

STATE OF NEVADA



BRIAN  
SANDOVAL  
*Governor*

DEPARTMENT OF BUSINESS AND INDUSTRY  
**FINANCIAL INSTITUTIONS DIVISION**

BRUCE BRESLOW  
*Director*

GEORGE E. BURNS  
*Commissioner*

**DATE:** April 7, 2016  
**TO:** Whom It May Concern:  
**FROM:** Leonard J. Esterly Jr.  
Deputy Commissioner

**SUBJECT:** Notice of Workshop to Solicit Comments on Proposed Regulations  
Pertaining to NAC 669A – FAMILY TRUST COMPANIES.

The regulation included in this memorandum is being proposed for permanent adoption. In order to review the proposed regulation and solicit comments from interested persons, a workshop will be held at 9:30 a.m. on May 6, 2016, at the Grant Sawyer Office Building in Room 4412E, 555 Washington Avenue, Las Vegas, Nevada and by video conference at the Nevada State Legislative Building in Room 2135, 401 S Carson St, Carson City, Nevada.

## NOTICE OF WORKSHOP

### TO SOLICIT COMMENTS ON PROPOSED REGULATIONS PERTAINING TO NAC 669A - FAMILY TRUST COMPANIES

The State of Nevada, Financial Institutions Division ("Division"), 2785 E. Desert Inn Road, Suite 180, Las Vegas, Nevada 89121, (702) 486-4120 is proposing the adoption of regulations to Chapter 669A of the Nevada Administrative Code (NAC). This workshop will be conducted subject to the Open Meeting Law (NRS 241.020) and the purpose is to solicit comments from interested persons on the proposed regulations to be held at the following locations through simultaneous videoconference:

Date: Friday, May 6, 2016

Time: 09:30 am.

In Las Vegas: Grant Sawyer Building  
555 E. Washington Avenue  
Hearing Room 4412E  
Las Vegas, NV 89101

In Carson City: Nevada State Legislative Building  
401 S Carson St  
Room 2135  
Carson City, NV 89701

ACCOMMODATIONS FOR PHYSICALLY HANDICAPPED: Reasonable efforts will be made to assist and accommodate physically handicapped persons desiring to attend the meeting. Members of the public who are disabled and require special accommodations or assistance at the workshop must notify Leonard Esterly, Deputy Commissioner, at the Division in writing at 2785 E. Desert Inn Road, Suite 180, Las Vegas, Nevada 89121, no later than 5 working days prior to the workshop. Any questions should be directed to Leonard Esterly, Deputy Commissioner, at (702) 486-4120.

AGENDA: Below is an agenda of all items scheduled to be considered. Unless otherwise stated, items may be taken out of the order presented on the agenda at the discretion of the Financial Institutions Division Commissioner. Items may also be combined for consideration or pulled or removed from the agenda at any time. Persons who may be subject to the provisions of the new regulation regarding Licensed Family Trust Companies should attend. Public Comment may be limited to three minutes per person at the discretion of the Commissioner. The Commissioner may only take action on those items denoted as potential action items.

1. PUBLIC COMMENTS: Members of the public are encouraged to address the commissioner regarding any matter. Persons who desire to submit written testimony should submit ten (10) copies to the Deputy Commissioner. Public comment may be limited to three minutes at the workshop per person at the discretion of the Commissioner.
  
2. REVIEW LCB APPROVED TEXT OF THE PROPOSED REGULATIONS (LCB FILE NO. R051-16P, DATED MARCH 23, 2016):
  - A. Section 1.

Chapter 669A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 27, inclusive, of this regulation.
  
  - B. Section 2.

As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 20, inclusive, of this regulation have the meanings ascribed to them in those sections.
  
  - C. Section 3.

"Board" means the body of designated, elected or appointed persons that jointly govern and oversee the activities of the committees, officers and managers of a licensed family trust company.
  
  - D. Section 4.

"Client" means a family member who has engaged a licensed family trust company to provide services pursuant to NRS 669A.220, as amended by section 12 of Senate Bill No. 384, chapter 256, Statutes of Nevada, at page 1210.
  
  - E. Section 5.

"Client complaint" means a written, verified complaint regarding the actions or omissions of a licensed family trust company made by one or more clients which has been filed with the Division and furnished to the management of the licensed family trust company by the Division for a response.
  
  - F. Section 6.

"Committee" means a body of designated, elected or appointed persons formed by a board pursuant to its governing instruments and applicable law and charged with the oversight of a particular area or function of a licensed family trust company.



G. **Section 7.**

"Corrective action" means any action, plan or other undertaking by a licensed family trust company or the management of the licensed family trust company reasonably required to address a deficiency or material weakness identified in a report of examination prepared pursuant to Section 27 of this regulation or subsequent correspondence from the Division.

H. **Section 8.**

"Deficiency" means an item, matter or condition relating to a licensed family trust company or its organization and operation which does not meet the requirements imposed by this Chapter and Chapter 669A of NRS.

I. **Section 9.**

"Division" means the Division of Financial Institutions of the Department of Business and Industry.

J. **Section 10.**

"Examination" means an on-site examination; off-site examination or independent review of a licensed family trust company.

K. **Section 11.**

"Examination guidance" means the examination procedures described in Section 25 of this regulation.

L. **Section 12.**

"Examination period" means the period of time since a license was issued to a licensed family trust company or since the most recent examination of a licensed family trust company, whichever is later, or such other period specified by the Commissioner.

M. **Section 13.**

"Independent review" means a review of a licensed family trust company conducted by a qualified firm pursuant to section 24 of this regulation.

N. **Section 14.**

"Independent review report" means a written report prepared by a qualified firm setting forth the results of an independent review.

O. **Section 15."**

"Licensed family trust company office" means the physical office maintained in this State pursuant to subsection 2 of NRS 669A.140.

P. **Section 16**

"Management of the licensed family trust company" mean the committees, officers, and managers of a licensed family trust company.

Q. **Section 17**

"Off-site examination" means an examination conducted by the Division in accordance with the procedures established in section 22 of this regulation.

R. **Section 18.**

"On-site examination" means an examination conducted by the Division in accordance with the procedures established in section 23 of this regulation.

S. **Section 19.**

"Qualified firm" means a person who meets the standards set forth in subsection 2 of section 24 of this regulation.

T. **Section 20.**

"Report of examination" means a written report prepared by the Division pursuant to section 27 of this regulation describing the results of an examination.

U. **Section 21.**

1. Except as otherwise provided in subsection 2, each licensed family trust company shall undergo an off-site examination or an independent review more than 1 year but not more than 2 years after the date on which its license was issued and shall subsequently undergo:

(a) An on-site examination or, if the Commissioner determines an off-site examination would be appropriate, an off-site examination, within 1 year after the date on which the Division delivers to the licensed family trust company a report of examination which rates the licensed family trust company as "unsatisfactory" or "needs improvement"; and

(b) An off-site examination or an independent review within 3 years after the date on which the Division delivers to the licensed family trust company a report of examination which rates the licensed family trust company as "satisfactory."

2. The Commissioner may require an on-site examination of a licensed family trust company at a time other than those specified in subsection 1 if the Commissioner determines that such an examination is necessary or appropriate under the circumstances to ensure that the licensed family trust company is complying with the provisions of this chapter and chapter 669A of NRS.



3. Each examination must determine whether the licensed family trust company has complied with the provisions of this chapter and chapter 669A of NRS during the examination period.

4. The Division will provide a notice of examination to a licensed family trust company by certified mail, return receipt requested, indicating that the licensed family trust company is subject to an examination, setting forth the examination period, setting the date by which all information and documentation required for the examination must be provided and including the examination guidance:

(a) Not more than 1 year after a licensed family trust company is initially issued a license or 30 days after the close of the first fiscal year for financial reporting purposes of a licensed family trust company, whichever is earlier;

(b) On or before November 15 of the year before the year in which an examination is required pursuant to paragraph (b) of subsection 1;

(c) At least 30 days before an examination is required pursuant to paragraph (a) of subsection 1; and

(d) At the time an examination is commenced pursuant to subsection 2.

5. The Commissioner will charge a fee at the rate of \$75 per hour for each hour spent by the staff of the Division to conduct an examination, and collect the fee from the licensed family trust company being examined, for each on-site examination or off-site examination conducted pursuant to this chapter. The Commissioner will bill the licensed family trust company upon the completion of the examination for the fee established in this subsection. The fee must be paid within 30 days after the date on which the bill is received. Except as otherwise provided in this subsection, any payment received after that date must include a penalty of 10 percent of the fee plus an additional 1 percent of the fee for each month, or portion of a month, that the fee is not paid. The Commissioner may waive the penalty for good cause. The failure of a licensed family trust company to pay the fee required in this subsection constitutes grounds for the revocation of its license.

6. In addition to the fee required by subsection 6 of section 24 of this regulation for the administrative review of an independent review report by the Division, a licensed family trust company shall pay the fees and costs incurred by the qualified firm it retains to perform the independent review.

V. **Section 22.**

1. A licensed family trust company undergoing an off-site examination shall submit, within the time period set forth in the notice of examination provided pursuant to section 21 of this regulation, all information and documentation required for the examination.

2. If the Division determines that incorrect or incomplete information or documentation has been submitted pursuant to subsection 1, the Division will notify the licensed family trust company of the information or documentation that must be provided to complete or correct the initial submission. The licensed family trust company shall provide the information required by the Division pursuant to this subsection within 45 days after the Division issues a notice pursuant to this subsection unless the Commissioner extends the time period for a response for good cause.

3. If a licensed family trust company fails to submit the information and documentation required pursuant to subsection 1 within the time period set forth in the notice of examination or fails to comply with the provisions of subsection 2, the Commissioner may:

(a) Impose a fee of \$25 per day for each day after the time period set forth in the notice of examination or in subsection 2, as appropriate, that the licensed family trust company has failed to provide the required information or documentation; or

(b) Require the licensed family trust company to undergo an on-site examination

W. **Section 23.**

1. A licensed family trust company undergoing an on-site examination shall provide to the Division reasonable access, as determined by the Commissioner, to its licensed family trust company office during the examination and provide, at the time of the examination and at the location of its licensed family trust company office, all information and documentation required for the examination.

2. If the Division determines that incorrect or incomplete information or documentation has been submitted pursuant to subsection 1, the Division will notify the licensed family trust company of the information or documentation that must be provided to complete or correct the initial submission. The licensed family trust company shall provide the information required by the Division pursuant to this subsection within 45 days after the Division issues a notice pursuant to this subsection unless the Commissioner extends the time period for a response for good cause.

3. If a licensed family trust company fails to submit the information and documentation required pursuant to subsection 1 at the time of the on-site examination or fails to comply with the provisions of subsection 2, the Commissioner may impose a fee of \$25 per day for each day after the on-site examination or the time period set forth in subsection 2, as appropriate, that the licensed family trust company has failed to provide the required information or documentation.



**X. Section 24.**

1. A licensed family trust company which received a rating of "satisfactory" on its most recent examination or which has not yet undergone an examination may elect to undergo an independent review. A licensed family trust company that elects to undergo an independent review must provide notification of such an election to the Division within 30 days after receipt of its notice of examination provided pursuant to section 21 of this regulation. The Division will provide written confirmation to the licensed family trust company that its examination will be conducted by means of independent review within 30 days after receiving the licensed family trust company's notification of election.

2. An independent review must be conducted by a person who:

(a) Uses professional standards for conducting the independent review which are promulgated by the American Institute of Certified Public Accountants, the Institute of Internal Auditors or the Bank Administration Institute;

(b) Is independent from the licensed family trust company and is not owned or controlled by any stockholder, member, owner, affiliate, family affiliate, family member, client or employee of the licensed family trust company;

(c) Does not share a material business or financial interest with the licensed family trust company;

(d) Ensures that the independent review is supervised by a certified public accountant in good standing with the American Institute of Certified Public Accountants and in each state in which the accountant is licensed to practice, a certified internal auditor or certified financial services auditor in good standing with the Institute of Internal Auditors or a certified bank auditor in good standing with the Bank Administration Institute; and

(e) Maintains in good standing all licenses necessary to perform the services included in an independent review.

3. A qualified firm performing an independent review shall comply with the professional standards promulgated by the American Institute of Certified Public Accountants, the Institute of Internal Auditors or the Bank Administration Institute, as appropriate, and the provisions of this chapter and chapter 669A of NRS. The qualified firm must ensure that the scope of the independent review meets or exceeds the provisions of the examination guidance and any written clarification or modification of the examination guidance issued by the Commissioner to the licensed family trust company pursuant to subsection 1 of section 26 of this regulation.



4. Upon the completion of an independent review, the qualified firm shall prepare a written independent review report. The independent review report must:

(a) Confirm that the qualified firm performed the independent review using the policies and procedures adopted by the licensed family trust company relating to the management, operation and administration of its trust business and the information and documentation provided in response to the notice of examination;

(b) Identify any deficiency noted during the independent review;

(c) Identify any client complaints;

(d) Identify any failure by the licensed family trust company to respond to the notice of examination;

(e) Comment on the cooperation of the management of the licensed family trust company during the independent review;

(f) Review the compliance of the licensed family trust company with the provisions of this chapter and chapter 669A of NRS; and

(g) Include the written response by the management of the licensed family trust company to any deficiency, corrective action or client complaint, if applicable.

5. A licensed family trust company that undergoes an examination by means of independent review shall file with the Division, on or before September 30 of the year in which the independent review is conducted:

(a) The independent review report prepared by the qualified firm conducting the independent review; and

(b) The audited financial statements of the licensed family trust company for the examination period prepared by a certified public accountant, including, without limitation, a description of the accounting method used by the licensed family trust company.

6. Upon the filing of an independent review report, the Division will:

(a) Perform an administrative review of the independent review report to ensure that:

(1) The person engaged by the licensed family trust company to perform the independent review satisfies the requirements of subsection 2;

(2) The independent review and the independent review report comply with the provisions of this chapter;

(3) Each deficiency, client complaint and corrective action identified in the independent review report were reported to the management of the licensed family trust company;

(4) The written response of the management of the licensed family trust company to each deficiency, client complaint or corrective action is reasonably adequate to ensure the compliance of the licensed family trust company with this chapter and chapter 669A of NRS; and

(5) The licensed family trust company complies with the requirements of this chapter and chapter 669A of NRS; and

(b) Assess the licensed family trust company which is the subject of the independent review report a fee of \$1000 for its administrative review of the independent review report.

**Y. Section 25.**

The Division will, and a qualified firm shall, perform the examination in accordance with the examination procedures as follows:

1. If applicable, review the results of the most recent examination and confirm with the management of the licensed family trust company that a corrective action has been completed.
2. Confirm the submission of the required financial information to the Division, including any supplementary information requested by the Division.
3. Review the licensed family trust company's compliance with the provisions of this chapter and chapter 669A of NRS.
4. Review the board and the committee structure of the licensed family trust company for compliance with the governing instruments of the licensed family trust company.
5. Review the minutes of the board and any committees and determine whether the minutes are retained permanently at the licensed family trust company office in physical or electronic form and in compliance with the governing instruments of the licensed family trust company.
6. If the licensed family trust company has elected to undergo an independent review pursuant to section 24 of this regulation, determine whether previous matters in the management letter for external financial audits of the financial statements of the licensed family trust company have been resolved, are being addressed by the management of the licensed family trust company in a response to the external auditor or do not require response or action.



7. If the licensed family trust company does not submit audited financial statements to the Division as part of its examination:

(a) Ensure that the licensed family trust company provides an annual report, if required pursuant to NRS 669A.255, as amended by section 14 of Senate Bill No. 384, chapter 256, Statutes of Nevada, at page 1213;

(b) Make not more than five selections from licensed family trust company accounts and client accounts and test transactions in the accounts to determine whether the transactions are properly authorized and properly recorded;

(c) Confirm through documentation and review that procedures have been established to address periodic and timely reconciliations of general ledger accounts and subsidiary ledgers of the licensed family trust company, as appropriate; and

(d) Test through documentation and review that:

(1) Controls are in place over suspense accounts;

(2) The accounts are periodically reconciled;

(3) The accounts reflect appropriate items; and

(4) The accounts are promptly cleared.

**Z. Section 26.**

1. A licensed family trust company may seek written clarification or modification of the examination guidance by submitting a written request to the Commissioner. The Commissioner may issue written clarification or modification of the examination guidance applicable to a licensed family trust company for good cause.

2. A licensed family trust company and a qualified firm engaged by a licensed family trust company to perform an independent review may rely upon the examination guidance in effect at the time that a notice of examination is provided pursuant to section 21 of this regulation, as clarified or modified by the response of the Commissioner to a written request submitted by the licensed family trust company pursuant to subsection 1, as the official statement of the Division of the scope of the examination.

**AA. Section 27.**

1. Within 60 days after the completion of an on-site examination or off-site examination of a licensed family trust company or the filing of an independent review report, the Division will prepare and deliver to the licensed family trust company a report of examination that:

(a) Identifies any deficiency or weakness which requires corrective action;

(b) Identifies any client complaint which requires further response by the management of the licensed family trust company; and

(c) Assigns a rating of "satisfactory", "needs improvement" or "unsatisfactory" to the licensed family trust company based on the results of the examination, the compliance of the licensed family trust company with the provisions of this chapter and chapter 669A of NRS and the capability and willingness of the board and the management of the licensed family trust company to take corrective action.

2. The Division will assign a rating of:

(a) "Satisfactory" to a licensed family trust company that is fundamentally sound, complies with the provisions of this chapter and chapter 669A of NRS in all substantial respects and exhibits only moderate deficiencies or minor weaknesses which are within the capability and willingness of the management of the licensed family trust company to correct.

(b) "Needs improvement" to a licensed family trust company that generally complies with the provisions of this chapter and chapter 669A of NRS and exhibits some degree of supervisory concern in one or more areas where moderate deficiencies or weaknesses are present which are within the capability and willingness of the board and the management of the licensed family trust company to correct.

(c) "Unsatisfactory" to a licensed family trust company that does not generally comply with the provisions of this chapter and chapter 669A of NRS and exhibits some degree of supervisory concern in one or more areas where a combination of deficiencies or material weakness exists which may range from moderate to severe.

3. The Commissioner may, on the basis of an "unsatisfactory" rating:

(a) Revoke the license of the licensed family trust company pursuant to NRS 669A.280;

(b) Order the removal of any number of persons from the management of the licensed family trust company pursuant to NRS 669A.300,

(c) Impose and collect an administrative fine pursuant to NRS 669A.320; and

(d) Take any other enforcement action authorized by law.

4. The Commissioner may require a licensed family trust company that is assigned a rating of "unsatisfactory" to submit to a compliance and periodic reporting plan administered by the licensed family trust company or a third party to enforce any corrective action identified in the examination. The Commissioner may establish such terms and conditions for a compliance and periodic reporting plan as he or she deems advisable and require the licensed family trust company to pay all costs relating to the compliance and periodic reporting plan.

5. The management of a licensed family trust company shall provide the report of examination and the management's written response to any corrective action



required by the Division to the board. If the report of examination rates the licensed family trust company as "needs improvement" or "unsatisfactory," the management of the licensed family trust company must comply with this subsection within 30 days after receiving the report of examination.

6. If no action is pending against a licensed family trust company as a result of an examination the Division will securely and confidentially maintain or destroy all documentation submitted in the course of an examination, other than the documents required to be filed with the Division, in accordance with the policies of the Division for the retention and destruction of records.

7. A report of examination and an independent review report are confidential and subject to the provisions of NRS 669A.310.

**BB. Section 28.**

1. Notwithstanding the provisions of section 21 of this regulation, a licensed family trust company whose license was issued on or before December 31, 2015, must undergo an examination, as defined in section 10 of this regulation, on or before December 31, 2017.

2. Notwithstanding the provisions of subsection 2 of section 29 of this regulation, the Division of Financial Institutions of the Department of Business and Industry will provide a notice of examination as described in section 21 of this regulation on or before November 15, 2016, to a licensed family trust company required to undergo an examination pursuant to subsection 1.

**CC. Section 29.**

1. This section and section 28 of this regulation become effective on October 1, 2016

2. Sections 1 to 27, inclusive, of this regulation becomes effective on January 1, 2017.

3. **PUBLIC COMMENTS:** Members of the public are encouraged to address the Commissioner regarding any matter. Persons who desire to submit written testimony should submit ten (10) copies to the Deputy Commissioner. Public comment may be limited to three minutes at the workshop per person at the discretion of the Commissioner.

#### 4. ADJOURNMENT

A copy of the proposed regulations to be considered for adoption is attached to this Notice and will also be available prior to the hearing on the Internet at: <http://www.fid.nv.gov>. Copies of this Notice and/or the proposed regulations will be e-mailed and/or US mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

This Notice has been e-mailed to all persons on the Division's mailing list for notice of proposed rulemaking, posted on the Division's web site at <http://www.fid.nv.gov>, posted on the State's Official Website, and posted at the following public locations for inspection by members of the public:

Attn: Public Posting  
Churchill County Library  
553 S. Maine Street  
Fallon, NV 89406

Attn: Public Posting  
Tonopah Public Library  
P.O. Box 449  
Tonopah, NV 89049  
(167 Central Street)

Attn: Public Posting  
Las Vegas – Clark County Library  
833 Las Vegas Blvd. N.  
Las Vegas, NV 89101

Attn: Public Posting  
Pershing County Library  
P.O. Box 781; (1125 Central Avenue)  
Lovelock, NV 89419

Attn: Public Posting  
Elko County Library  
720 Court Street  
Elko, NV 89801

Attn: Public Posting  
Storey County Library  
P.O. Box 14; (95 South R Street)  
Virginia City, NV 89440

Attn: Public Posting  
Goldfield Public Library  
P.O. Box 430; (Fourth & Crook Sts.)  
Goldfield, NV 89013

Attn: Public Posting  
Washoe County Library  
P.O. Box 2151; (301 S. Center)  
Reno, NV 89501

Attn: Public Posting  
Eureka Branch Library  
P.O. Box 293 (80 South Monroe)  
Eureka, NV 89316

Attn: Public Posting  
White Pine County Library  
950 Campton St.  
Ely, NV 89301

Attn: Public Posting  
Humboldt County Library  
85 East 5th St.  
Winnemucca, NV 89445

Attn: Public Posting  
Battle Mountain Branch Library (Lander  
County)  
625 South Broad Street  
P.O. Box 141  
Battle Mountain, NV 89820



Attn: Public Posting  
Lincoln County Library  
63 Main St. / P.O. Box 330  
Pioche, NV 89043

Attn: Public Posting  
Carson City Library  
900 N. Roop Street  
Carson City, NV 89701

Department of Business & Industry  
Las Vegas Director's Office  
555 E. Washington Avenue  
Suite 4900  
Las Vegas, NV 89101

Department of Business & Industry  
Carson City Director's Office  
1830 College Parkway,  
Suite 100  
Carson City, NV 89706

Office of the Commissioner  
2785 E. Desert Inn Rd.  
Suite 180  
Las Vegas, Nevada 89121

Northern Nevada Examination Office  
1755 East Plumb Lane  
Suite 243  
Reno, Nevada 89502

**SMALL BUSINESS IMPACT STATEMENT FOR PROPOSED REGULATIONS BY THE FINANCIAL INSTITUTIONS  
DIVISION TO TITLE 55, CHAPTER 669A  
LICENSED FAMILY TRUST COMPANIES**

5 April 2016

**1. Small Business Impact (SBI) Statement pursuant to NRS 233B.0609:**

**(a) A description of the manner in which comment was solicited from affected small businesses, a summary of their responses, and an explanation of the manner in which other interested persons may obtain a copy of the summary.**

**(I) Solicitation of affected small businesses.**

NFID sought comments in accordance with NRS 233B.0608 for the purpose of considering whether as a result of the proposed regulations, there may be a direct and significant economic burden upon small business (defined as fewer than 150 employees) or if the regulations will directly restrict the formation, operation or expansion of a small business seeking to those engaged in or who desire to engage in the business of a Licensed Family Trust Company and to ensure that there is established in this State an adequate and efficient Licensed Family Trust industry.

NFID established the solicitation list from its list of Licensed Family Trust companies, and in-turn, NFID solicited comments on the proposed regulations from this list by e-mailing a notice and questionnaire. Additionally a copy of the full text of the proposed regulations was included and also posted to the Division website. This small business impact statement was formulated from the solicited comments resulting from the questionnaire sent to the Licensed Family Trust industry.

**(II) Summary of responses.**

1) Will any of the proposed regulatory language have an adverse economic effect upon small business? The new regulatory language will impose incremental fees, however, the regulation will overall have a beneficial impact.

2) Will any of the proposed regulatory language have a beneficial economic effect on small business? There will not be a beneficial economic impact as the industry sustains the incremental fees, however, the regulation will overall have beneficial impact.

3) Do you anticipate any indirect adverse effects on your business? None anticipated.

4) Do you anticipate any indirect beneficial effects on your business? The industry believes the proposed regulation will enhance the fiduciary oversight of the business.



**(III) Obtain a copy of the summary.**

This Small Business Impact Statement was posted on the NFID website dated April 5, 2016 along with a Notice of Workshop for May 6, 2016. Interested persons may also obtain a copy of the Small Business Impact Statement by contacting the:

**Office of the Commissioner  
Financial Institutions Division  
2785 E. Desert Inn Road, Suite 180  
Las Vegas, NV 89121  
Email: [FIDMaster@fid.state.nv.us](mailto:FIDMaster@fid.state.nv.us)  
Voice: (702) 486-4120  
Fax: (702) 486-4563  
Website: <http://fid.state.nv.us>**

**(b) The manner in which the analysis was conducted.**

NFID sent a copy of the draft regulations and a SBI Questionnaire to all known Licensed Family Trust Companies (approximately 24) in Nevada and as part of the process to garner the most current information from the Licensed Family Trust industry, and invited written comment regarding the impact to the Licensed Family Trust industry. NFID took all comments submitted into consideration.

**(c) The estimated economic effect of the proposed regulation on the small businesses which it is to regulate including, without limitation:**

**(1) Both Adverse and Beneficial effects:**

**(I) ADVERSE EFFECTS:**

The new examination fee that did not exist previously will have an impact on Licensed Family Trust companies in some financial manner or form. The NFID examination fee of \$75 per hour spent by the Division staff to conduct an examination for each on-site or off-site examination pursuant to NAC 669A. It is estimated an examination will take approximately 64 hours (\$4,800.00) to complete.

If an independent review is opted for instead of a NFID examination, in addition to the \$1,000 fee for NFID administrative review of the independent report required by Section 24 of the regulation, a Licensed Family Trust Company shall pay all the fees and costs incurred by the qualified firm it retains to perform the independent review.

**(II) BENEFICIAL EFFECTS:**

Upon consideration of all the comments, the NFID has concluded that the proposed regulations will have a minimal economic impact upon small business and the proposed regulations probably will not affect the formation, operation or expansion of a small business seeking to provide these services. Through well thought out and coordinated administrative language (NAC) with the Licensed Family Trust industry, NFID can directly lessen the impact by establishing a cost based equitable examination fee to moderate the costs to regulate the industry per this new NAC.

**(2) Both Direct and Indirect effects:**

**(I) DIRECT EFFECTS:**

NFID has made every effort to coordinate with the entire Licensed Family Trust industry in order to facilitate a joint effort to develop regulations which establish the requirement for the periodic examination of Licensed Family Trust Companies and not to exacerbate any additional financial or regulatory burden upon existing small businesses.

NFID has determined the most prominent positive direct effects from these regulations will be the ability of Licensed Family Trust industry to meet IRS requirements as a regulated industry and provide additional assurances to family members regarding the safety and soundness of their family trust operations.

An hourly examination fee (\$75/Hr) will be charged and is a NFID pre-determined cost based amount to cover the time to conduct the examination and prepare the report.

**(II) INDIRECT EFFECTS:**

The proposed regulations could generate extra hours of work for the industry to support the NFID requirements to carry out the new regulation.

**(d) A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.**

NFID considered and analyzed submitted comment as detailed above. No material impacts were indicated in the comments submitted.

**(e) The estimated cost to the agency for enforcement of the proposed regulation.**

The estimated cost to the Financial Institutions Division for enforcement of the proposed regulation should be covered by the proposed hourly examination fee to be collected by NFID. It is estimated NFID will not need any additional funding or resources beyond the proposed fee revenue.

**(f) If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect, and the manner in which the money will be used.**

The proposed regulation provides for an hourly examination fee of \$75/hour and the amount NFID expects to collect based on the recent data for each examination is approximately \$4,800.00 with the average exam projected to take approximately 64 hours to complete. Total annual amount the 1<sup>st</sup> year is approximately \$115,200 based on 24 Licensed Family Trust Companies multiplied by \$4,800.00 (amount per each exam) and every 3<sup>rd</sup> year after.

The examination fees collected will be used by NFID to regulate the industry at the most economical method possible with the Division's established objective to maintain all fees at the lowest level possible to cover only agency costs to implement/operate/enforce and not to over burden small business with high and unnecessary fees. To further facilitate the goal of maintaining fees at the lowest level possible, NFID has not requested any additional state funding or staff.

**(g) If the proposed regulation includes provisions which duplicate or are more stringent than federal, state, or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.**

To our knowledge the proposed regulations do not duplicate any existing federal, state, or local standards regulating the same activity.



**(h) The reasons for the conclusions of the agency regarding the impact of the regulation on small businesses.**  
The NFID has concluded that the impact of the regulation on small businesses will be minimal because the Family Trust industry requested the regulations to achieve the positive direct effects of meeting IRS requirements as a regulated industry and providing additional assurances to family members regarding the safety and soundness of their trust operations.

**To the best of my knowledge, the information contained in this Small Business Impact Statement was prepared properly and accurate.**



Leonard J. Esterly Jr.  
Deputy Commissioner

**PROPOSED REGULATION OF THE  
COMMISSIONER OF FINANCIAL INSTITUTIONS**

**LCB File No. R051-16**

March 23, 2016

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-20 and 25-29, NRS 669A.270; §§21 and 24, NRS 658.101, 669A.260 and 669A.270; §§22 and 23, NRS 669A.270 and 669A.290.

A REGULATION relating to family trust companies; establishing requirements for the periodic examination of licensed family trust companies; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing law authorizes the Commissioner of Financial Institutions to adopt such regulations as may be necessary to carry out the provisions of NRS relating to family trust companies and to charge and collect from a licensed family trust company a fee for the supervision and examination of the licensed family trust company. (NRS 658.101, 669A.260, 669A.270)

**Section 21** of this regulation requires each licensed family trust company to undergo an off-site examination or independent review more than 1 year but not more than 2 years after the date on which its license was issued and to undergo subsequent examinations based on the results of the immediately preceding examination. **Sections 22-24** of this regulation establish, respectively, the methods for conducting an off-site examination, an on-site examination and an independent review. **Section 25** of this regulation sets forth the examination guidance for an examination of a licensed family trust company. **Section 26** of this regulation authorizes the Commissioner to issue a clarification or modification of the examination guidance to a licensed family trust company in response to a written request by the licensed family trust company. **Section 27** of this regulation requires the Division of Financial Institutions of the Department of Business and Industry to provide a report of examination to a licensed family trust company after the completion of an examination. **Section 27** also sets forth the contents of a report of examination and establishes the standards to be used for rating a licensed family trust company in a report of examination.

**Section 29** of this regulation provides that this regulation becomes effective on January 1, 2017. **Section 28** of this regulation requires a licensed family trust company whose license was issued on or before December 31, 2015, to undergo an examination on or before December 31, 2017.



**Section 1.** Chapter 669A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 27, inclusive, of this regulation.

**Sec. 2.** *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 20, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Board” means the body of designated, elected or appointed persons that jointly govern and oversee the activities of the committees, officers and managers of a licensed family trust company.*

**Sec. 4.** *“Client” means a family member who has engaged a licensed family trust company to provide services pursuant to NRS 669A.220, as amended by section 12 of Senate Bill No. 384, chapter 256, Statutes of Nevada 2015, at page 1210.*

**Sec. 5.** *“Client complaint” means a written, verified complaint regarding the actions or omissions of a licensed family trust company made by one or more clients which has been filed with the Division and furnished to the management of the licensed family trust company by the Division for a response.*

**Sec. 6.** *“Committee” means a body of designated, elected or appointed persons formed by a board pursuant to its governing instruments and applicable law and charged with the oversight of a particular area or function of a licensed family trust company.*

**Sec. 7.** *“Corrective action” means any action, plan or other undertaking by a licensed family trust company or the management of the licensed family trust company reasonably required to address a deficiency or material weakness identified in a report of examination prepared pursuant to section 27 of this regulation or subsequent correspondence from the Division.*

- Sec. 8. *“Deficiency” means an item, matter or condition relating to a licensed family trust company or its organization and operation which does not meet the requirements imposed by this chapter and chapter 669A of NRS.*
- Sec. 9. *“Division” means the Division of Financial Institutions of the Department of Business and Industry.*
- Sec. 10. *“Examination” means an on-site examination, off-site examination or independent review of a licensed family trust company.*
- Sec. 11. *“Examination guidance” means the examination procedures described in section 25 of this regulation.*
- Sec. 12. *“Examination period” means the period of time since a license was issued to a licensed family trust company or since the most recent examination of a licensed family trust company, whichever is later, or such other period specified by the Commissioner.*
- Sec. 13. *“Independent review” means a review of a licensed family trust company conducted by a qualified firm pursuant to section 24 of this regulation.*
- Sec. 14. *“Independent review report” means a written report prepared by a qualified firm setting forth the results of an independent review.*
- Sec. 15. *“Licensed family trust company office” means the physical office maintained in this State pursuant to subsection 2 of NRS 669A.140.*
- Sec. 16. *“Management of the licensed family trust company” means the committees, officers and managers of a licensed family trust company.*
- Sec. 17. *“Off-site examination” means an examination conducted by the Division in accordance with the procedures established in section 22 of this regulation.*



Sec. 18. *“On-site examination” means an examination conducted by the Division in accordance with the procedures established in section 23 of this regulation.*

Sec. 19. *“Qualified firm” means a person who meets the standards set forth in subsection 2 of section 24 of this regulation.*

Sec. 20. *“Report of examination” means a written report prepared by the Division pursuant to section 27 of this regulation describing the results of an examination.*

Sec. 21. 1. *Except as otherwise provided in subsection 2, each licensed family trust company shall undergo an off-site examination or an independent review more than 1 year but not more than 2 years after the date on which its license was issued and shall subsequently undergo:*

*(a) An on-site examination or, if the Commissioner determines an off-site examination would be appropriate, an off-site examination, within 1 year after the date on which the Division delivers to the licensed family trust company a report of examination which rates the licensed family trust company as “unsatisfactory” or “needs improvement”; and*

*(b) An off-site examination or an independent review within 3 years after the date on which the Division delivers to the licensed family trust company a report of examination which rates the licensed family trust company as “satisfactory.”*

2. *The Commissioner may require an on-site examination of a licensed family trust company at a time other than those specified in subsection 1 if the Commissioner determines that such an examination is necessary or appropriate under the circumstances to ensure that the licensed family trust company is complying with the provisions of this chapter and chapter 669A of NRS.*

3. *Each examination must determine whether the licensed family trust company has complied with the provisions of this chapter and chapter 669A of NRS during the examination period.*

4. *The Division will provide a notice of examination to a licensed family trust company by certified mail, return receipt requested, indicating that the licensed family trust company is subject to an examination, setting forth the examination period, setting the date by which all information and documentation required for the examination must be provided and including the examination guidance:*

*(a) Not more than 1 year after a licensed family trust company is initially issued a license or 30 days after the close of the first fiscal year for financial reporting purposes of a licensed family trust company, whichever is earlier;*

*(b) On or before November 15 of the year before the year in which an examination is required pursuant to paragraph (b) of subsection 1;*

*(c) At least 30 days before an examination is required pursuant to paragraph (a) of subsection 1; and*

*(d) At the time an examination is commenced pursuant to subsection 2.*

5. *The Commissioner will charge a fee at the rate of \$75 per hour for each hour spent by the staff of the Division to conduct an examination, and collect the fee from the licensed family trust company being examined, for each on-site examination or off-site examination conducted pursuant to this chapter. The Commissioner will bill the licensed family trust company upon the completion of the examination for the fee established in this subsection. The fee must be paid within 30 days after the date on which the bill is received. Except as otherwise provided in this subsection, any payment received after that date must include a*



*penalty of 10 percent of the fee plus an additional 1 percent of the fee for each month, or portion of a month, that the fee is not paid. The Commissioner may waive the penalty for good cause. The failure of a licensed family trust company to pay the fee required in this subsection constitutes grounds for the revocation of its license.*

*6. In addition to the fee required by subsection 6 of section 24 of this regulation for the administrative review of an independent review report by the Division, a licensed family trust company shall pay the fees and costs incurred by the qualified firm it retains to perform the independent review.*

**Sec. 22.** *1. A licensed family trust company undergoing an off-site examination shall submit, within the time period set forth in the notice of examination provided pursuant to section 21 of this regulation, all information and documentation required for the examination.*

*2. If the Division determines that incorrect or incomplete information or documentation has been submitted pursuant to subsection 1, the Division will notify the licensed family trust company of the information or documentation that must be provided to complete or correct the initial submission. The licensed family trust company shall provide the information required by the Division pursuant to this subsection within 45 days after the Division issues a notice pursuant to this subsection unless the Commissioner extends the time period for a response for good cause.*

*3. If a licensed family trust company fails to submit the information and documentation required pursuant to subsection 1 within the time period set forth in the notice of examination or fails to comply with the provisions of subsection 2, the Commissioner may:*

*(a) Impose a fee of \$25 per day for each day after the time period set forth in the notice of examination or in subsection 2, as appropriate, that the licensed family trust company has failed to provide the required information or documentation; or*

*(b) Require the licensed family trust company to undergo an on-site examination.*

**Sec. 23. 1.** *A licensed family trust company undergoing an on-site examination shall provide to the Division reasonable access, as determined by the Commissioner, to its licensed family trust company office during the examination and provide, at the time of the examination and at the location of its licensed family trust company office, all information and documentation required for the examination.*

*2. If the Division determines that incorrect or incomplete information or documentation has been submitted pursuant to subsection 1, the Division will notify the licensed family trust company of the information or documentation that must be provided to complete or correct the initial submission. The licensed family trust company shall provide the information required by the Division pursuant to this subsection within 45 days after the Division issues a notice pursuant to this subsection unless the Commissioner extends the time period for a response for good cause.*

*3. If a licensed family trust company fails to submit the information and documentation required pursuant to subsection 1 at the time of the on-site examination or fails to comply with the provisions of subsection 2, the Commissioner may impose a fee of \$25 per day for each day after the on-site examination or the time period set forth in subsection 2, as appropriate, that the licensed family trust company has failed to provide the required information or documentation.*



*Sec. 24. 1. A licensed family trust company which received a rating of “satisfactory” on its most recent examination or which has not yet undergone an examination may elect to undergo an independent review. A licensed family trust company that elects to undergo an independent review must provide notification of such an election to the Division within 30 days after receipt of its notice of examination provided pursuant to section 21 of this regulation. The Division will provide written confirmation to the licensed family trust company that its examination will be conducted by means of independent review within 30 days after receiving the licensed family trust company’s notification of election.*

*2. An independent review must be conducted by a person who:*

*(a) Uses professional standards for conducting the independent review which are promulgated by the American Institute of Certified Public Accountants, the Institute of Internal Auditors or the Bank Administration Institute;*

*(b) Is independent from the licensed family trust company and is not owned or controlled by any stockholder, member, owner, affiliate, family affiliate, family member, client or employee of the licensed family trust company;*

*(c) Does not share a material business or financial interest with the licensed family trust company;*

*(d) Ensures that the independent review is supervised by a certified public accountant in good standing with the American Institute of Certified Public Accountants and in each state in which the accountant is licensed to practice, a certified internal auditor or certified financial services auditor in good standing with the Institute of Internal Auditors or a certified bank auditor in good standing with the Bank Administration Institute; and*

*(e) Maintains in good standing all licenses necessary to perform the services included in an independent review.*

*3. A qualified firm performing an independent review shall comply with the professional standards promulgated by the American Institute of Certified Public Accountants, the Institute of Internal Auditors or the Bank Administration Institute, as appropriate, and the provisions of this chapter and chapter 669A of NRS. The qualified firm must ensure that the scope of the independent review meets or exceeds the provisions of the examination guidance and any written clarification or modification of the examination guidance issued by the Commissioner to the licensed family trust company pursuant to subsection 1 of section 26 of this regulation.*

*4. Upon the completion of an independent review, the qualified firm shall prepare a written independent review report. The independent review report must:*

*(a) Confirm that the qualified firm performed the independent review using the policies and procedures adopted by the licensed family trust company relating to the management, operation and administration of its trust business and the information and documentation provided in response to the notice of examination;*

*(b) Identify any deficiency noted during the independent review;*

*(c) Identify any client complaints;*

*(d) Identify any failure by the licensed family trust company to respond to the notice of examination;*

*(e) Comment on the cooperation of the management of the licensed family trust company during the independent review;*

*(f) Review the compliance of the licensed family trust company with the provisions of this chapter and chapter 669A of NRS; and*



*(g) Include the written response by the management of the licensed family trust company to any deficiency, corrective action or client complaint, if applicable.*

*5. A licensed family trust company that undergoes an examination by means of independent review shall file with the Division, on or before September 30 of the year in which the independent review is conducted:*

*(a) The independent review report prepared by the qualified firm conducting the independent review; and*

*(b) The audited financial statements of the licensed family trust company for the examination period prepared by a certified public accountant, including, without limitation, a description of the accounting method in use by the licensed family trust company.*

*6. Upon the filing of an independent review report, the Division will:*

*(a) Perform an administrative review of the independent review report to ensure that:*

*(1) The person engaged by the licensed family trust company to perform the independent review satisfies the requirements of subsection 2;*

*(2) The independent review and the independent review report comply with the provisions of this chapter;*

*(3) Each deficiency, client complaint and corrective action identified in the independent review report were reported to the management of the licensed family trust company;*

*(4) The written response of the management of the licensed family trust company to each deficiency, client complaint or corrective action is reasonably adequate to ensure the compliance of the licensed family trust company with this chapter and chapter 669A of NRS; and*

*(5) The licensed family trust company complies with the requirements of this chapter and chapter 669A of NRS; and*

*(b) Assess the licensed family trust company which is the subject of the independent review report a fee of \$1,000 for its administrative review of the independent review report.*

**Sec. 25.** *The Division will, and a qualified firm shall, perform the examination in accordance with the examination procedures as follows:*

- 1. If applicable, review the results of the most recent examination and confirm with the management of the licensed family trust company that all corrective action has been completed.*
- 2. Confirm the submission of the required financial information to the Division, including any supplementary information requested by the Division.*
- 3. Review the licensed family trust company's compliance with the provisions of this chapter and chapter 669A of NRS.*
- 4. Review the board and the committee structure of the licensed family trust company for compliance with the governing instruments of the licensed family trust company.*
- 5. Review the minutes of the board and any committees and determine whether the minutes are retained permanently at the licensed family trust company office in physical or electronic form and in compliance with the governing instruments of the licensed family trust company.*
- 6. If the licensed family trust company has elected to undergo an independent review pursuant to section 24 of this regulation, determine whether previous matters in the management letter for external financial audits of the financial statements of the licensed family trust company have been resolved, are being addressed by the management of the*



*licensed family trust company in a response to the external auditor or do not require response or action.*

*7. If the licensed family trust company does not submit audited financial statements to the Division as part of its examination:*

*(a) Ensure that the licensed family trust company provides an annual report, if required pursuant to NRS 669A.255, as amended by section 14 of Senate Bill No. 384, chapter 256, Statutes of Nevada 2015, at page 1213;*

*(b) Make not more than five selections from licensed family trust company accounts and client accounts and test transactions in the accounts to determine whether the transactions are properly authorized and properly recorded;*

*(c) Confirm through documentation and review that procedures have been established to address periodic and timely reconciliations of general ledger accounts and subsidiary ledgers of the licensed family trust company, as appropriate; and*

*(d) Test through documentation and review that:*

*(1) Controls are in place over suspense accounts;*

*(2) The accounts are periodically reconciled;*

*(3) The accounts reflect appropriate items; and*

*(4) The accounts are promptly cleared.*

*Sec. 26. 1. A licensed family trust company may seek written clarification or modification of the examination guidance by submitting a written request to the Commissioner. The Commissioner may issue written clarification or modification of the examination guidance applicable to a licensed family trust company for good cause.*

2. *A licensed family trust company and a qualified firm engaged by a licensed family trust company to perform an independent review may rely upon the examination guidance in effect at the time that a notice of examination is provided pursuant to section 21 of this regulation, as clarified or modified by the response of the Commissioner to a written request submitted by the licensed family trust company pursuant to subsection 1, as the official statement of the Division of the scope of the examination.*

**Sec. 27.** *1. Within 60 days after the completion of an on-site examination or off-site examination of a licensed family trust company or the filing of an independent review report, the Division will prepare and deliver to the licensed family trust company a report of examination that:*

*(a) Identifies any deficiency or weakness which requires corrective action;*

*(b) Identifies any client complaint which requires further response by the management of the licensed family trust company; and*

*(c) Assigns a rating of “satisfactory,” “needs improvement” or “unsatisfactory” to the licensed family trust company based on the results of the examination, the compliance of the licensed family trust company with the provisions of this chapter and chapter 669A of NRS and the capability and willingness of the board and the management of the licensed family trust company to take corrective action.*

*2. The Division will assign a rating of:*

*(a) “Satisfactory” to a licensed family trust company that is fundamentally sound, complies with the provisions of this chapter and chapter 669A of NRS in all substantial respects and exhibits only moderate deficiencies or minor weaknesses which are within the capability and willingness of the management of the licensed family trust company to correct.*



*(b) “Needs improvement” to a licensed family trust company that generally complies with the provisions of this chapter and chapter 669A of NRS and exhibits some degree of supervisory concern in one or more areas where moderate deficiencies or weaknesses are present which are within the capability and willingness of the board and the management of the licensed family trust company to correct.*

*(c) “Unsatisfactory” to a licensed family trust company that does not generally comply with the provisions of this chapter and chapter 669A of NRS and exhibits some degree of supervisory concern in one or more areas where a combination of deficiencies or material weakness exists which may range from moderate to severe.*

*3. The Commissioner may, on the basis of an “unsatisfactory” rating:*

*(a) Revoke the license of the licensed family trust company pursuant to NRS 669A.280;*

*(b) Order the removal of any number of persons from the management of the licensed family trust company pursuant to NRS 669A.300;*

*(c) Impose and collect an administrative fine pursuant to NRS 669A.320; and*

*(d) Take any other enforcement action authorized by law.*

*4. The Commissioner may require a licensed family trust company that is assigned a rating of “unsatisfactory” to submit to a compliance and periodic reporting plan administered by the licensed family trust company or a third party to enforce any corrective action identified in the examination. The Commissioner may establish such terms and conditions for a compliance and periodic reporting plan as he or she deems advisable and require the licensed family trust company to pay all costs relating to the compliance and periodic reporting plan.*

*5. The management of a licensed family trust company shall provide the report of examination and the management’s written response to any corrective action required by the*

*Division to the board. If the report of examination rates the licensed family trust company as “needs improvement” or “unsatisfactory,” the management of the licensed family trust company must comply with this subsection within 30 days after receiving the report of examination.*

*6. If no action is pending against a licensed family trust company as a result of an examination, the Division will securely and confidentially maintain or destroy all documentation submitted in the course of an examination, other than the documents required to be filed with the Division, in accordance with the policies of the Division for the retention and destruction of records.*

*7. A report of examination and an independent review report are confidential and subject to the provisions of NRS 669A.310.*

**Sec. 28.** 1. Notwithstanding the provisions of section 21 of this regulation, a licensed family trust company whose license was issued on or before December 31, 2015, must undergo an examination, as defined in section 10 of this regulation, on or before December 31, 2017.

2. Notwithstanding the provisions of subsection 2 of section 29 of this regulation, the Division of Financial Institutions of the Department of Business and Industry will provide a notice of examination as described in section 21 of this regulation on or before November 15, 2016, to a licensed family trust company required to undergo an examination pursuant to subsection 1.

**Sec. 29.** 1. This section and section 28 of this regulation become effective on October 1, 2016.

2. Sections 1 to 27, inclusive, of this regulation become effective on January 1, 2017.