

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Commerce

Regulation/Package Title: Rules for Banks

Rule Number(s): 1301:1-1-01 (Rescind); 1301:1-1-02 (Amend); 1301:1-1-03 (No Change); 1301:1-1-04 (No Change); 1301:1-1-05 (Amend); 1301:1-2-01 (Amend); 1301:1-2-02 (No Change); 1301:1-3-01 (Amend); 1301:1-3-02 (No Change); 1301:1-3-03 (No Change); 1301:1-3-04 (Amend); 1301:1-3-05 (Amend); 1301:1-3-06 (Amend); 1301:1-3-10 (Amend); 1301:1-3-11 (No Change); 1301:1-3-12 (No change); 1301:1-4-01 (Amend); 1301:1-4-03 (New); 1301:1-4-04 (No Change); 1301:1-4-06 (Amend); 1301:1-4-11 (Amend); 1301:1-4-12 (Amend); 1301:1-4-13 (No Change); 1301:1-4-14 (New); 1301:1-5-01 (Amend); 1301:1-6-01 (No Change)

Date: April 2, 2015

Rule Type:

New

5-Year Review

Amended

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

1301:1-1-01, Notification of Public Hearings (Rescind) – This rule describes when public notice is required for administrative rule changes proposed by the Division’s superintendent. It is recommended that this rule be rescinded because such notice requirements already apply to the Division pursuant to Chp. 119 of the Revised Code.

1301:1-1-02, Open public meetings of the banking commission (Amend) – The rule addresses public notice requirements of the banking commission meetings and other related requirements. The rule is being amended to modernize certain aspects of the how the public can request notification of the banking commission meetings and to correct a typographical error.

1301:1-1-05, Reimbursement to banks and trust companies for assembling or providing financial records (Amend) – As required by Revised Code Section 9.02, this rule establishes the rates and conditions for the reimbursement of costs incurred when a bank provides requested customer financial records. The proposed amendments will bring the reimbursement rates and exceptions to reimbursement in line with the federal rules, as required by Revised Code Section 9.02.

1301:1-2-01, Computation of capital (Amend) – This rule details capital requirements for banks as required by Ohio Revised Code Section 1107.03. Proposed amendments to this rule would correct several typographical errors.

1301:1-3-01, Lending limits (Amend) – This rule details the lending limit for banks. Proposed amendments to this rule would correct several typographical errors.

1301:1-3-04, Insider loans (Amend) – This rule further explains the authority and conditions necessary for a bank to extend credit to its insiders as set forth in Revised Code Sections 1109.23 and 1109.24. This rule is being amended to correct multiple typographical errors. A proposed amendment to this rule would correct a typographical error.

1301:1-3-05, Insider loan reporting (Amend) – This rule further clarifies the requirements applicable to a bank's insider loans as set forth in Revised Code Sections 1109.23 and 1109.24. Specifically, the rule speaks to certain reporting requirements for bank insiders

who have extensions of credit with a correspondent bank. The proposed amendment to this rule would correct a typographical error.

1301:1-3-06, Revenue bonds (Amend) – As required by Revised Code Section 1109.36, this rule details the conditions under which revenue bonds can be permissible investments for banks. The rule is being amended to correct a typographical error.

1301:1-3-10, Operating subsidiaries (Amend) – This rule details the applicable requirements and conditions for when a bank intends to acquire, establish, or perform new activities in an operating subsidiary. This rule would be amended to provide parity with parallel federal regulations.

1301:1-4-01, Definition of an emergency under 1115.15 of the Revised Code (Amend) – This rule defines an emergency for purposes of Revised Code Section 1115.15. An amendment is being proposed in order to reword a portion of the rule for the sake of readability.

1301:1-4-03, Definition of an outside director (New) – A new rule is being proposed to define the term “outside director” for purposes of section 1105.02 of the Revised Code.

1301:1-4-06, Change in bank control (Amend) – This rule clarifies the requirements applicable to a change in bank control as set forth by Revised Code Section 1115.06. A proposed amendment to this rule would correct several typographical errors.

1301:1-4-11, Procedures for relocating a banking office (Amend) – As required by Revised Code Section 1117.04, this rule details requirements that pertain to the relocation of a banking office. A proposed amendment to this rule would clarify the necessary conditions for a banking office to be deemed relocated.

1301:1-4-12, Procedures for closing a banking office (Amend) – As required by Revised Code Section 1117.04, this rule details requirements that pertain to the closing of a banking office. A proposed amendment to this rule would correct a typographical error.

1301:1-4-14, Retention of “Federal” in name of converted Federal savings association (New) – This new rule would adopt what is already permitted under federal law; the authority of a federal thrift that converts to a state bank to retain the word “Federal” in their name.

1301:1-5-01, Management duties regarding shareholder meetings (Amend) – This rule expands on and clarifies the notice requirements of Revised Code Section 1103.13 that the management of a bank must comply with as it relates to meetings of their shareholders. It also delineates proxy requirements pertaining to such meetings. This rule would be amended solely to correct an outdated reference to the “superintendent of banks”.

NO CHANGE RULES

1301:1-1-03, Personal service (*No change*) – No changes are recommended for this rule as part of the five year rule review process. The rule expands on the personal service requirements of Revised Code Section 1121.37.

1301:1-1-04, Designations and names that include bank, banker, banking, or trust (*No change*) – No changes are recommended for this rule as part of the five year rule review process. The rule provides guidance as it pertains to the Revised Code Section 1101.15 prohibitions against using names that include bank, banker, banking, or trust.

1301:1-2-02, Trust company capital (*No change*) – No changes are recommended for this rule as part of the five year rule review process. This rule details capital requirements for trust companies as required by Ohio Revised code Section 1111.05.

1301:1-3-02, Real estate lending standards (*No change*) – No changes are recommended for this rule as part of the five year rule review process. As required by Revised Code Section 1109.16, this rule sets forth requirements pertaining to a bank's real estate lending standards and policies.

1301:1-3-03, Letters of credit (*No change*) – No changes are recommended for this rule as part of the five year rule review process. The rule addresses requirements that apply when a bank issues a letter of credit.

1301:1-3-11, Bank subsidiary corporations and bank service corporations (*No change*) – No changes are recommended for this rule as part of the five year rule review process. This rule clarifies the process for banks seeking Division approval, as required by Revised Code Section 1109.44, when they intend to acquire, establish, or perform new activities in a bank subsidiary corporation or bank service corporation.

1301:1-3-12, Mutual funds (*No change*) – No changes are recommended for this rule as part of the five year rule review process. The rule addresses those situations in which a bank's investment in mutual funds operates as an exception to certain investment restrictions.

1301:1-4-04, Bank's purchase of its own shares (*No change*) – No changes are recommended for this rule as part of the five year rule review process. This rule clarifies the process for banks seeking Division approval, as required by Revised Code Sections 1103.08 and 1107.13, when they intend to purchase their own stock.

1301:1-4-13, Agency agreement between bank and affiliate and unaffiliated depository institutions (*No change*) – No changes are recommended for this rule as part of the five year rule review process. The rule addresses the requirements that apply when a bank contracts for certain services with an affiliated or unaffiliated depository institution.

1301:1-6-01, Qualified trustees (No change) – No changes are recommended for this rule as part of the five year rule review process. The rule further clarifies the applicable procedure when a trust company applies to be a qualified trustee as required by Revised Code Sections 135.18 and 135.181.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.** Revised Code Section 1121.03 is the authorizing statute for each of the aforementioned rules. Revised Code Section 9.02 also authorizes the amendments to rule 1301:1-1-05.
3. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**
No to both questions.
4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.** Not applicable.
5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?** These rules are being promulgated in response to questions and comments from stakeholders, and so that the Division can better administer the Ohio Bank Code, Title 11 of the Revised Code. The rules will provide guidance and clarification on a number of issues that have come to the Division's attention since the most recent five year rule review.
6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?** Success will be measured by the clarity and guidance that these regulations will bring to stakeholders as it pertains to their regulatory interactions with the Division going forward.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.** The Ohio Bankers League, Community Bankers Association of Ohio, Banking Commission, Fifth Third Bank, Ohio State Bar Association, Ohio Poverty Law Center, Coalition on Homelessness and Housing in Ohio, and Vorys, Sater, Seymour and Pease LLP were contacted and given draft regulations for review and comment as part of this rule review process.

- 8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?** Vorys, Sater, Seymour and Pease LLP responded with specific comments regarding the draft rules. Some of the suggestions are not feasible at this time, as they exceed current Division statutory authority. For example, there was a suggestion that the Division allow nonbank investors to apply for a preliminary bank “shelf charter”. This process, however, would conflict with the current statutory chartering process for a de novo bank. Additionally, it was suggested that rules be proposed to allow for additional capital options for mutual banking institutions, and to allow for the formation of mutual holding companies. However, such rules would be more appropriate for the savings bank and savings and loan rules, rather than the banking rules. That being said, the Division did incorporate the suggestion that the Division adopt a formal rule process by which a converting federal thrift can retain the word “federal” in its name. This suggestion became the basis for new rule OAC 1301:1-4-14. Additionally, a Banking Commission member had numerous comments that were taken into consideration, and resulted in several grammatical fixes. Finally, a meeting was held with a representative of the Ohio Bankers League, to discuss the Division’s goals as they pertain to the five year rule review, but they did not have any substantive concerns. Similarly, the Community Bankers Association of Ohio did not have any substantive concerns pertaining to the bank rules.
- 9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?** Not applicable.
- 10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn’t the Agency consider regulatory alternatives?** Given that these regulations are subject to their five year rule review, every rule was reviewed and numerous alternatives were considered as part of the process.
- 11. Did the Agency specifically consider a performance-based regulation? Please explain.** No, these regulations are necessary to carry out the provisions of Revised Code chapters 1101 to 1127. However, any amendments or proposed rules resulting from the five year rule review are being made for purposes of clarifying existing law, as a result of stakeholder input, or are needed for purposes of modernizing certain aspects of the rules.
- 12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?** The Division is the only agency that regulates Ohio-chartered banks under Chapters 1101 to 1127 of the Revised Code.
- 13. Please describe the Agency’s plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.** The regulations have been available to stakeholders throughout the

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rule review process, and will continue to be available to them through the Division's website throughout the JCARR process. Once finalized, the regulations will be brought to the attention of stakeholders at every available opportunity, including outreach events, newsletters, and through the Banking Commission. Additionally, Division staff will be trained on the regulations to ensure their consistent application.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;** These rules apply to “banks” and certain “trust companies”, as those terms are defined by Revised Code section 1101.01. These rules do not impose any new fines, fees, or penalties.
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance);** *OAC 1301:1-1-02, Open public meetings of the banking commission.* The rule addresses public notice requirements of the banking commission meetings and other related requirements. No substantive changes to this rule are being proposed, other than modernizing certain aspects of the rule to allow for email notification.
OAC 1301:1-1-05, Reimbursement to banks and trust companies for assembling or providing financial records. This rule does not adversely affect stakeholders, but does raise the reimbursement rate a bank or trust company can charge another party for providing customer financial records. The rule and reimbursement rate increase are both mandated by Revised Code Section 9.02.
OAC 1301:1-2-01, Computation of capital. This rule details the capital requirements for banks, and how that capital is to be calculated, as required by Revised Code Section 1107.03. No substantive changes to this rule are being proposed as part of the five year rule review.
OAC 1301:1-2-02, Trust company capital. This rule details the capital requirements for trust companies, and how that capital is to be calculated, as required by Revised Code Section 1111.05. No changes are recommended for this rule.
OAC 1301:1-3-01, Lending limits. This rule clarifies the limits of a bank's authority to lend money. No substantive changes to this rule are being proposed as part of the five year rule review.
OAC 1301:1-3-02, Real estate lending standards. As required by Revised Code Section 1109.16, this rule clarifies the limits of a bank's real estate lending authority. No changes are recommended for this rule.

OAC 1301:1-3-03, Letters of credit. This rule details the requirements that must be in place before a bank can issue a letter of credit pursuant to Chp. 1305 of the Revised Code. No changes are recommended for this rule.

OAC 1301:1-3-04, Insider loans. This rule further explains and clarifies the limits on a bank's authority to extend credit to its insiders as prescribed by Revised Code Sections 1109.22 and 1109.23. No substantive changes to this rule are being proposed as part of the five year rule review.

OAC 1301:1-3-05, Insider loan reporting. Banks and bank insiders may need to expend time and resources to ensure their insider policies comply with the rule's reporting requirements. However, the rule merely clarifies the bank insider loan requirements set forth in Revised Code Sections 1109.23 and 1109.24. Additionally, most banks already have sufficient policies already in place to ensure compliance, and these same banks are subject to similar federal requirements. No substantive changes to this rule are being proposed as part of the five year rule review.

OAC 1301:1-3-06, Revenue bonds. As required by Revised Code Section 1109.36, this rule details the conditions under which revenue bonds can be permissible investments for banks. The rule is being amended to correct a typographical error. A bank may need to expend time and resources to ensure their investments in revenue bonds meet the conditions set forth by the rule. However, most, if not all, banks already conduct adequate due diligence and are in compliance with the rule. Additionally, federal standards independently impose similar standards on these same banks.

OAC 1301:1-3-10, Operating subsidiaries. This rule requires banks to notify the Division when they intend to acquire, establish, or perform new activities in an operating subsidiary. It also provides that a bank operating subsidiary is subject to examination by the Division in the same manner as the parent bank. The proposed revisions, however, do not result in any additional adverse impact to stakeholders, as they merely provide parity with parallel federal regulations so that state-chartered banks are not disadvantaged relative to national banks.

OAC 1301:1-3-11, Bank subsidiary corporations and bank service corporations. This rule would require a minimal expenditure of time and resources for a bank that intends to invest in, acquire, establish, or perform new activities in a bank subsidiary corporation or a bank service corporation pursuant to Revised Code section 1109.44, as they must file a letter with the Division requesting approval.

OAC 1301:1-4-04, Bank's purchase of its own shares. This rule would require a minimal expenditure of time and resources for a bank that intends to purchase its own stock, as it details the information that must be submitted in order to obtain the Division approval required by Revised Code Sections 1103.08 and 1107.13.

OAC 1301:1-4-06, Change in bank control. This rule details the information and notice that must be submitted to the Division before a person or entity can acquire control of a state bank, as required by Revised Code Section 1115.06. No substantive changes to this rule are being proposed as part of the five year rule review.

OAC 1301:1-4-11, Procedures for relocating a banking office. This rule details the information and notice that must be submitted to the Division for a bank that intends to relocate a banking office. The rule does not create the notice requirement, however, as it is mandated by Revised Code Section 1117.04. An amendment to this rule is being recommended to better clarify already existing requirements.

OAC 1301:1-4-12, Procedures for closing a banking office. This rule details the notice requirements applicable to a bank that intends to close a banking office. These procedures are mandated by Revised Code Section 1117.04. No substantive changes are being proposed for this rule as part of the five year rule review.

OAC 1301:1-4-13, Agency agreement between bank and affiliate and unaffiliated depository institutions. The rule requirement that banks obtain Division approval pursuant to Revised Code section 1117.05 when providing certain services to its customers through another depository institution, may require a minimal expenditure of time and resources. However, such approval is necessary in order to ensure the safety and soundness of the unaffiliated institution and to protect depositors.

OAC 1301:1-5-01, Management duties regarding shareholder meetings. This rule expands on and clarifies the notice requirements of Revised Code Section 1103.13 that the management of a bank must comply with as it relates to meetings of their shareholders. It also delineates proxy requirements pertaining to such meetings. No substantive changes are being proposed for this rule as part of the five year rule review.

OAC 1301:1-6-01, Qualified trustees. This rule would require a minimal expenditure of time and resources for trust companies seeking a certificate of qualification to become a qualified trustee. The rule details the information that must be submitted in order to obtain the Division approval required by Revised Code Sections 135.18 and 135.181. Such an approval process is necessary to ensure the safety and soundness of those institutions holding public funds. **and**

c. Quantify the expected adverse impact from the regulation.

It is difficult to generalize any adverse impact, as the Division regulates banks of all asset sizes. Additionally, the cost of compliance can vary greatly depending on the financial condition of a bank and the effectiveness of its management. That being said, the following are estimated ranges of the time and cost a bank may need to

expend to ensure compliance with those regulations resulting in a potential adverse impact:

OAC 1301:1-3-05, Insider loan reporting – Compliance with this rule may require 5 to 10 hours of a CFO’s time at an estimated cost of \$420.00.

OAC 1301:1-3-06, Revenue bonds - Compliance with this rule may require 5 hours of a CFO’s time at an estimated cost of \$300.00.

OAC 1301:1-3-11, Bank subsidiary corporations and bank service corporations - Compliance with this rule may require 4 hours of a CFO’s time and 2 hours of an attorney’s time for a total estimated cost of \$480.00.

OAC 1301:1-4-04, Bank’s purchase of its own shares - Compliance with this rule may require 2 hours of a CFO’s time, 2 hours of an attorney’s time, and 2 hours admin time for a total estimated cost of \$394.00.

OAC 1301:1-4-11, Procedures for relocating a banking office - Compliance with this rule may require 1 hour of a CEO’s time and 2 hours admin time for a total estimated cost of \$114.00.

OAC 1301:1-4-12, Procedures for closing a banking office - Compliance with this rule may require 1 hour of a CEO’s time and 2 hours admin time for a total estimated cost of \$114.00.

OAC 1301:1-6-01, Qualified trustees - Compliance with this rule may require 5 hours of a CFO’s time at an estimated cost of \$300.00.

Additionally, any such impact is necessary for the Division to carry out its delegated responsibility under Title 11 of the Revised Code to supervise and regulate banks chartered under the laws of this state, and to provide parity with applicable parallel federal regulations.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community? As stated in Revised Code Section 1101.02, the general assembly has delegated rule-making power and administrative discretion to the Division, and, mandates, among other things, that the interests of depositors, creditors, shareholders, and the general public in banks doing business in this state be protected. Additionally, certain changes are necessary to provide parity with parallel federal regulations. The specific compliance criteria was based on the following:

OAC 1301:1-2-01, Computation of capital – Federal capital standards for banks.

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OAC 1301:1-2-02, Trust company capital – Based on the Multi-State Trust Institutions Act.

OAC 1301:1-3-01, Lending limits – Based on federal lending limit standards.

OAC 1301:1-3-02, Real estate lending standards - Based on federal standards.

OAC 1301:1-3-03, Letters of credit- Based on federal safety and soundness standards.

OAC 1301:1-3-04, Insider loans – Based on federal Regulation O.

OAC 1301:1-3-05, Insider loan reporting – Based on federal Regulation O.

OAC 1301:1-3-10, Operating subsidiaries – Based on federal law.

OAC 1301:1-3-11, Bank subsidiary corporations and bank service corporations – Mirrors the requirements placed on bank operating subsidiaries.

OAC 1301:1-4-04, Bank's purchase of its own shares – Based on similar restrictions existing under federal law.

OAC 1301:1-4-06, Change in bank control – Based on change of control requirements for national banks.

OAC 1301:1-4-11, Procedures for relocating a banking office – Based on federal standards.

OAC 1301:1-4-12, Procedures for closing a banking office - Based on federal standards.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain. No. These rules must be applied evenly in order to ensure the safety of soundness of Ohio-chartered banks, and to protect the interests of depositors, creditors, shareholders, and general public in these institutions.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation? The Division does not impose administrative fines or civil penalties for paperwork violations.

18. What resources are available to assist small businesses with compliance of the regulation? The Division widely publicizes to stakeholders the fact that its staff is available directly via phone or email. Additionally, many of the most commonly requested forms and applications are available from the Division's website.