

Approved: January 26, 1994  
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Richard Bond at 9:07 a.m. on January 25, 1994 in Room 529-S of the Capitol.

All members were present.

Committee staff present: William Wolff, Legislative Research Department  
Fred Carman, Revisor of Statutes  
June Kossover, Committee Secretary

Conferees appearing before the committee: Tom Slattery, Associated General Contractors  
Kathleen Taylor, Kansas Bankers Association  
James Maag, Kansas Bankers Association  
Judy Stork, Kansas Banking Department

Others attending: See attached list

Senator Hensley made a motion to approve the minutes of the meeting of January 20 as submitted. Senator Steffes seconded the motion. The motion carried.

Tom Slattery, Associated General Contractors, appeared before the committee to request introduction of legislation to amend the workers compensation statutes to allow funds in the 70% claim account of workers compensation pools to be used to pay for excess specific and aggregate insurance if approved by the Insurance Commissioner. The bill would also amend the language in 44-591 to reflect that the board of trustees of a workers' compensation pool be selected according to the bylaws of the pool. (Attachment #1.) Senator Hensley made a motion, seconded by Senator Steffes, to introduce this legislation. The motion carried.

The hearing was opened on SB 505. Kathleen Taylor, Kansas Bankers Association, appeared before the committee to recommend passage of this bill, which would eliminate Subsection (d)(3) of 84-4-401, which is a duplication of language in KSA 84-4-401(c). (Attachment #2.) There being no questions and no further conferees, the hearing was closed. Senator Lee made a motion to pass SB 505 favorably and to place it on the Consent Calendar. Senator Petty seconded the motion. The motion carried.

The chairman opened the hearing on SB 508. James Maag, Kansas Bankers Association, testified in favor of passage of this legislation and explained that the bill would give the Bank Commissioner authority to review on an individual basis whether or not a state-chartered bank would be allowed to purchase and hold life insurance policies on executive officers and directors in connection with employee compensation and benefit plans. (Attachment #3.) In response to Senator Bond's request, Mr. Maag provided clarification of problems that small banks have experienced. Senator Bond also questioned the language on line 31, page 5. Senator Steffes questioned whether it would be possible for a bank to go too far; i.e., investing 100% of capital in one insurance company. Judy Stork of the State Banking Department, replied that the bill is viewed as "grandfather" legislation for banks that had already exceeded 15% of their capital.

Mr. Maag also requested an amendment to SB 508 to give state-chartered banks authority to invest in Community Development Corporations (CDC). The amendment would allow banks the ability to lend money to develop low and moderate income housing and minority business opportunities. Mr. Maag further explained that the amendment does not set limits on the percent of capital that could be invested. Senator Bond questioned whether the language could be written to mirror the OCC investment limitations.

Mr. Carman advised that the language of the bill would have to be modified to mirror OCC language.

There were no further questions and no other conferees; the hearing on SB 508 was closed. Senator Steffes made a motion, seconded by Senator Corbin, to amend SB 508 page 6, line 29, to read "...; underwritten by any one life insurance company." The motion carried.

Senator Praeger made a motion to amend SB 508 as proposed by Mr. Maag to allow state-chartered banks to make CDC loans. Senator Steffes seconded the motion. The motion carried.

Senator Steffes made a motion, seconded by Senator Petty, to conceptually amend SB 508 to mirror the tiered limits language of the OCC. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,  
Room 529-S Statehouse, at 9:07 a.m. on January 25, 1994.

Senator Corbin made a motion to pass **SB 508** favorably as amended. Senator Praeger seconded the motion. The motion carried. Senator Steffes will carry this bill.

The hearing was reopened on **SB 492**, which was originally heard in the meeting of January 19 and tabled pending clarification of language (see minutes of January 19, 1994). The language has been agreed upon between the Revisor and the Insurance Commissioner's staff and the amendment to the bill presented to the committee. (Attachment #4.) Senator Praeger made a motion to amend **SB 492** by amending the language on page 2, line 14, to read "...by electronically readable means." The motion was seconded by Senator Lawrence. The motion carried.

Senator Lawrence moved to recommend **SB 492** favorably as amended. Senator Praeger seconded the motion. The motion carried.

The committee adjourned at 9:38 a.m.

The next meeting is scheduled for January 26, 1994.

## GUEST LIST

**SENATE**

COMMITTEE: FINANCIAL INSTITUTIONS AND INSURANCE

DATE: 1-25-94

[illegible]



## Associated General Contractors of Kansas, Inc.

200 West 33rd • Topeka, Kansas 66611 • Telephone 913-266-4015 • Fax 913-266-2561

---

### OFFICERS

David Foreman  
*President*

Jerry Thompson  
*Vice President*

David Underwood  
*Treasurer*

Thomas E. Slattery  
*Executive Vice President*

January 21, 1994

Dear Senator Bond:

Several of the associations sponsoring self-insured work comp pools would like to have this amendment introduced. Let me know if I can provide further information.

Sincerely,

Thomas E. Slattery  
Executive Vice President

TES/sm

Senate Floor 1/25/94  
Attachment #1

---

### DIRECTORS

Bennie Crossland  
Steve Johnson  
Doyle Koehn  
Robert Miller

Gene Murray  
Frank Sauerwein  
Charles Schultz  
Bruce Senne

Carl Harris, Subcontractor  
Steve Morgan, Supplier  
National Director Charles E. Koehn, Sr.  
NAMC Member Starks Vincent



ti. Certificate of authority of such pool to do business in this state. Upon revoking any such certificate the commissioner shall communicate the fact to the attorney general, whose duty it shall be to commence and prosecute an action in the proper court to dissolve such pool or to enjoin the same from doing or transacting business in this state. The commissioner of insurance may call a hearing under K.S.A. 40-222b, and amendments thereto, and the provisions shall apply to group workers' compensation pools.

History: L. 1983, ch. 166, § 4; July 1.

**44-585.** Same; premiums; contributions; deposit of premiums; refunds. (a) Premium contributions to the pool shall be based upon appropriate manual classification and rates, plus or minus applicable experience credits or debits, and minus any advance discount approved by the trustees, not to exceed 15% of manual premium. The pool must use rules, classifications and rates as promulgated by the national council on compensation insurance and must report premium and loss data to a rating organization.

(b) At least 70% of the annual premium shall be placed into a designated depository for the sole purpose of paying claims. This shall be called the claims fund account. The remaining annual premium shall be placed into a designated depository for the payment of taxes, fees and administrative costs. This shall be called the administrative fund account.

(c) Any surplus moneys for a fund year in excess of the amount necessary to fulfill all obligations under the workmen's compensation act for that fund year may be declared to be refundable by the trustees not less than 12 months after the end of the fund year, upon the approval of the commissioner. Such approval can be obtained only upon satisfactory evidence that sufficient funds remain on deposit for the payment of all outstanding claims and expenses, including incurred but not reported claims. Any such refund shall be paid only to those employers who remained participants in the pool for an entire year. Payment of previously earned refunds shall not be contingent on continued membership in the pool.

History: L. 1983, ch. 166, § 5; July 1.

If so approved by the commissioner of insurance, the annual premium to be designated to such depository may be determined to be the net amount of premium after specific and aggregate excess insurance premium costs have been paid.

**44-586.** Same; premiums; use; investments. The trustees shall not utilize any of the moneys collected as premiums for any purpose unrelated to Kansas workers' compensation. Moneys not needed for current obligations may be invested by the trustees. Such investments shall be limited to bonds or other evidences of indebtedness issued, assumed or guaranteed by the United States of America, or by any agency or instrumentality thereof; in certificates of deposit in a federally insured bank; or in shares or savings deposits in a federally insured savings and loan association.

History: L. 1983, ch. 166, § 6; July 1.

**44-587.** Same; group-funded workers' compensation pools fee fund; expense of administration; assessments. The expense of the administration of the group-funded workers' compensation pools shall be financed in the following manner:

(a) There is hereby created in the state treasury a fund to be called the group-funded workers' compensation pools fee fund. All amounts which are required to be paid from the group compensation pools fee fund for the operating expenditures incident to the administration of the group-funded workers' compensation pools shall be paid from the group-funded workers' compensation pools fee fund. The commissioner of insurance shall be responsible for administering the group-funded workers' compensation pools fee fund and all payments from the fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner of insurance or a person or persons designated by the commissioner.

(b) The commissioner of insurance shall estimate as soon as practical after January 1 of each year the expenses necessary for the administration of the group-funded workers' compensation pools for the fiscal year beginning on July 1 thereafter. Not later than June 1 of each year, the commissioner of insurance shall notify all such group-funded workers' compensation pools of the amount of each assessment imposed under this subsection on such group-funded workers' compensation pools and the same shall be due and payable to the commissioner on the July 1 following.

(c) The commissioner of insurance shall remit all moneys received by or for such

F1 #1 1/25/94

1-2

commissioner under this section to the state treasurer. Upon receipt of any such remittance the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the group-funded workers' compensation pools fee fund.

History: L. 1983, ch. 166, § 7; July 1.

**44-588.** Same; premium tax; payment. In addition to the fees required to be paid in K.S.A. 44-587, and as a condition precedent to the continuation of the certificate of authority provided in this act, all group-funded workers' compensation funds shall pay a tax annually upon the annual Kansas gross premium based upon the manual rates in effect at the date of renewal pursuant to subsection (b) of K.S.A. 44-584 as filed by the national council of compensation insurance at the rate of 1% per annum applied to the collective payroll of the pool for the preceding calendar year. In the computation of the tax, all pools shall be entitled to deduct any annual Kansas gross premiums returned on account of cancellation or dividends returned to members of such pools or expenditures used for the purchase of specific and aggregate excess insurance, as provided in subsection (m) of K.S.A. 44-582.

History: L. 1983, ch. 166, § 8; July 1.

**44-589.** Same; assessments; subject to article 24 of chapter 40 of Kansas Statutes Annotated. (a) Each licensed pool shall be assessed annually as provided by K.S.A. 74-713, K.S.A. 44-566a, and amendments thereto, and K.S.A. 44-588.

(b) Each licensed pool shall be subject to the provisions of article 24 of chapter 40 of the Kansas Statutes Annotated.

History: L. 1983, ch. 166, § 9; July 1.

**44-590.** Same; new members; application; termination. (a) After the inception date of the group-funded workers' compensation pool, prospective new members of the pool shall submit an application for membership to the board of trustees or its administrator. The trustees may approve the application for membership pursuant to the bylaws of the pool. The application for membership and approval shall then be filed with the commissioner. Membership takes effect after approval.

(b) Individual members may elect to terminate their participation in a pool or be subject to cancellation by the pool pursuant

to the bylaws of the pool. On termination or cancellation of a member, the pool shall notify the commissioner within 10 days and shall maintain coverage of each cancelled or terminating member for 30 days after notice to the commissioner or until the commissioner gives notice that the cancelled or terminating member has procured workers' compensation and employer's liability insurance, whichever occurs first.

History: L. 1983, ch. 166, § 10; July 1.

**44-591.** Same; board of trustees; duties. To ensure the financial stability of the operations of each group-funded workers' compensation pool, the board of trustees of each pool is responsible for all operations of the pool. The board of trustees shall consist of not less than three nor more than 11 persons ~~whom a pool elects~~ for stated terms of office to direct the administration of a pool, and whose duties include approving applications by new members of the pool. The majority of the trustees must be members of the pool, but a trustee may not be an owner, officer or employee of any service agent or representative. All trustees must be residents of this state or officers of corporations authorized to do business in this state. The board of trustees of each fund shall take all necessary precautions to safeguard the assets of the fund, including all of the following:

(a) Designate an administrator to administer the financial affairs of the pool who shall furnish a fidelity bond to the pool in an amount sufficient to protect the pool against the misappropriation or misuse of any moneys or securities. The commissioner shall determine the amount of the bond and the administrator shall file evidence of the bond with the commissioner. The bond is one of the conditions required for approval of the establishment and continued operation of a pool.

(b) Retain control of all moneys collected or disbursed from the pool and segregate all moneys into a claims fund account and an administrative fund account. The amount allocated to the claims fund account shall be sufficient to cover payment of any aggregate loss fund as defined in the aggregate excess policy. Only disbursements that are credited toward the aggregate loss fund are made from the claims fund account. All administrative costs and other disburse-





The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

January 25, 1994

TO: Senate Committee on Financial Institutions and Insurance

FROM: Kathleen A. Taylor, Associate General Counsel  
Kansas Bankers Association

RE: **SB 505: Striking KSA 84-4-401(d) (3)**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the Committee on the matter of amending the Kansas Uniform Commercial Code.

As you will recall, the legislature in 1991, made major changes to the Uniform Commercial Code (UCC) which were a result of the recommendations of the Uniform Commissioners. Most of these changes appeared in Articles 3 and 4 of the UCC.

One of the uniform changes was made to KSA 84-4-401(c). The uniform language in this subsection codified the case law that had developed regarding a bank's liability for payment of a post-dated check.

Subsection (c) states that a bank is not liable for paying an otherwise properly payable check before the date of the check - unless the bank has received notice that the check is post-dated. Notice can be oral in which case it will be effective for 14 days, or the effectiveness can be extended for periods of 6 months upon a written confirmation from the customer.

The Kansas legislature had already amended the Kansas UCC in 1975 to address this very same issue, and they addressed it in the same manner. Subsection (d)(3) states that a bank will not be liable for paying an otherwise properly post-dated check before the date unless written notice was received by the bank.

While the provisions for the type of notice that is to be given is different in the two subsections, we believe that the uniform language should stand, as that appears to be the intent of the 1991 changes.

Therefore, we ask that you consider striking the duplicative language in subsection (d)(3) of 84-4-401 as suggested by **SB 505**.

*Senate File 1/25/94*  
*Attachment #2*





The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

January 25, 1994

TO: Senate Committee on Financial Institutions and Insurance  
RE: SB 508 - Life Insurance on Officers and Directors

Mr. Chairman and Members of the Committee:

During the 1993 session the Legislature passed SB 37 giving state-chartered banks additional investment authority. Specifically the bill allowed state banks to purchase and hold an interest in life insurance policies on the life of its executive officers and directors and to also purchase life insurance policies in connection with employee compensation and benefit plans.

It has been called to our attention that the language contained in SB 37 has proven to be unduly restrictive for the plans which had been structured by several community banks throughout the state. These plans were entered into in good faith in the belief they conformed with Kansas law and are vital to retaining good management in these institutions.

Several meetings have been held with the Bank Commissioner and his staff on this issue. Since each plan has certain unique characteristics it was the decision of the KBA State Affairs Committee that the best way to resolve the problem would be to simply give the Commissioner authority to review these plans on an individual basis. Thus K.S.A. 9-1101(25)(a)(i) and (25)(b)(v) are amended to give the Bank Commissioner such authority. We strongly urge the committee to give positive consideration to these amendments so community banks throughout Kansas can continue to offer these insurance packages in order to retain their key personnel.

In addition to the amendments suggested above, we are also requesting that SB 508 be amended to allow state-chartered banks to invest in community development corporations (CDC) and community development projects (CD project). This is an investment currently afforded to national banks and is one which will become increasingly important as new federal regulations relating to the Community Reinvestment Act (CRA) are put in place. A state bank's ability to make such an investment could be vital to economic improvements in their

Senate 4141  
1/25/94

Attachment #3

Office of Executive Vice President • 1500 Merchants National Building  
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444  
FAX (913) 232-3484

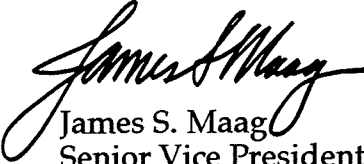




community and they should not be placed in a position of having fewer resources to assist economic growth than their national bank competitors.

Attached to this testimony are articles relating to CDCs and how effective they can be in developing low and moderate-income housing and minority business opportunities. We would also urge the committee to adopt the proposed amendments granting this investment authority for state-chartered banks.

Your favorable consideration of SB 508 with the proposed amendments would be greatly appreciated.

  
James S. Maag  
Senior Vice President

F141 1/25/94  
3-2

1 or no longer meets the definition of an executive officer;  
 2 (iv) the authority to hold life insurance on a director ceases when  
 3 that director is no longer a member of the board of directors;  
 4 (v) the bank's board of directors must approve and document the  
 5 purchase of any life insurance, including the reasonableness of such  
 6 purchase; and  
 7 (vi) except as part of a reasonable compensation or benefit plan,  
 8 a bank is not authorized to purchase life insurance as an estate  
 9 management device for the benefit of officers, directors or employees  
 10 who are also controlling shareholders of the bank.  
 11 (b) Life insurance purchased for the sole purpose of providing  
 12 deferred compensation and benefit plans are subject to the following  
 13 limitations:  
 14 (i) The bank may purchase individual or group policies for the  
 15 sole purpose of providing deferred compensation agreements entered  
 16 into with its officers and employees;  
 17 (ii) the bank may purchase policies on directors to fund a deferred  
 18 directors fees program;  
 19 (iii) the board of directors must approve and document such  
 20 deferred plans including the reasonableness of the plans;  
 21 (iv) the bank is not authorized to hold the policies unless spe-  
 22 cifically approved by the state banking board if no liability exists  
 23 under the deferred compensation plans;  
 24 (v) the cash surrender value of any life insurance policy purchased  
 25 for the sole purpose of providing deferred compensation and benefit  
 26 plans, underwritten by any one life insurance company, cannot ex-  
 27 ceed at any time, 15% of the bank's capital stock, surplus, undivided  
 28 profits, loan loss reserve, capital notes and debentures and reserve  
 29 for contingency;  
 30 (vi) the cash surrender value of life insurance policies purchased  
 31 for the sole purpose of providing deferred compensation and benefit  
 32 plans, in the aggregate from all companies, cannot at any time exceed  
 33 25% of the bank's capital stock, surplus, undivided profits, loan loss  
 34 reserve, capital notes and debentures and reserve for contingency,  
 35 unless the bank has obtained the prior approval of the state bank  
 36 commissioner; and  
 37 (vii) the present value of the projected cash flow from the policy  
 38 must not substantially exceed the present value of the projected cost  
 39 of the deferred compensation or benefit program liabilities; and  
 40 (26) to make loans to the bank's stockholders or the stockholders  
 41 he bank's controlling bank holding company on the security of  
 42 shares of the bank or shares of the bank's controlling bank holding  
 43 company, with the limitation that this may occur only if the bank

1 would have extended credit to such stockholder on exactly the same  
 2 terms without the shares pledged as collateral, and provided the  
 3 shares pledged are not a director's qualifying shares per K.S.A. 9-  
 4 1117, and amendments thereto.  
 5 Sec. 2. K.S.A. 1993 Supp. 9-1101 is hereby repealed.  
 6 Sec. 3. This act shall take effect and be in force from and after  
 7 its publication in the statute book.

(27) to make investments in and loans to community  
 development corporations (CDCs) and community development  
 projects (CD projects) as defined in K.S.A. 9-701 and amendments  
 thereto.

, unless the bank has obtained the prior approval of the state bank  
 commissioner;

F121  
1/25/94  
3-3

9-701        ss otherwise clearly indicated by the context, the following words when used in this act, for the purposes of this act, shall have the meanings respectively ascribed to them in this section:

(a) "Bank" means a state bank incorporated under the laws of Kansas.

(b) "Trust company" means a trust company incorporated under the laws of Kansas and which does not accept deposits.

(c) "Board" means the Kansas state banking board.

(d) "Commissioner" means the Kansas state bank commissioner.

(e) "Executive officer" means the chairperson of the board, the president, each vice president, the cashier, the secretary and the treasurer of a bank, unless such officer is excluded by resolution of the board of directors or by the bylaws of the bank or bank holding company from participation, other than in the capacity of a director, in major policymaking functions of the bank or bank holding company, and the officer does not actually participate in major policymaking functions of the bank or bank holding company.

(f) "Insured bank" means a state bank whose deposits are insured through the federal deposit insurance corporation or other governmental agency or by an insurer approved by the state commissioner of insurance for such purpose.

(g) "Item" means any check, note, order, or other instrument or memorandum providing for the payment of money, or upon which money may be collected.

(h) "Demand deposits" includes every deposit which is not a "time deposit," "savings deposit," or "negotiable order of withdrawal deposit," as defined in this section.

(i) "Time deposits" means "time certificates of deposit" and "time deposits, open account," as defined in this section.

(j) "Time certificate of deposit" means a deposit evidenced by a negotiable or nonnegotiable instrument which provides on its face that the amount of such deposit is payable, upon presentation and surrender of the instrument, to bearer or to any specified person or to such person's order:

(1) On a certain date, specified in the instrument, not less than seven days after the date of the deposit; or

(2) at the expiration of a certain specified time not less than seven days after the date of the instrument; or

(3) upon notice in writing which is actually required to be given not less than seven days before the date of repayment.

(k) "Time deposit, open account" means a deposit, other than a "time certificate of deposit," with respect to which there is in force a written contract with the depositor that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which shall be not less than seven days after the date of the deposit, or prior to the expiration of the period of notice which must be given by the depositor in writing not less than seven days in advance of withdrawal.

(l) "Savings deposit" means a deposit: (1) Which consists of funds deposited to the credit of or in which the entire beneficial interest is held by one or more individuals, or of a corporation, association or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal or other similar purposes and not operated for profit; or that consists of funds deposited to the credit of or in which the entire beneficial interest is held by the United States, any state of the United States or any county, municipality or political subdivision thereof, or that consists of funds deposited to the credit of, or in which any beneficial interest is held by a corporation, partnership, association or other organization not qualifying above; and (2) with respect to which the depositor is not required by the deposit contract but may at any time be required

F141 1/25/94  
3-4

by the bank to give notice in writing of an intended withdrawal not less than seven days before such withdrawal is made and which is not negotiable on a specified date or at the expiration of a specified time after the date of deposit.

(1) (m) "Public moneys" means all moneys coming into the custody of the United States government or any board, commission or agency thereof, and also shall mean all moneys coming into the custody of any officer of any municipal or quasi-municipal or public corporation, the state or any political subdivision thereof, pursuant to any provision of law authorizing any such official to collect or receive the same.

(n) "Municipal corporation" means any city incorporated under the laws of Kansas.

(o) "Quasi-municipal corporation" means any county, township, school district, drainage district, or any other governmental subdivision in the state of Kansas having authority to receive or hold moneys or funds.

(p) "Certificate of authority" means a statement signed and sealed by the commissioner evidencing the authority of a bank or trust company to transact a general business as such.

(q) "Transaction account" means a deposit or account on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar device for the purpose of making payments or transfers to third persons or others.

(r) "Nonpersonal time deposit" means a time deposit, including a savings deposit that is not a transaction account, representing funds in which any beneficial interest is held by a depositor which is not a natural person.

(s) "Negotiable order of withdrawal deposit" means a deposit on which interest is paid and which is subject to withdrawal by the owner by negotiable or transferable instruments for the purpose of making transfers to third parties, and which consists solely of funds in which the entire beneficial interest is held by one or more individuals, an organization which is operated primarily for religious, philanthropic, charitable, educational, fraternal or other similar purposes and which is not operated for profit, and with respect to deposits of public funds by an officer, employee or agent of the United States, any state, county, municipality or political subdivision thereof, the District of Columbia, the commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States or any political subdivision thereof.

(t) "Trust company business" means engaging in, or holding out to the public as willing to engage in, the business of acting as a fiduciary for hire, except that no accountant, attorney, credit union, insurance broker, insurance company, investment adviser, real estate broker or sales agent, savings and loan association, savings bank, securities broker or dealer, real estate title insurance company or real estate escrow company shall be deemed to be engaged in a trust company business with respect to fiduciary services customarily performed by them for compensation as a traditional incident to their regular business activities.

(u) "Community development corporation" (CDC) means a corporate entity established by one or more financial institutions or by financial institutions and other investors or members, and operating for the primary purpose of housing development, economic growth and revitalization, small and minority business creation, and other community development initiatives.

(v) "Community development project" (CD project) means a specific project in a particular location, such as a neighborhood, town, county, or state, the primary purpose of which is the economic improvement of that area or the provision of housing for low- and moderate- income persons in that area.

F141 1/25/94  
3-5

## FOCUS ON BANKING

# THE CDC SOLUTION

*Banks speed up growth of corporations giving development loans to community*

BY CASEY GILMORE

The number of bank-owned Community Development Corporations active in the Kansas City area has tripled over the past six months, a hopeful sign for those seeking new community investment dollars.

Subsidiaries of Fourth Financial Corp. in Wichita and United Missouri Bancshares in Kansas City were formed in June and October, respectively, to increase the bank companies' community development investments. They join St. Louis-based Boatmen's Bancshares Inc., which has had a CDC active in Kansas City since 1989.

Banks are required to invest in their communities, yet face strict regulations on debt levels that exclude many low- and moderate-income borrowers. As a result, banks are setting up community development corporations as subsidiaries to make the investments that banks cannot in affordable housing and small businesses.

The CDCs are being encouraged by the Comptroller of the Currency, which recently relaxed review requirements for CDC-funded projects and doubled the cap on investments a bank holding company can make in its CDC. A regulation announced Dec. 28 permits banks to invest up to 10 percent of their unimpaired capital and surplus in the CDC, up from 5 percent.

Gary Sherrer, senior vice president of Fourth Financial and president of its community development corporation, said the greater popularity of CDCs reflects a new corporate consciousness. He said companies that cared about communities in the past have supported the United Way and various charities, a tradition that should continue.

"But sometimes that is dealing with the symptoms and easing the pain that is created by a system that would change if we could create more small-business jobs, leaner housing and create a broader tax base," he said.

### Developing partnerships

Sherrer said corporations realize they in help turn around declining communities by investing directly in housing rehabilitation and small businesses.

In its first six months, Fourth's CDC has invested \$350,000 in 11 housing projects in eight markets, none in Kansas City so far. Often the project involves buying and rehabilitating a house and then selling it. The CDC also has made small-business loans totaling \$175,000, one enabling a Wichita contractor to get a contract for flood repair in Kansas City.

Fourth's plan for 1994 is to leverage the CDC's funding by approaching other corporations that serve multiple markets throughout Kansas to invest in the CDC. Fourth hopes to undertake larger projects with greater impact.

"We think we can develop corporate partnerships. If we build up communities, affordable housing and small businesses, good things happen for all of us."

Kansas City-based United Missouri Bancshares won approval for its CDC in October. President Reginald Smith, who also runs United Missouri Mortgage Co., said the CDC was developed to address the needs of low- and moderate-income homebuyers whose needs were not being met by other UMB products.

The CDC offers a mortgage with no points in which the 5 percent down payment and the costs for title searches, appraisals, inspections and other services are rolled into the mortgage. The down payment and closing-cost sum is amortized over three years, at which point the monthly mortgage payment drops.

The CDC has made eight home loans so far. Smith said the CDC can make a loan of up to 104 percent of the purchase price, a ratio that would draw criticism from regulators if it were done at the bank.

Like Sherrer, he said that a mix of CDCs, each with its own targets, will help make a difference in turning around Kansas City neighborhoods that have withered for lack of attention and investment.

"It took neighborhoods a long time to decline and it will take a long time to bring them back," he said. "Collectively, these programs will meet the needs" in low-income communities.

### Old but aggressive

The oldest bank CDC investing in Kansas City also produced the largest investment in the city last year: Boatmen's

CDC announced in October that it would invest \$5.8 million in the Q Hill neighborhood Downtown.

Boatmen's had been involved as a mortgage lender in earlier phases of the project and the CDC stepped in to provide financing for the project's third phase. Douglas Woodruff, chief operating officer of Boatmen's CDC, said the investment was guided by Boatmen's philosophy that revitalizing Kansas City's Downtown and older neighborhoods is critical to the city's overall growth and stability.

In its first four years, the CDC had invested \$1 million in Kansas City through the National Equity Fund, a fund made up of investments from large corporations. The fund's investments are administered by the Local Initiative Support Corp., which has 22 Kansas City projects comprising 762 units of rental housing. The projects represent \$46 million in reinvestment, \$16.26 million of which came from the NEF. In exchange for their investments, the corporations receive low-income-housing tax credits. Their returns come primarily from tax credits, depreciation write-offs and deductions for interest payments.

### Lending consortium

In addition to the CDCs, nine banks have jointly sponsored a lenders consortium aimed at providing low-cost mortgages to low- and moderate-income homebuyers. The consortium is working with the state to develop a homebuyers program.

Woodruff said Boatmen's so far has supported housing ventures but will look this year into making small-business loans. Sherrer said Fourth is making housing and small-business loans to create jobs in the communities where it is redeveloping housing.

The business loans in 1993 included a \$80,000 loan to a minority contractor who needed \$380,000 up front to buy the equipment and hire the staff to land a multimillion-dollar government flood damage contract. The contractor could get a Small Business Administration-guaranteed loan for \$300,000 but couldn't come up with the \$80,000.

A second loan involved buying a property and selling it back to a Topeka day-care operator. The operator had leased the building and wanted to buy it but couldn't get a loan. She has since increased her staff and the number of children she serves by 50 percent, Sherrer said.

Sherrer said small businesses are frustrated when they cannot get a loan. "The debt-to-equity tests and cash flow requirements banks demand. Banks when they cannot find a way to help many cases, he said, it

41+1 1/25/94  
3-6



## COMMUNITY DEVELOPMENT CORPORATION INVESTMENT RULES ARE ISSUED BY OCC

In the wake of recent regulatory efforts to boost community investment by banks, the Office of the Comptroller of the Currency Dec. 27 issued final community development corporation and project investments rules aimed at encouraging national banks to address community financing needs.

"It is important to give banks authority to significantly increase their dollar investments in CDCs and CD projects to enhance the opportunity for banks to participate in improving their communities," Comptroller Eugene Ludwig said in announcing the final regulation, which was published in the *Federal Register* (58 FR 68464).

The rule, which implements Section 6 of the Depository Institutions Disaster Relief Act of 1992, generally would make it easier for national banks to increase their CDC and CD project investments.

A bank CDC is a for-profit or non-profit corporation established by one or more banks, or by a bank and other investors to promote community development. A CD project is a specific program that helps small and minority businesses or provides housing, services, or jobs for low- and moderate-income persons and families in the project area. These projects must largely benefit such businesses and low- and moderate-income persons by providing housing, services, or jobs, and a national bank's investments in them can "affect positively" their Community Reinvestment Act performance rating, OCC said.

Under the DIDRA regulations, banks generally must request OCC approval to hike the amount of their single project and aggregate investments in CDCs and CD projects above current investment limits.

The final rule eases that by hiking the limits, and by establishing a so-called self-certification notice procedure that lets a greater number of banks bypass the need to get prior OCC approval of such an investment. The rules also streamline the process when OCC approval is required.

The rule has an expedited effective date of Dec. 31, 1993.

### Rule Raises Threshold

Specifically, the rule would exempt adequately capitalized banks with asset sizes of \$250 million or less from getting prior OCC approval for CDC and CD project investments. Those banks can self-certify single investments up to 5 percent of unimpaired capital and surplus, provided all investments do not exceed 5 percent of unimpaired capital and surplus.

The OCC said this is "a more appropriate threshold" for defining small banks than the one of \$100 million suggested in its proposed regulations, issued for comment in July (61 BBR 82, 7/19/93).

The agency estimated that this threshold asset size represents about 83 percent of the national bank population—a change OCC said would benefit many small financial institutions.

The rule would also let national banks that have more than \$250 million in assets self-certify individual investments that do not top 2 percent of unimpaired capital and surplus, or \$10 million, whichever is less. Such a bank would have to seek OCC approval of its investments that exceed either of those limits.

### Streamlined Procedures Available

Additionally, certain adequately capitalized banks with composite CAMEL supervisory ratings of 3, with improving trends, can request authority from the OCC to self-certify their investments. Expedited approval would be granted for bank investments in specific CDCs and CD projects that have already been approved by the OCC for a different national bank. And all remaining investment proposals generally would be approved by the OCC within 30 days of receipt.

OCC approval would not be required for investments made by healthy, 1- or 2-rated banks that are covered by informal enforcement actions, under provisions included in the final rule.

### Investment Limits Are Increased

Finally, the final regulation also hikes the limit on bank investments in CDCs and CD projects. Prior to DIDRA, a national bank's aggregate investment could not pass 5 percent of its unimpaired capital and surplus.

The rule implements the section of the act that raises that ceiling to 10 percent of unimpaired capital and surplus, on a case-by-case basis. However, the OCC must determine that this does not pose significant risks to the deposit insurance fund.

According to an OCC press release, bank investments should increase to 400 annually from 200 as a result of the raised investment limits.

CDC and CD project investments that promote the public welfare must address local needs in low- to moderate-income areas. By investing in these projects, OCC said, national banks can meet community financing needs they could not otherwise address because of legal restrictions.

441 1/25/94  
3-7

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your Committee on Financial Institutions and Insurance

Recommends that Senate Bill No. 492

"AN ACT relating to insurance; statement of financial condition;  
mode of report; amending K.S.A. 40-225 and repealing the  
existing section."

Be amended:

On page 2, in line 14, by striking "on a ma-"; in line 15, by  
striking all before the period and inserting "by electronically  
readable means";

And the bill be passed as amended.

\_\_\_\_\_  
Chairperson

Senate 7/4/1  
1/25/94  
Attachment # 4