

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Commerce

Regulation/Package Title: Rules for Savings and Loan Associations

Rule Number(s): 1301:2-1-01 (Rescind); 1301:2-1-02 (Amend); 1301:2-1-03 (No Change); 1301:2-2-01 (Amend); 1301:2-3-01 (No Change); 1301:2-3-02 (No Change); 1301:2-3-03 (No Change); 1301:2-3-04 (No Change); 1301:2-4-01 (No Change); 1301:2-4-02 (No Change); 1301:2-4-03 (No Change); 1301:2-4-04 (No Change); 1301:2-4-05 (No Change); 1301:2-5-01 (Amend); 1301:2-5-02 (No Change)

Date: January 20, 2016

Rule Type:

New

Amended

5-Year Review

Rescinded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.

Regulatory Intent

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

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

1301:2-1-01, notification of public hearing (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 It is recommended that this rule be rescinded because such notice requirements already apply to the Division pursuant to Chp. 119 of the Revised Code.

1301:2-1-02, Reimbursement for providing financial records (Amend) – As required by section 9.02(C) of the Revised Code, this rule is being amended to reflect the increased reimbursement rate under federal rules that financial institutions may charge for providing customer financial records. Section 9.02(C) of the Revised Code provides that the rates and conditions for making such payments shall be established by rule by the superintendent of financial institutions, and that such rules shall be substantially like those adopted by the board of governors of the federal reserve system to regulate similar fees required by federal law.

1301:2-2-01, Net worth requirement (Amend) – As required by section 1151.33 of the Revised Code, the rule expands on the net worth (capital) requirements applicable to savings and loan associations. The rule is being amended to provide for parity with revised regulatory capital rules recently issued at the federal level.

NO CHANGE RULES

1301:2-1-03, Record retention (No change) – No changes are recommended for this rule as part of the five year rule review process. The rule sets forth the record retention schedule for savings and loans associations as allowed for by section 1155.07 of the Revised Code.

1301:2-3-01, Activities of service corporations (No change) – No changes are recommended for this rule as part of the five year rule review process. As required by section 1151.344(B) of the Revised Code, this rule sets forth the allowable services for certain saving and loan association controlled service corporations.

1301:2-3-02, Repurchase and reverse repurchase agreements (No change) – No changes are recommended for this rule as part of the five year rule review process. As required by section 1151.28 of the Revised Code, this rule sets forth the safety and soundness standards for a savings and loan association wishing to invest in repurchase or reverse repurchase agreements.

1301:2-3-03, Operating subsidiaries *(No change)* – No changes are recommended for this rule as part of the five year rule review process. The rule sets forth the conditions for a savings and loan association to establish, acquire, or engage in new activities in an operating subsidiary.

1301:2-3-04, Commercial lending *(No change)* – No changes are recommended for this rule as part of the five year rule review process. As permitted by section 1151.30 of the Revised Code, this rule increases the maximum amount of commercial loans a savings and loan association can make, along with the amount of reserves that must be maintained.

1301:2-4-01, Incorporation *(No change)* – No changes are recommended for this rule as part of the five year rule review process. Chapter 1151 of the Revised Code requires the Division's approval before a proposed savings and loan association may commence business, and this rule expands on and details that application process.

1301:2-4-02, Change in control *(No change)* – No changes are recommended for this rule as part of the five year rule review process. This rule clarifies the requirements applicable to a change of control of a savings and loan association as required by section 1151.66 of the Revised Code.

1301:2-4-03, Agency agreement between savings and loan association and affiliate and non-affiliate depository institutions *(No change)* – No changes are recommended for this rule as part of the five year rule review process. This rule details the conditions that must be met for a savings and loan association to provide services through another depository institution, conditions which include obtaining prior written approval of the Division under certain circumstances. This rule expands on and relates back to the process set forth in section 1151.03 of the Revised Code.

1301:2-4-04, Conversion from mutual to stock *(No change)* – No changes are recommended for this rule as part of the five year rule review process. In accordance with section 1155.27 of the Revised Code, this rule sets forth the Division's application process for a mutual savings and loan association to convert to a stock savings and loan association.

1301:2-4-05, Remote service units *(No change)* – No changes are recommended for this rule as part of the five year rule review process. This rule sets forth the conditions under which a savings and loan association may establish or use a remote service unit.

1301:2-5-01, Directors *(No change)* – No changes are recommended for this rule as part of the five year rule review process. The rule sets forth the minimum number of directors that may be authorized for a savings and loan association.

1301:2-5-02, Bonds for officers and employees *(No change)* – No changes are recommended for this rule as part of the five year rule review process. This rule sets forth

the schedule for the minimum bonding coverage that a savings and loan must maintain in accordance with section 1151.49 of the Revised Code.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.** Revised Code Section 1155.20 is the authorizing statute for each of the aforementioned rules. Revised Code Section 9.02 also authorizes the amendments to rule 1301:2-1-02.
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 so that the Division can better administer those chapters of the Revised Code applicable to state chartered savings and loan associations. The rules will provide guidance and clarification on those issues that have come to the Division's attention since the previous 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, the Community Bankers Association of Ohio, the Savings and Loan Associations and Savings Banks Board, 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?** The Division has not received any feedback from the stakeholders.
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.

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- 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 1151, 1153, 1155, 1157. 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 savings and loan associations under Chapters 1151, 1153, 1155, and 1157 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 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 Savings and Loan Associations and Savings Banks Board. 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 savings and loan associations, as that term is defined by Revised Code section 1151.01.
 - b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance);**

1301:2-2-01, Net worth requirement (Amend) – Section 1151.33 of the Revised Code requires that a savings and loan association maintains net worth (capital) as determined by the superintendent. Capital requirements have historically been an integral component of financial institution regulation in order to protect the institution against risk and unexpected

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losses. Such capital requirements have become even more important as a result of the lessons learned from the 2008 financial crisis. Intrinsic within a capital requirement is what can be described as a cost to a savings and loan association. However, it is not possible to quantify this cost, as it varies by each institution's financial condition, business model, and other factors. Additionally, the rule amendments will not impact the cost of compliance, as it merely provides for parity with federal rules already applicable to state savings and loan associations.

1301:2-3-01, Activities of service corporations (No change) – A service corporation may need to expend minimal time and resources to file the necessary letter of intent with the Division when intending to engage in an activity not expressly authorized by the rule.

1301:2-3-02, Repurchase and reverse repurchase agreements (No change) – A savings and loan association may need to expend minimal time and resources to establish the guidelines required by the rule before entering repurchase agreements.

1301:2-3-03, Operating subsidiaries (No change) – A savings and loan association may need to expend minimal time and resources in order to provide the Division with the written notice required when establishing, acquiring, or engaging in new activities in an operating subsidiary.

1301:2-3-04, Commercial lending (No change) – Maintaining a certain level of reserves can be described as a cost to a savings and loan association. However, as required by section 1151.30 of the Revised Code, adequate reserves are necessary to protect the savings and loan association against the risk of the increased commercial lending permitted by the rule.

1301:2-4-01, Incorporation (No change) – As with the incorporation of any business, there would be a cost to a proposed savings and loan association that wishes to organize in Ohio. However, the rule's application requirements are necessary for the Division to comply with its responsibilities under section 1151.03 of the Revised Code to properly certify that a proposed savings and loan association may commence business.

1301:2-4-02, Change in control (No change) – A person or entity acquiring control of a savings and loan association may need to expend time and resources to comply with the notice provisions of the rule. However, such prior approval of the Division is required by section 1151.66 of the Revised Code.

1301:2-4-03, Agency agreement between savings and loan association and affiliate and non-affiliate depository institutions (No change) – The rule requirement that savings and loan associations obtain prior Division approval in accordance with section 1151.03 of the Revised Code 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.

1301:2-4-04, Conversion from mutual to stock (No change) – As with any corporate reorganization, there would be a legal, time, and resource cost to a savings and loan association wishing to apply to the Division for conversion from mutual to stock form. However, the rule's conditions are similar to those applicable to federal savings associations, and are necessary for the Division to ensure that the proposed transaction adequately protects the converting institution's depositors.

1301:2-4-05, Remote service units (No change) – There is a cost that varies by institution in order to comply with the rule's remote service unit IT security provisions. However, these requirements are in line with federal privacy laws and federal rules governing the protection of consumer financial information.

1301:2-5-02, Bonds for officers and employees (No change) – There is a cost for a savings and loan association to maintain a fidelity bond in compliance with the rule. However, similar coverage is required for all financial institutions and is necessary to protect depositors and others from the risk of loss. **and**

c. Quantify the expected adverse impact from the regulation.

It is difficult to generalize any adverse impact, as the Division regulates savings and loan associations of all asset sizes. Additionally, the cost of compliance can vary greatly depending on the financial condition of a savings and loan association and the effectiveness of its management. That being said, the following are estimated ranges of the time and cost a savings and loan association may need to expend to ensure compliance with those regulations resulting in a potential adverse impact:

OAC 1301:2-3-01, Activities of 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.

1301:2-3-03, Operating subsidiaries - 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.

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 savings and loan associations 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 provided for in sections 1155.011 and 1155.20 of the Revised Code, the general assembly has delegated rule-making power and administrative discretion to the Division, and, mandates, among other things, that the Division supervise and examine savings and loan association. Additionally, certain changes are necessary to provide parity with parallel federal regulations. The specific compliance criteria was based on the following:

1301:2-2-01, Net worth requirement – Adopts federal capital standards for banks and savings associations.

1301:2-3-01, Activities of service corporations –Based on requirements for state chartered banks

1301:2-3-03, Operating subsidiaries – Based on requirements for state chartered banks.

1301:2-4-02, Change in control – Based on requirements for state chartered banks.

1301:2-4-03, Agency agreement between savings and loan association and affiliate and non-affiliate depository institutions - Based on requirements for state chartered banks.

1301:2-4-05, Remote service units – 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 savings and loan associations, and to protect the interests of members, 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.