statements, during the period of the directors' examinations, or at the time of the issuing of the report, the person:

1. Was connected with the institution as a promoter, underwriter, voting trustee, director or officer, or in any capacity equivalent to that of a member of management or of an employee;
2. Was a trustee for any pension or profit sharing trust of the institution;
3. Received or had a commitment to receive other compensation from the institution or a third party, for services or products of others to be procured by the institution; or
4. Received or had a commitment from the institution to receive a contingent fee. For this purpose, a contingent fee means compensation for the performance of services payment of which, or the amount of which, is contingent upon the findings or results of such services.

Amended Effective March 1, 2004

Statutory reference amendment to conform Rule to recodified statutes; update terminology to conform to recodified statutes; formatting changes to comply with Colorado Secretary of State guidelines.

Amended Effective June 1, 1998

To permit a CPA who may practice in Colorado under a reciprocal agreement with another state to qualify to be responsible for conducting a directors' examination.