



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

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### Business Impact Analysis

Agency, Board, or Commission Name: Ohio Treasurer of State

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Bank monitoring and economic monitoring.

Rule Number(s): 113-40-05

Date of Submission for CSI Review: N/A – R.C. 107.56

Public Comment Period End Date: 1/3/2020

Rule Type/Number of Rules:

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_\_)

Amended/ 1 rules (FYR? No)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

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 regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, 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.

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### **Reason for Submission**

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

**The rule(s):**

- a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

### **Regulatory Intent**

2. **Please briefly describe the draft regulation in plain language.**

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

The rule as originally adopted outlines ongoing monitoring for financial institutions that are granted a reduced collateral floor. The amendment accomplishes the following:

- Provides the Treasurer of State more flexibility and discretion in implementing and removing collateral calls. The previous language was rigid in requirement of collateral calls and did not provide authority or guidance for a financial institution to return to a reduced collateral floor.
- Replaces one of the macroeconomic indicators with a new, more reliable indicator (the Sahm Rule) that was not previously available.
- Clarifies the source to be used for the macroeconomic indicator for the daily treasury yield curve and changes the number of instances that could trigger increasing the collateral requirement.

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- Removes the specific reference to the federal reserve bank of Philadelphia and uses a general reference to the federal reserve bank instead. This particular indicator is now published by the federal reserve bank of St. Louis, but the responsibility may be moved to a different federal reserve district in the future.

**3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

ORC 135.182 grants the rule-writing authority and the rule amplifies ORC Sections 135.18 and 135.182.

**4. 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.

**5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

N/A

**6. 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)?**

The public purpose of this rule is to ensure that public deposits are properly collateralized and to increase the reduced collateral floor if macroeconomic or regional economic indicators are present, or if an individual financial institution has an emerging concern identified through use of the SCALE model.

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

The Treasurer of State's office will measure the success of this rule by financial institutions' continued participation in the Ohio Pooled Collateral program and the safeguards used to protect public deposits.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No.

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## **Development of the Regulation**

**9. 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.*

Ohio Bankers League: 11/18/19 by email.

Community Bankers Association of Ohio: 11/18/19 by email.

**10. 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 raised concerns over the initial draft shared by the Treasurer of State's office that changed the economic indicator in OAC 113-40-05(B)(1)(b). The Treasurer of State's office initially proposed that one instance of the yield curve inversion could trigger the economic monitoring collateral requirement. The Ohio Bankers League believes one instance was too stringent, and as such, the Treasurer of State's office updated the language to reflect the economic monitoring could be triggered after five instances of the yield curve inversion within a rolling thirty calendar day period.

**11. 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?**

The Treasurer of State's office reviewed economic data published by the federal reserve bank over the last forty years.

**12. 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 Treasurer of State's office did not consider any alternative regulations as there are no other regulatory processes that perform this type of economic monitoring.

**13. 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.***

Yes; this is a performance-based regulation.

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

Existing regulations promulgated by the Treasurer of State were reviewed to ensure that this regulation did not duplicate any existing Ohio regulation.

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**15. 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 changes to this rule will be integrated into the operating procedures of the Ohio Pooled Collateral System and will be applied to all participants that have been approved for a reduced collateral floor in the program.

**Adverse Impact to Business**

**16. 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; and**

The impacted business community includes financial institutions that (1) apply for and are approved as public depositories that then (2) opt in to the Ohio Pooled Collateral program and subsequently (3) apply, and are approved, for a reduced collateral floor. Ten financial institutions are currently approved for a reduced collateral floor.

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

If certain criteria are met, the rule may require a financial institution to provide additional collateral.

**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.*

While the impact would vary by financial institution, if certain criteria are met, the rule may require a financial institution to provide additional collateral.

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

The regulatory intent justifies the impact to the business community as it provides better monitoring and in the event of an adverse economic event, the Treasurer of State can ensure public deposits are more fully collateralized.

**Regulatory Flexibility**

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

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Yes. The Revised Code offers other options for collateralizing public deposits. Financial institutions opt in to the Ohio Pooled Collateral program; it is not mandatory. Furthermore, financial institutions participating in the Ohio Pooled Collateral program must separately apply, and be approved, for the reduced collateral floor. If the public depository does not wish to be subject to this rule, the financial institution can collateralize public deposits pursuant to either R.C. 135.18(A)(1) or R.C. 135.182(B)(1)(a).

**19. 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?**

This rule does not include any fines or penalties.

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

The Treasurer of State's office has adopted operating policies for the program to assist financial institutions with compliance.