

State of Kansas

Office of the State Bank Commissioner

Notice of Hearing on Proposed Amended Administrative Regulation

A public hearing will be conducted on Tuesday, March 29, 2022, at 9:00 a.m. in the Bank Commissioner's Conference Room A of the Jayhawk Tower Building, 700 SW Jackson, Fourth Floor, Topeka, KS 66603 to consider amending Kansas Administrative Regulation 17-11-18, an administrative regulation promulgated by the Office of the State Bank Commissioner regarding loan documentation.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed amended regulation. All interested parties may submit written comments prior to the hearing by mailing them to the Office of the State Bank Commissioner, 700 SW Jackson, Suite 300, Topeka, Kansas 66603-3796 or by email to Melissa.Wangemann@osbckansas.org. All interested parties will be given a reasonable opportunity to present their views orally or in writing regarding the amendments to K.A.R. 17-11-18 during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation.

Copies of the current regulation, proposed amendments, and the economic impact statement may be obtained from the Office of the State Bank Commissioner by contacting Melissa Wangemann at 785-379-3569, Melissa.Wangemann@osbckansas.org or the mailing address given above.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed amended regulation and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Melissa Wangemann at the Office of the State Bank Commissioner. The west entrance to the Jayhawk Tower Building is accessible and there is one accessible parking spot at 720 SW Jackson. There is additional accessible parking on the northwest corner of Jackson and 8th Street.

A summary of the proposed amended regulation and economic impact follows. Copies of the proposed amended regulation and the economic impact statement can be viewed at the Office of the State Bank Commissioner's website, www.osbckansas.org.

Summary: K.A.R. 17-11-18 creates requirements for state banks to maintain certain loan documentation that aids the Office of the State Bank Commissioner in examining state banks, and ensures sound and safe banking practices.

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**SCOTT SCHWAB
SECRETARY OF STATE**

Amended K.A.R. 17-11-18 changes the requirements for state banks' maintenance of loan documents. The main impetus for these changes is to place state banks on a competitive playing field with national banks, who do not have these same requirements. The amendments are as follows:

(a) - The requirement that a state bank maintain credit information for each borrower when the total amount of all loans to the borrower is greater than \$100,000 is amended to increase the threshold requirement to \$250,000.

(b)(1)(A) - The requirement that a state bank record its protections on purchase-money real estate loans is amended to allow a lien search for those loans up to \$250,000. This new threshold of \$250,000 replaces the old category of \$25,000-\$50,000 allowing for a lien search.

(b)(1)(B) - For loans that exceed \$250,000, the bank can use either an attorney's written opinion or title insurance. This replaces the old threshold of real estate loans greater than \$50,000 for these protections.

(b)(1)(C) - The requirement that a state bank obtain an insurance policy against loss of the bank's priority position ("mortgage-priority insurance") for a non-purchase real estate mortgage is amended. A new threshold of \$250,000 is added along with the options of obtaining an attorney's written opinion or title insurance.

(b)(1)(D) - Two options for non-purchase real estate mortgages over \$250,000 are allowed, which are an attorney's written opinion or title insurance. The mortgage-priority insurance is not allowed, due to the increase in the threshold.

(c) - A technical amendment is added to change the phrase from "in excess of" to "greater than" and make that phrasing standard throughout the amended regulation.

(d) - A technical amendment is added to change the word "retain" to "maintain" to create uniform phrasing throughout the amended regulation.

Economic Impact: The banking industry expects cost savings because the amended regulation will allow state-chartered banks to offer a less costly mortgage. The title insurance industry believes it will lose business and see a marked reduction in profits. It should be noted that mortgages sold on the secondary market generally require title insurance; thus, any bank that sells its mortgages will still purchase title insurance. The number of state banks that would continue to purchase title insurance cannot be estimated. Title insurance prevents additional, higher costs in the future to the borrower and the bank, if the mortgage is determined to be impaired and legal action is necessary to clear the title. As is typical with any type of insurance, title insurance insures against unforeseen losses relating to the mortgage. Thus, the benefit of saving money for banks and bank customers is offset by increased risk for undiscovered liens and other impairments.

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The Kansas Bankers Association estimated that the use of mortgage-priority insurance will save customers approximately \$400 on a \$100,000 non-purchase real estate mortgage loan and approximately \$600 on a \$250,000 non-purchase real estate mortgage loan. OSBC requested economic impact data from the title insurance industry; however, they were not able to provide detailed costs. They noted that title insurance prevents additional, higher costs in the future, if the mortgage is determined to be impaired and legal action is necessary to clear the title.

Melissa A. Wangemann
General Counsel

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Proposed

17-11-18. Loans; documentation requirements. (a) Except as specified in this subsection, each bank shall maintain complete and current credit information, not older than 15 months, for each borrower ~~for whom~~ if the total amount of the following exceeds \$100,000 is greater than \$250,000:

- (1) All loans made to the borrower; and
- (2) all loans attributable to the borrower pursuant to K.S.A. 9-1104, and amendments thereto.

This ~~requirement~~ subsection shall not apply if all loans made or attributable to the borrower are adequately secured.

(b)(1) Unless loan repayment is guaranteed by a governmental program or private insurance company, the following requirements shall ~~be met~~ apply:

~~(1)(A)~~ (A) For each purchase-money real estate mortgage loan ~~in excess of \$25,000 but less than \$50,000~~ not greater than \$250,000, the bank shall ~~complete one of the following tasks:~~

~~(A) The bank shall verify in writing~~ maintain a written verification that a lien search of the records of the county register of deed's office was conducted and the bank's lien position was determined. ~~This verification of a lien search shall be on file with the bank.~~

(B) For each purchase-money real estate mortgage loan greater than \$250,000, the bank shall obtain and maintain on file either an attorney's written title opinion or a title insurance policy.

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(C) For a each non-purchase-money real estate mortgage loan that is not a refinancing of an existing first mortgage greater than \$250,000, the bank shall meet one of the following requirements:

(i) Obtain and maintain on file an insurance policy fully insuring the bank against loss of the mortgage priority position. The bank shall maintain a copy of the policy and any other supporting information on file;

(ii) obtain and maintain on file an attorney's written title opinion; or

(iii) obtain and maintain on file a title insurance policy.

(D) For each non-purchase-money real estate mortgage loan greater than \$250,000, the bank shall obtain and maintain on file an attorney's written title opinion or a title insurance policy.

(2) For purposes of this subsection, "non-purchase-money real estate mortgage loan" shall mean a mortgage loan that does not finance or refinance the acquisition of real estate or the transfer of a deed.

~~(2) For each real estate loan of \$50,000 or more, an attorney's written title opinion or a title insurance policy shall be on file with the bank.~~

(c) If the value of the improvements on any real estate is necessary for adequate protection of the loan, an insurance policy covering these improvements against fire and windstorm shall be on file with the bank for any loan ~~in excess of~~ greater than \$25,000.

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(d) A real estate mortgage or deed of trust, showing the filing information with the county register of deeds, shall be on file with the bank for each loan collateralized by real estate.

(e) For any loan collateralized by personal property, if the bank is required by law to file a financing statement to perfect a security interest, the bank shall ~~retain~~ maintain a copy of the filed financing statement. In other cases, the bank shall maintain all documents related to the loan. (Authorized by K.S.A. ~~2013~~ 2021 Supp. 9-1713; implementing K.S.A. ~~2013~~ 2021 Supp. 9-1101, K.S.A. 2021 Supp. 9-1130, and K.S.A. ~~2013~~ 2021 Supp. 9-1713; effective Jan. 1, 1966; amended May 1, 1983; amended Jan. 27, 1992; amended Aug. 9, 1996; amended Jan. 18, 2002; amended May 30, 2003; amended May 3, 2013; amended July 11, 2014; amended P-
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**Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget**

Office of the State Bank Commissioner
Agency

Melissa Wangemann
Agency Contact

785-379-3569
Phone Number

17-11-18
K.A.R. Number(s)

Melissa.Wangemann@osbckansas.org
Agency Contact Email

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to: Division of the Budget
900 SW Jackson, Room 504-N, Topeka, KS, 66612.

I. Brief description of the proposed rule(s) and regulation(s).

K.A.R. 17-11-18 creates requirements for state banks to maintain certain loan documentation that aids the Office of the State Bank Commissioner in examining state banks, and ensures sound and safe banking practices.

Amended K.A.R. 17-11-18 changes the requirements for state banks' maintenance of loan documents. The main impetus for these changes is to place state banks on a competitive playing field with national banks, who do not have these same requirements. The amendments are as follows:

(a) - The requirement that a state bank maintain credit information for each borrower when the total amount of all loans to the borrower is greater than \$100,000 is amended to increase the threshold requirement to \$250,000.

(b)(1)(A) - The requirement that a state bank record its protections on purchase-money real estate loans is amended to allow a lien search for those loans up to \$250,000. This new threshold of \$250,000 replaces the old category of \$25,000-\$50,000 allowing for a lien search.

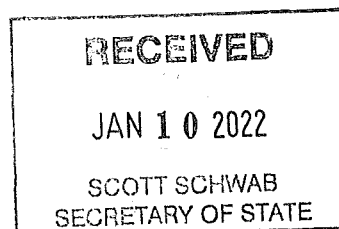
(b)(1)(B) - For loans that exceed \$250,000, the bank can use either an attorney's written opinion or title insurance. This replaces the old threshold of real estate loans greater than \$50,000 for these protections.

(b)(1)(C) - The requirement that a state bank obtain an insurance policy against loss of the bank's priority position ("mortgage-priority insurance") for a nonpurchase real estate mortgage is amended. A new threshold of \$250,000 is added along with the options of obtaining an attorney's written opinion or title insurance.

(b)(1)(D) - Two options for nonpurchase real estate mortgages over \$250,000 are allowed, which are an attorney's written opinion or title insurance. The mortgage-priority insurance is not allowed, due to the increase in the threshold.

(c) - A technical amendment is added to change the phrase from "in excess of" to "greater than" and make that phrasing standard throughout the amended regulation.

(d) - A technical amendment is added to change the word "retain" to "maintain" to create uniform phrasing throughout the amended regulation.



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II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that used by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)

This regulation is not mandated by federal law. Also, national banks do not have similar loan documentation requirements.

Approach use by contiguous states:

Colorado: The Commissioner of Banking has discretion to require banks to acquire insurance or title insurance for real estate taken as security, but the statute does not specify which would be required based on the type or amount of loan offered. Co St. 11-102-102(3)(f-g).

Oklahoma: Statute permits the Commissioner to impose conditions and limitations on real estate loans. 6 OKL.St. Ann. 803. Oklahoma Bank Commissioner has a regulation stating that examiners will review real estate loans for safety and soundness risk, but the regulation does not specify what documentation would be required based on the type or amount of the loan. OK ADC 85:10-11-3.

Missouri and Nebraska These states do not have any statutes or regulations discussing the required loan documentation for real estate. See Mo St. 362.105 1.(1); See NE ST 8-152.

III. Agency analysis specifically addressing following:

A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The amended regulation is expected to impact state banks and the title insurance/title opinions industry, and indirectly Kansas consumers who purchase mortgages.

Effect on State Banks:

The amended regulation enhances the business activities of state banks and lowers the costs of real estate loans to consumers.

Amended K.A.R. 17-11-18 will reduce the government-imposed requirement for banks to maintain borrowers' credit documentation by limiting the requirement to loans greater than \$250,000. The current regulation has differing requirements for loan documentation, based on two thresholds: \$25,000-\$50,000 and loans of \$50,000 or more. State banks will also have more options for documenting their loans on nonpurchase real estate; they can use the cheaper option of mortgage priority insurance up to \$250,000 instead of the current cap of \$50,000.

Amended K.A.R. 17-11-18 increases the mortgage amount for which state-chartered banks can use an alternative product of mortgage-priority insurance—versus obtaining an attorney's title opinion or obtaining title insurance—for nonpurchase-money real estate mortgage loans of \$250,000 or less. This new threshold allows banks to be much more competitive with other lenders who have no such restrictions, such as national-chartered banks and credit unions. This option is only available for those loans less than \$50,000 in the current regulation. This amendment will in turn, reduce the cost of those loans to the banks' customers and reduce the turnaround time for approval of those loans.

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Effect on Title Insurance, Title Opinions:

The proposed regulation is expected to reduce the business activities of title insurance companies and real estate attorneys who offer written title opinions. The reduction of business activities for these industries may be significant, according to the industry. OSBC has reached out to the Kansas Land Title Association for assistance in estimating these effects.

B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;

The Kansas Bankers Association estimated that the use of mortgage-priority insurance will save customers approximately \$400 on a \$100,000 nonpurchase-money real estate mortgage loan and approximately \$600 on a \$250,000 nonpurchase-money real estate mortgage loan.

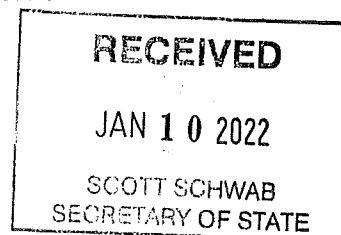
OSBC requested information from the title insurance industry; however, they were not able to provide detailed costs. They noted that title insurance prevents additional, higher costs in the future, if the mortgage is determined to be impaired and legal action is necessary to clear the title. They also note that a title search uncovers liens and other impairments, and those problems are remedied before issuance of the mortgage, meaning those liens and other obligations are paid off. In other words, the title search causes payment to those who are owed money on the property, e.g., lien, and therefore creates an economic benefit to the lienholders and others with monetary claims to the real property.

C. Businesses that would be directly affected by the proposed rule and regulation;

Kansas banks will be positively affected by the proposed regulation. Many Kansas banks use mortgage-priority insurance (instead of title insurance) when they make a home real estate loan, which results in lower closing fees to their customers. The availability of using the mortgage-priority insurance, however, is limited to nonpurchase real estate loans below \$50,000 under the current regulation. This limitation impacts state banks' ability to compete in a market where other lenders (national banks, credit unions, online mortgage companies) do not have comparable requirements.

An example provided to the OSBC from a state bank stated that the cost of a basic title lien search and report with no title insurance coverage averages \$250, while the cost of the mortgage priority insurance coverage is \$45. The cost of a lender's policy of title insurance for a loan of \$50,000 would be about \$500. These fees are passed on to the customer, creating a difference of \$205 and \$455 in closing fees to a customer in our examples.

Also, rural communities may have a limited number of title companies. One bank noted that they waited almost a month for a title insurance commitment on a small dollar home equity loan request. These longer processing time periods impact state banks' ability to compete fairly with credit unions and national banks. The title insurance industry notes that the majority of homes in the rural areas are under the new \$250,000 threshold; therefore, they say that many of their companies will see significant losses of income from the lack of title insurance and opinion requests.



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Another Kansas bank commented that it had been using the mortgage-priority insurance product in lieu of obtaining title insurance on refinances, home equity loans, and second mortgages on residential property of less than \$50,000 since 2012. This product has worked very well for saving borrowers' time and money while ensuring that the Bank is in the mortgage position as intended. Increasing the threshold allowed for the mortgage-priority insurance would make state banks more competitive vis-a-vis national banks, thrifts, credit unions, and fintecs.

D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

The banking industry has opined that there is no cost associated with the change in the regulation but expects to see only benefits, as it will allow state-chartered banks to offer a less costly product. As for the title insurance industry, they do not anticipate any benefits to their market and will lose business and see a marked reduction in profits. It should be noted that mortgages sold on the secondary market generally require title insurance; thus, any bank that sells its mortgages will still purchase title insurance. The number of state banks that would continue to purchase title insurance cannot be estimated. As previously noted, title insurance prevents additional, higher costs in the future to the borrower and the bank, if the mortgage is determined to be impaired and legal action is necessary to clear the title. As is typical with any type of insurance, title insurance insures against unforeseen losses relating to the mortgage. Thus, the benefit of saving money for banks and bank customers is offset by increased risk for undiscovered liens and other impairments.

E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

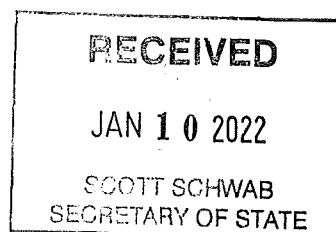
The OSBC has communicated with both the banking industry and the title insurance industry. It is not possible to take measures to benefit both industries. The Bank Commissioner believes that state banks should have more latitude in determining what loan documentation is appropriate for the banks to protect their own interests. The OSBC amends this regulation to reset the threshold at \$250,000 as a reasonable basis for any safety and soundness concerns we may have regarding a bank's mortgage loans. Purchasing title insurance or obtaining an attorney's opinion are business judgment decisions for the state banks. Consumers and borrowers are not prevented from purchasing title insurance or title opinions to protect their interests. This amended regulation merely eliminates the requirement that state banks purchase it for real estate mortgages at a threshold below \$250,000.

F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

\$ ____ No estimates were provided by the industries contacted, other than the example provided by the Kansas Bankers Association.

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES ☐ NO ☒



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Give a detailed statement of the data and methodology used in estimating the above cost estimate.

The costs were produced after conversations with the Kansas Bankers Association and the Kansas Land Title Association.

Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES ☐ NO ☒

G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

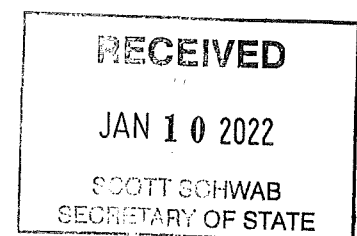
The OSBC consulted with the Register of Deeds Association and received no comments.

H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

The OSBC reached out to the industries directly impacted by the regulation: the bank industry and the title insurance industry.

I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

N/A



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