



# Common Sense Initiative

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## Business Impact Analysis

Agency Name: Department of Commerce, Division of Financial Institutions

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Regulation/Package Title: Rules for State Banks

Rule Number(s): 1301:1-1-02 (Amend); 1301:1-1-03 (No change); 1301:1-1-04 (Amend); 1301:1-1-05 (No change); 1301:1-2-01 (Rescind, New); 1301:1-2-02 (No change); 1301:1-3-01 (Amend); 1301:1-3-01.1 (Amend); 1301:1-3-02 (Amend); 1301:1-3-03 (Amend); 1301:1-3-04 (Rescind, New); 1301:1-3-05 (Rescind); 1301:1-3-06 (Amend); 1301:1-3-10 (Amend); 1301:1-3-11 (Amend); 1301:1-3-12 (Amend); 1301:1-4-01 (No change); 1301:1-4-03 (Rescind); 1301:1-4-04 (Amend); 1301:1-4-06 (Amend); 1301:1-4-11 (Amend); 1301:1-4-12 (No change); 1301:1-4-13 (No change); 1301:1-4-14 (No change); 1301:1-4-15 (New); 1301:1-4-16 (New); 1301:1-5-01 (Amend); 1301:1-6-01 (Amend)

Date: \_\_\_\_\_

**Rule Type:**

New

5-Year Review

Amended

Rescinded

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency,

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responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **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.*

**1301:1-1-02 Open public meetings of the banking commission** (*Amend*) – This rule addresses public notice requirements of the banking commission meetings and other related requirements. Proposed amendments correct typographical errors.

**1301:1-1-04 Designations and names that include “bank,” “banker,” “banking,” or “trust”** (*Amend*) – This rule provides guidance as it pertains to prohibitions contained in R.C. 1101.15 against using names that include bank, banker, banking, or trust. Amendments will reflect a change to R.C. 1101.15, which adds to the naming restriction the terms “savings association,” “savings and loan,” or “savings bank,” or a word or combination of words of similar meaning.

**1301:1-2-01 Computation of capital** (*Rescind, New*) – This rule details capital requirements for state banks as defined by R.C. 1101.01. At present the rule mirrors a former version of the Federal Deposit Insurance Corporation’s (“FDIC”) regulation regarding capital adequacy. The Division seeks to streamline the computation of capital by all state banks by replacing a reference to the FDIC regulation with a reference to the Office of the Comptroller of the Currency’s method of computing capital. Pursuant to LSC’s fifty per cent guideline, because the change will amend more than fifty per cent of the existing rule, the Division is rescinding the existing rule and enacting a new rule bearing the same rule number.

**1301:1-3-01 Lending limits** (*Amend*) – This rule details the lending limits for state banks. The proposed amendment would change references from the term “bank” to “state bank.”

**1301:1-3-01.1 Derivative transactions** (*Amend*) – This rule clarifies the definitions of the terms “loans and extensions of credit” and “derivative transaction” as those terms are used in R.C. 1109.22. The proposed amendment would change references from the term “bank” to “state bank.”

**1301:1-3-02 Real estate lending standards** (*Amend*) – As required by Revised Code Section 1109.16, this rule sets forth requirements pertaining to a bank’s real estate lending standards and policies. The proposed amendment would change references from the term “bank” to “state bank.”

**1301:1-3-03 Letters of credit** (*Amend*) – This rule addresses requirements that apply when a bank issues a letter of credit. The proposed amendments would change references from the term “bank” to “state bank.”

**1301:1-3-04 Insider loans** (*Rescind, New*) – This rule explains the authority and conditions necessary for a state bank to extend credit to its insiders as set forth in R.C. 1109.23 and 1109.24. The existing rule substantially mirrors federal Regulation O, 12 C.F.R. Part 215. The Division proposes to replace the language contained in the existing rule with a simpler reference to the federal regulation. Pursuant to LSC’s fifty per cent guideline, because the change will amend more than fifty per cent of the existing rule, the Division is rescinding the existing rule and enacting a new rule bearing the same rule number.

**1301:1-3-05 Insider loan reporting** (*Rescind*) – This rule speaks to certain reporting requirements for state bank insiders with extensions of credit with a correspondent bank, as required by R.C. 1109.23 and 1109.24. The Division proposes to rescind this rule, which mirrors an old version of Reg. O. Several years ago, Reg. O was amended to eliminate certain requirements, including the correspondent loan requirement this rule mirrors. The elimination of the federal reporting requirements did not alter restrictions on loans to executive officers, directors, principal shareholders. Likewise, the Division’s rescission of this rule would not alter a state bank’s insider loan reporting requirements.

**1301:1-3-06 Revenue bonds** (*Amend*) – This rule details the conditions under which revenue bonds are permissible investments. Proposed amendments modernize the rule, promote parity with federal regulations, and change a reference from the term “bank” to “state bank.” Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act required federal agencies to modify their regulations to remove references to and requirements of reliance on credit ratings. The Division proposes to replace the rule’s reference to investment rating services with a reference to the OCC regulation that defines the term “investment grade” in accordance with section 939A of the Dodd-Frank Act.

**1301:1-3-10 Operating subsidiaries** (*Amend*) – This rule details requirements and conditions applicable to a bank intending to acquire, establish, or perform new activities in an operating subsidiary. Proposed amendments would clarify the information required to be included in a letter notifying the Superintendent of a state bank’s intention to acquire, establish, or perform new activities in an operating subsidiary, and would modify delivery requirements for notification letters. Proposed amendments also change references from the term “bank” to “state bank.”

**1301:1-3-11 Bank subsidiary corporations and bank service corporations** (*Amend*) – This rule clarifies the process for a bank seeking Division approval to acquire, establish, or perform new activities in a bank subsidiary corporation or a bank service corporation. The proposed amendments would clarify the process for a state bank seeking the Superintendent’s

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approval to acquire, establish, or perform new activities in a bank subsidiary corporation or a bank service corporation. Proposed amendments would also shorten the timeframe within which the Superintendent would render a decision on a proposal to invest in, acquire, establish, or perform new activities in a bank subsidiary corporation or bank service corporation. The amendment also changes a reference from the term “bank” to “state bank.”

**1301:1-3-12 Mutual funds** (*Amend*) – This rule addresses those situations in which a state bank’s investment in mutual funds operates as an exception to certain investment restrictions. The amendment corrects a typographical error and changes references from the term “bank” to “state bank.”

**1301:1-4-03 Definition of an outside director under section 1105.02 of the Revised Code** (*Rescind*) – This rule defines the term “outside director” for purposes of R.C. 1105.02. Because R.C. 1105.02 now contains a definition of that term, the Division proposes to rescind the rule.

**1301:1-4-04 Bank’s purchase of its own shares** (*Amend*) – This rule clarifies the process for a bank seeking Division approval when it intends to purchase its own stock. The rule amendments change references from the term “bank” to the term “stock state bank”; clarify the requirement that a state bank obtain prior Division approval before purchasing its stock; and correct a reference to the statute it amplifies, which was changed in recent legislation (HB 49, 132nd General Assembly).

**1301:1-4-06 Change in bank control** (*Amend*) – This rule clarifies the requirements to a change in bank control as set forth in R.C. 1115.06. The rule amendments would correct typographical errors; add a provision that clarifies items required in a state bank’s notification to the superintendent; and rescind several paragraphs that duplicate requirements enumerated in R.C. 1115.06.

**1301:1-4-11 Procedures for relocating a banking office** (*Amend*) – This rule details requirements applicable to the relocation of a banking office. The rule amendment reflects changes to R.C. 1117.04, which now defines the term “service area” as a one-mile radius for determining whether the Division must approve a branch relocation.

**1301:1-4-15 Converting into a state bank** (*New*) – This rule clarifies the procedure a national bank or other institution must follow when it wishes to convert into a state-chartered bank pursuant to R.C. 1115.02. The conversion requirements were codified before the 2018 enactment of HB 49, but were removed through the bill’s enactment; this rule substantially mirrors the previous statutory language.

**1301:1-4-16 Institution-affiliated party** (*New*) – This rule promotes clarity by defining the term “institution-affiliated party” by reference to federal law. HB 49 of the 132nd General Assembly added a reference to institution-affiliated parties but did not define the term.

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**1301:1-5-01 Management duties regarding shareholder meetings** (*Amend*) – This rule expands on and clarifies the notice requirements with which a bank must comply related to a meeting of the shareholders. The proposed amendments account for changes to R.C. 1103.13 and 1103.14, which were renumbered to 1113.14 and 1113.15, respectively. The changes specifically remove material that is now duplicative and correct typographical errors.

**1301:1-6-01 Qualified trustees** (*Amend*) – This rule clarifies the procedure to which a trust company adheres when it applies to be a qualified trustee as required by R.C. 135.18 and 135.181. Proposed amendments seek to modernize the rule by revising a reference to a bank’s vault system.

#### NO CHANGE RULES

**1301:1-1-03 Personal service** (*No change*) – This rule expands on the personal service requirements of R.C. 1121.37. No changes are recommended for this rule.

**1301:1-1-05 Reimbursement to banks and trust companies for assembling or providing financial records** (*No change*) – As required by R.C. 9.02, this rule establishes the rates and conditions for the reimbursement of costs a bank incurs when it assembles or provides customer financial records. No changes are recommended for this rule.

**1301:1-2-02 Trust company capital** (*No change*) – This rule details capital requirements for trust companies as required by R.C. 1111.06. No changes are recommended for this rule.

**1301:1-4-01 Definition of an emergency under section 1115.15 of the Revised Code** (*No change*) – This rule defines an emergency as that term is used in R.C. 1115.15. No changes are recommended for this rule.

**1301:1-4-12 Procedures for closing a banking office** (*No change*) – This rule establishes the procedure for closing a banking office. No changes are recommended for this rule.

**1301:1-4-13 Agency agreement between bank and affiliate and unaffiliated depository institutions** (*No change*) – This rule addresses the applicable requirements when a bank contracts for certain services with an affiliated or unaffiliated depository institution. No changes are recommended for this rule.

**1301:1-4-14 Retention of "federal" in name of converted Federal savings association** (*No change*) – This rule specifies that a converted federal savings association may retain the word “federal” in its name. No changes are recommended for this rule.

## 2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 1121.03 is the authorizing statute for each of the rules. R.C. 9.02 also authorizes 1301:1-1-05.

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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?**

*If yes, please briefly explain the source and substance of the federal requirement.*

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 administrative rules are necessary for the Division to administer and enforce the Ohio Bank Code, found at R.C. Title 11. The administrative rules clarify the requirements set out in the banking code.

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The Division will measure the success of the rules via the clarity and guidance the rules provide to stakeholders regarding their interactions with the Division.

### **Development of the Regulation**

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

On March 25, 2019 the Division emailed its proposed rule amendments to all state-chartered banks and thrifts, the Ohio Bankers League, and the Community Bankers Association of Ohio. The Division also solicited feedback in person on April 3, 2019 from attendees of Bankers Day, the Division's annual conference with industry stakeholders.

**What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

- The Ohio Bankers League and Jeffrey E. Smith, Esq. separately submitted similar comments regarding proposed new rule 1301:1-4-15 (Converting into a state bank). The comments raised the following concerns:
  1. The requirement of an appraisal of a pro forma market value might be costly to converting institutions, with the information described in the paragraph potentially available to the Division in other forms;

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2. Certain of the Superintendent's enumerated considerations, namely the evaluation of whether each directors', executive officers', and controlling shareholders' competence, experience, and integrity meet the criteria for acquiring control of a state bank; as well as the evaluation of whether the proposed bank meets the requirements of the banking code, would require the expenditure of time and resources, and were more typical criteria for de novo bank applications; and
3. Clarification was needed in proposed paragraphs (A) and (B) to ensure the rule applied both to thrifts doing business under the authority of another state as well as pursuant to federal law.

The Division reviewed and considered each of the comments. The Division determined that Comments 1 and 3 merited revisions to the rule consistent with the stakeholders' feedback. The Division determined that the considerations to which Comment 2 relate afford the Superintendent necessary discretion when considering a conversion application. Further, those criteria were previously enumerated in the banking code; therefore the proposed rule does not introduce criteria with which the banking community is unfamiliar.

- Heartland Bank commented that the changes appeared largely technical and clarifying without major changes. The state bank commented that the changes removing redundancies and promoting parity with federal regulations would be helpful.

**8. 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.

**9. 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?**

The Division considered several alternatives during the rulemaking process. The Division determined that the proposed changes to the administrative rules promote clarity and efficiency for stakeholders.

**10. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

No, the Division did not specifically consider a performance-based rule. These administrative rules are necessary for the Division to carry out Ohio's banking code, codified at R.C. Title 11. Proposed amendments and new rules largely reconcile the amended banking code with the agency's existing administrative rules.

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**11. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The Division is the only state agency that regulates Ohio-chartered banks and therefore the rules do not duplicate other state agencies' rules. As the Division's proposed rule amendments evidence, the agency has made a significant effort to remove redundancies between its rules and their amplifying statutes.

**12. 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 proposed rules have been available to stakeholders throughout the rule review process. Rules will continue to be available to stakeholders via the Division's website and throughout the CSI process. Once the rules are finalized, the Division will bring them to stakeholders' attention at every available opportunity, including outreach events, newsletters, and through trade groups. Additionally, the Division will train staff on the rules to ensure their consistent application. Division staff are available by phone to timely respond to stakeholder questions.

**Adverse Impact to Business**

**13. 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;**

The rules apply to banks and trust companies (referred to collectively as the "banking community"), as those terms are defined in R.C. 1101.01. The rules do not impose new fines, fees, or penalties against the banking community.

**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

*1301:1-1-02 Open public meetings of the banking commission.* This rule does not adversely affect the banking community.

*1301:1-1-04 Designations and names that include "bank," "banker," "banking," or "trust".* While this rule itself does not impose a penalty, sanction, or create a cause of action for failure to comply with its terms, R.C. 1101.99 imposes civil penalties for violations of R.C. 1101.15, which this rule amplifies. The rule does not adversely impact the banking community; rather the rule has potential adverse impacts in the form of civil penalties for persons who are not members of the banking community and who violate the rule.

*1301:1-1-05 Reimbursement to banks and trust companies for assembling or providing financial records.* This rule does not adversely affect the banking community.

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*1301:1-2-01 Computation of capital.* While a state bank may expend minimal time and resources to comply with the rule, such effort is standard across the industry and helps ensure the state bank's safe and sound operation.

*1301:1-3-01 Lending limits.* While a state bank may expend minimal time and resources to comply with the rule, such effort is standard across the industry and helps ensure the state bank's safe and sound operation.

*1301:1-3-01.1 Derivative transactions.* This rule does not adversely affect the banking community.

*1301:1-3-02 Real estate lending standards.* As required by Revised Code Section 1109.16, this rule clarifies the items that a state bank must include in its real estate lending policy. A state bank may expend minimal time and resources to comply with the requirements of the rule.

*1301:1-3-03 Letters of credit.* A state bank may expend minimal time and resources to comply with the requirements of the rule.

*1301:1-3-04 Insider loans.* The Division proposes to replace the language contained in the rule with a reference to federal Regulation O, 12 C.F.R. Part 215. This change will lessen a state bank's compliance expenditures.

*1301:1-3-05 Insider loan reporting.* The Division proposes to rescind this rule. The rescission will not adversely impact the banking community.

*1301:1-3-06 Revenue bonds.* A state bank may expend minimal time and resources to ensure compliance with the requirements for a revenue bond to qualify as an eligible investment.

*1301:1-3-10 Operating subsidiaries.* A state bank may expend minimal time and resources to file the required letter of notification when intending to acquire, establish, or perform new activities in an operating subsidiary.

*1301:1-3-11 Bank subsidiary corporations and bank service corporations.* A state bank may expend minimal time and resources to file the required letter of notification requesting the Superintendent's approval when intending to acquire, establish, or perform new activities in a bank subsidiary corporation or bank service corporation.

*1301:1-3-12 Mutual funds.* This rule does not adversely affect the banking community.

*1301:1-4-03 Definition of an outside director under section 1105.02 of the Revised Code.* The Division proposes to rescind this rule. The rescission will not adversely impact the banking community.

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*1301:1-4-04 Bank's purchase of its own shares.* A stock state bank may expend minimal time and resources to submit to the Superintendent the required information when desiring to purchase shares of its own stock.

*1301:1-4-06 Change in bank control.* A state bank may expend time and resources to compile the information required to be included in a notice of change of control.

*1301:1-4-11 Procedures for relocating a banking office.* A bank may expend minimal time and resources to file the required written notice when intending to relocate a banking office.

*1301:1-5-01 Management duties regarding shareholder meetings.* A stock state bank may expend minimal time and resources to comply with the requirements of this rule.

*1301:1-6-01 Qualified trustees.* A trust company may expend minimal time and resources to submit the required letter to the Division requesting certification as a qualified trustee.

#### **New Rules**

*1301:1-4-15 Converting into a state bank.* This rule requires a converting institution to expend time and resources compiling the information required to be included in a conversion application.

*1301:1-4-16 Institution-affiliated party.* This rule does not impose a regulatory burden on the banking community.

**c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.*

To quantify the adverse impact the rules may impose on stakeholders is not possible, as the Division regulates state banks of diverse asset sizes. The costs associated with compliance can vary, depending on factors such as a state bank's financial condition and the effectiveness of its leadership. Any adverse impact is a necessary inconvenience for stakeholders, as the General Assembly has tasked the Division with the responsibility of supervising and regulating Ohio-chartered banks, and to provide parity with applicable parallel federal regulations.

**14. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

The regulatory intent justifies the adverse impact to the Ohio banking industry because pursuant to R.C. 1101.02 the General Assembly has delegated rulemaking power and administrative discretion to the Division and requires the Division to, among other things,

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protect the interests of depositors, creditors, shareholders, and the general public in banks doing business in Ohio. Certain changes provide parity with federal requirements.

### **Regulatory Flexibility**

**15. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

No, the rules do not exempt small businesses from compliance. The Division must apply the rules it administers evenly to ensure the safety and soundness of all Ohio-chartered banks, and to protect the interests of depositors, creditors, shareholders, and the general public in these institutions.

**16. 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?**

Because the Division does not impose administrative fines or civil penalties for paperwork violations of the administrative rules described herein, the agency will not have reason to apply R.C. 119.14.

**17. What resources are available to assist small businesses with compliance of the regulation?**

The Division widely publicizes to stakeholders that Division staff are available via phone and email. Many of stakeholders' most frequently-requested applications and forms are available via the Division's website.