



DIVISION OF BANKING

Building #3, Room 311 • State Capitol Complex • 1900 Kanawha Blvd., East • Charleston, WV 25305-0240 • (304) 558-2294
FAX: (304) 558-0442

CONSENT TO FILE RULE

August 27, 1996

TO WHOM IT MAY CONCERN:


Title of Rule: Rules Governing Off-Premise Bookkeeping Services of Financial Institutions
in West Virginia [*formerly-- Regulations Governing the Operations of
State Chartered Financial Institutions in West Virginia*]

Title Number: 106

Series Number: 3

Pursuant to West Virginia Code §§ 5F-2-2(a) and 64-7-4(c), the undersigned hereby
consents to the filing of the foregoing rule.

Signed this 28th day of August, 1996.


James H. Paige III
Secretary of Tax & Revenue *by R.A. Hoffman*

DATE: August 28, 1996

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WV Division of Banking

LEGISLATIVE RULE TITLE: Regulations Governing the Operations of State Chartered Financial Institutions [to be renamed—Rules Governing Off-Premise Bookkeeping Services of Financial Institutions in WV]

1. Authorizing statute(s) citation W. Va. Code § 31A-2-4(c)(11)

2. a. Date filed in the State Register with Notice of ~~Hearing~~/ Comment Period.

July 19, 1996

b. What other notice, including advertising, did you give of the hearing?

Sent to each person/business on the WV Division of Banking's "Official Notification" list.

c. Date of ~~Hearing(s)~~/ Comment Period July 22, 1996 to Aug. 19, 1996.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 28, 1996

f. Name and phone number(s) of agency person(s) to contact for additional information:

Timothy Winslow 558-2294

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

_____ N/A _____

_____ N/A _____

b. Date of hearing: _____ N/A _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

_____ N/A _____

d. Attach findings and determinations and reasons:

Attached _____ N/A _____



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COMMISSIONER OF BANKING RULES GOVERNING OFF-PREMISE BOOKKEEPING SERVICES OF FINANCIAL INSTITUTIONS IN WEST VIRGINIA 106 CSR 3

Summary of Proposed Rule Amendments

The proposed amendments are intended to provide regulatory relief from the requirement that financial institutions first obtain written consent from the Commissioner and submit for review the proposed contract prior to entering agreements for off-premise bookkeeping services. The provision of such services is now common in the industry, so much so that the rule creates inadvertent breaches by unsuspecting financial institutions. The amendments place only a notification requirement along with written assurance that the provider is subject to regulation and examination by the Commissioner. This approach for non-bank financial institutions parallels that set forth for state chartered banks in W. Va. Code § 31A-5-5, without then adding new requirements for those banks. The rule is also amended to make clear that it does not govern out-of-state state banks which may soon be able to operate in West Virginia under interstate banking law provisions. (See, e.g., W. Va. Code § 31A-8D-1 et seq.).

Lastly the title of the rule is changed to be more specific and descriptive. This change is intended to assist persons in more readily finding and ascertaining rules of the Commissioner of Banking pertaining to this subject.



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OF FINANCIAL INSTITUTIONS IN WEST VIRGINIA
106 CSR 3

Statement of Circumstances

The provision of off-premises bookkeeping and data processing services is now common in the financial industry, so much so that the rule creates inadvertent breaches by unsuspecting institutions. The provisions for notification in W. Va. Code § 31A-5-5 already provide a sufficient regulatory approach for state banks which seek to utilize off-premise bookkeeping services, and should be followed by other financial institutions. The requirement under the present rule that financial institutions first obtain written consent from the Commissioner and submit for review the proposed contract prior to entering agreements for off-premise bookkeeping services is unnecessary.

E.E.O./AFFIRMATIVE ACTION EMPLOYER

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules Governing Off-Premises Bookkeeping Services of
Financial Institutions in West Virginia [106 CSR 3]

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Division of Banking

Address: State Capitol Complex

Building 3, Room 311

Charleston, West Virginia 25305-0240

1. Effect of Proposed Rule:

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSES	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

The rule is being amended to delete unnecessary requirements and better conform it to provisions in the statute. The amendments thus have no cost effects.

3. Objectives of these rules:

To delete unneeded rule requirements and simply the process of financial institutions establishing off-premises bookkeeping arrangements.

Rule Title: Rules Governing Off-Premises Bookkeeping Services of
Financial Institutions in West Virginia

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government:

None.

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific Groups of Citizens:

None. Although the lessening of regulatory delay may save financial institutions some expenses.

C. Economic Impact on Citizens / Public at Large:

None. --

Date: 8/28/96

Signature of Agency Head or Authorized Representative:

She S. Bies

TITLE 106
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF BANKING

SERIES 3
~~REGULATIONS GOVERNING THE OPERATIONS OF
STATE-CHARTERED FINANCIAL INSTITUTIONS IN WEST VIRGINIA~~
RULES GOVERNING OFF-PREMISE BOOKKEEPING SERVICES
OF FINANCIAL INSTITUTIONS IN WEST VIRGINIA

§106-3-1. General.

1.1. Scope. -- ~~These regulations establish general rules and regulations for the~~ pertain to the operation of financial institutions chartered by under the primary jurisdiction of the Commissioner of Banking for the State of West Virginia.

1.2. Authority. -- W. Va. Code §31A-2-4(c)(11).

1.3. Filing Date. -- ~~April 22, 1992~~

1.4. Effective Date. -- ~~April 24, 1992~~

§106-3-2. Maintenance of Records and Accounts.

2.1. Off-premise bookkeeping services.

~~Prior to entering into any agreement for the provision of obtaining off-premise data processing bookkeeping services, a financial institution desiring to utilize these services must obtain the written consent of notify the Commissioner of Banking and provide written assurances satisfactory to the Commissioner by both the state financial institution and the party performing such services that the performance thereof will be subject to regulation and examination by the commissioner and any appropriate federal supervisory agency to the same extent as if such services were being performed by the financial institution on its own premises. Submission of a copy of the written agreement for off-premises processing between the state financial institution and the service provider, signed by both parties, which agreement contains a contractual obligation for the service provider to be subject to regulation and examination by the Commissioner and any appropriate federal agency, will satisfy the written assurance requirement. An application for consent shall include a copy of the proposed contract for the services, which must detail the work to be performed, the reports to be provided and the frequency of the reports. The Commissioner of Banking will not consent to any contract which does not provide for sufficient records to be available to the examining personnel of the Division of Banking for the efficient examination of the financial institution.~~



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106 CSR 3

Comments Received

Only one comment was received regarding the above-referenced rule. This comment letter is attached, and concerns the addition of language to make clear that the submission of a signed contract containing language obligating the parties to an off-premise processing agreement to be under the supervision and regulatory authority of the Commissioner of Banking, satisfies the code and rule requirement that a written assurance be given.

Response to Comment

The proposed rule was amended to reflect the comment suggestion.



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106 CSR 3

Amendment Made in Response to Comment

The following sentence was added at the end of 106 CSR § 3-2.1: "*Submission of a copy of the written agreement for off-premises processing between the state financial institution and the service provider, signed by both parties, which agreement contains a contractual obligation for the service provider to be subject to regulation and examination by the Commissioner and any appropriate federal agency, will satisfy the written assurance requirement.*"

Reason for the Amendment

The amendment was made to provide an easy and less burdensome method by which financial institutions could comply with the intent and letter of the statute and rule, without having to file separate notarized written assurances with the Commissioner.

Suggested language--Section 106-3-2:

Insert the following as the last sentence:

Submission of a complete copy of the written agreement, signed by both parties, between the state financial institution and the party performing such services, which includes a contractual obligation for such party to be subject to regulation and examination by the commissioner and any appropriate federal agency, will satisfy the requirement that the above described written assurances be given.

West Virginia Bankers Association, Inc.

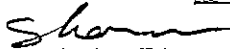
Suite 1212 • Commerce Square • Charleston, WV 25301-1780 • (304) 343-8838

August 19, 1996

Hand Deliver

Sharon G. Bias, Commissioner of Banking
West Virginia Division of Banking
State Capitol Complex
1800 Washington Street, East
Building 3, Room 311A
Charleston, WV 25305-0240

Re: **Proposed Regulations Governing the
Operations of State Chartered Financial Institutions
in West Virginia, Title 106, Series 3**


Dear ~~Commissioner~~ Bias:

Please consider our comments contained in this letter regarding the above-referenced proposed regulations on behalf of State banks in West Virginia. We appreciate the Division's recognition of the common nature of off-premises bookkeeping and data processing services in the banking industry. We support the proposal to switch from the prior written consent requirement to a notice procedure.

We would like to suggest one refinement to the proposal as currently drafted. It is our understanding that most, if not all, data processing contracts include contractual provisions obligating the third-party processor to be subject to, cooperate with and participate in, examinations of the financial institution for which it performs services. Given the common place appearance of such language in the data processing contracts, we would like to propose, as an alternative to the provision contained in the proposed regulations, that the bank supply evidence that the third-party processor will be bound, under the terms of the proposed contract, to be subject, cooperate in and be examined by the Commissioner and her staff. This alternative should address the concerns of the Division, and at the same time, avoid the need to obtain a separate written document from the third-party data processor regarding compliance and examination matters.

We would strongly encourage your consideration of inclusion of this alternative. If you have any questions about our suggestion, please do not hesitate to give me a call.

Very truly yours,



Thomas A. Winner

Attachment (proposed language)

Building on Our Past



Shaping Our Future