

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 if the total amount of the following 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 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 apply:

(A) For each purchase-money real estate mortgage loan not greater than \$250,000, the bank shall 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 or any option listed under paragraph (b)(1)(B).

(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.

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

(i) 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;

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(ii) obtain and maintain on file an insurance policy fully insuring the bank against loss of the mortgage priority position;

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

(iii)(iv) 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.

(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 greater than \$25,000.

(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 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. ~~2021-Supp.~~ 9-1713; implementing K.S.A. ~~2021-Supp.~~ 9-1101, K.S.A. ~~2021-Supp.~~ 9-1130, and K.S.A. ~~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,

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2003; amended May 3, 2013; amended July 11, 2014; amended May 27, 2022; amended P-

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Kansas Administrative Regulations Economic Impact Statement (EIS)

Office of the State Bank Commissioner
Agency

Brock Roehler
Agency Contact

785-379-3892
Contact Phone Number

17-11-18

K.A.R. Number(s)

Permanent Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?

Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.

No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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Section I

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

K.A.R. 17-11-18 is being amended to clarify that state chartered banks may choose the more stringent methods of verifying the bank's position on purchase-money real estate mortgage loans of \$250,000 or less as currently permitted for purchase-money real estate mortgage loans exceeding \$250,000. Furthermore, state banks will now be permitted to maintain a written verification that a lien search was conducted on non-purchase-money real estate mortgage loans that are not greater than \$250,000 in addition to the other options already available to the bank.

Section II

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

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

Approach used 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). There is no requirement for lien searches by Colorado.

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. There is no requirement for lien searches by Oklahoma.

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.

Section III

Agency analysis specifically addressing the following:

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

The regulation is expected to have a marginal net positive impact for Kansas business activities and growth.

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(s) and regulation(s) and on the state economy as a whole;

Effect on State Banks:

The regulation allows state banks more options for complying with documentation requirements on real-estate loans. This will help state banks be more competitive with its competitor national banks and non-Kansas state-chartered banks doing business in Kansas.

Effect on Kansas residents:

Kansas residents could see lower closing costs on mortgage loans if they take out a mortgage with a Kansas-chartered state bank.

Effect on title insurance companies:

Title insurance companies may receive more title insurance business for purchase-money real estate mortgage loan not greater than \$250,000 if the state bank or consumer wants the protection of title insurance. They also may also receive less title insurance business for non-purchase-money real estate mortgage loans that are not greater than \$250,000.

Effect on title attorneys:

Title attorneys may receive more title opinion business for purchase-money real estate mortgage loan not greater than \$250,000 if the state bank or consumer wants the protection of a title opinion. They also may also receive less title opinion business for non-purchase-money real estate mortgage loans that are not greater than \$250,000.

Counties register of deeds

County register of deeds offices will see more traffic if Kansas state-chartered bank loan origination takes business from national banks or other state-chartered banks doing business in Kansas since these entities do not have a requirement to check title. This increase in traffic is not expected to require additional resources to be designated by each county.

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

Kansas state-chartered banks, Kansas residents originating real-estate mortgages, title insurance companies, title attorneys, and county register of deeds offices.

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

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Required)**

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 another option for compliance. The Kansas Land Title Association opined that although they were not fully in favor with the change since it would result in lower business. However, they understood that it would help Kansas state-chartered banks be competitive to other banks doing business in Kansas. They also felt that many state-chartered banks, especially smaller state-chartered banks, would continue to use title insurance even when it would not be required due to the strong relationship the title-insurance companies have established with the bank.

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;

Business and economic development will have a marginal net increase in Kansas due to more compliance options for state-chartered banks.

F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public. *Note: Do not account for any actual or estimated cost savings that may be realized.*

There are no additional compliance costs due to this regulation change. Kansas state-chartered banks can choose to not make any changes to their business practices.

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

There are no additional compliance costs due to this regulation change.

- Yes
- No
- Not Applicable
- If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing 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.

If applicable, click here to enter public hearing information.

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Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

\$0.

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

\$0.

- 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.**

Revenues of cities, counties or school districts will not be affected. County Register of Deeds offices may see a slight increase in title and lien research if Kansas state-chartered banks take business from other banks without a requirement to check the title/liens. This is unlikely to require additional resources and may result in higher revenue if the register of deeds charges fees.

- 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 discussed this regulation change with the Kansas Bankers Association and the Kansas Land Title Association.

Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

- Yes If yes, complete the remainder of Section IV.
 No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.**

Click here to enter agency response.

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B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

Click here to enter agency response.

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

Click here to enter agency response.

D. Provide a detailed statement of the data and methodology used in estimating the costs used.

Click here to enter agency response.

**DOB APPROVAL STAMP (If
Required)**