

**REPORT OF THE DEPARTMENT OF BANKING AND SECURITIES TO THE  
INDEPENDENT REGULATORY REVIEW COMMISSION**

**FINAL-FORM REGULATION SUBMITTED WITH REVISIONS  
REGULATION NO. 3-51 (IRRC # 3021)  
ASSESSMENTS**

The Department of Banking and Securities (Department) drafted Chapter 5 (relating to assessments) to implement an assessment schedule for State-chartered institutions. The regulation provides adequate and sustainable funding for the Department and streamlines reporting and billing requirements on State-chartered institutions through the elimination of examination-based billing for State-chartered credit unions and State-chartered trust companies. The Department drafted the final-form regulation under the authority of 17 Pa.C.S. § 503(a) (relating to regulation by Department) and sections 202(C) and 204(A) of the Department of Banking and Securities Code (71 P.S. §§ 733-202(C) and 733-204(A)).

The Independent Regulatory Review Commission (Commission) held a public meeting on February 27, 2014, at which it considered the final-form regulation. On March 5, 2014, the Commission issued an order (Disapproval Order) disapproving the final-form regulation. The Department is submitting a revised final-form regulation in response to the concern expressed by the Commission in its Disapproval Order.

The Department submits this report to the Commission in accordance with section 7(c) of the Regulatory Review Act and the related regulations. 71 P.S. § 745.7(c); 1 Pa. Code § 311.4.

***Explanation of the Revisions to the Final-Form Regulation***

***Concern of the Commission***

The final-form regulation established an assessment schedule for its State-chartered institutions. The Department determined that the final-form regulation was necessary because the current assessment methods are outdated and do not accurately reflect the Department's costs to regulate the state-chartered institutions under its jurisdiction. The final-form regulation included definitions of terms; a semiannual assessment schedule for banks, bank and trust companies, savings banks and savings associations; a semiannual assessment for trust companies; a semiannual assessment schedule for credit unions; language permitting the addition of a surcharge to the assessed amount based upon the Uniform Financial Institutions Rating System (UFIRS) or Uniform Interagency Rating System (UITRS) composite rating of the institution; and language permitting the addition of an adjustment to the assessed amount based upon specific inflation indices.

In its Disapproval Order, the Commission determined that the final-form regulation was consistent with the statutory authority of the Department and with the intention of the General Assembly. The Disapproval Order referenced the Department's verbal answer given at the February 27, 2014 meeting explaining the intended method of implementing the inflation adjustment. The

Commission explained that until the Department clarified the implementation methodology in the regulation itself, the promulgation of the final-form regulation was not in the public interest. Specifically, the Commission suggested that the language of the regulation needed to reference the timeframe over which the Department intended to calculate the rate of adjustment. The Commission made this suggestion to “ensure a more stable and predictable regulatory environment as the assessment schedule and the inflation adjustment are implemented in the future.”

#### *Response to the Commission’s Concern*

The Department is submitting a revised final-form regulation to address the Commission’s concern in the Disapproval Order. In response to the Commission’s concern regarding the implementation methodology, the Department has modified subsection 5.5(a) and added new subsections 5.5(a.1) and 5.5(b.1) to the revised final-form regulation. The Department also added “fiscal year” to the defined terms for further clarification.

#### Subsection 5.5(a)

The Department revised section 5.5(a) of the final-form regulation by deleting the language regarding the amount of permissible increase in assessments due to changes in the consumer price index (CPI). The Department moved the CPI language to a new subsection 5.5(a.1) for better readability due to the modifications made to the language.

While not specifically mentioned in the Disapproval Order, the Commission verbally suggested that the Department clarify that the need for the CPI adjustment was not solely “due to inflation” as the final-form regulation originally indicated. During the February 27, 2014 meeting, the Commission correctly noted that the Department also needed to provide for cost increases not solely related to inflation. The Department has considered the Commission’s suggestion and agrees that the original phrase “due to inflation” should be changed to “due to increased costs of operation” in order to more accurately reflect why the CPI adjustment may be necessary. Therefore, the Department also deleted the term “inflation” in subsection 5.5(a) and replaced it with the phrase “increased costs of operations.”

#### Subsection 5.5(a.1)

New subsection 5.5(a.1) (*Amount of inflation adjustment*) incorporates the timeframe over which the Department will calculate the rate of the CPI adjustment if needed, as explained by the Department at the February 27, 2014, meeting. The Department will calculate the percentage increase by using the percentage change in the “Consumer Price Index- All Urban Consumers: U.S. All Items 1982-84=100” over the fiscal year immediately preceding the fiscal year in which the Department submits its proposed budget to the General Assembly. For additional clarification, the Department added the definition of “fiscal year” to section 5.1 (*Definitions*), referencing the statutory cite to the definition of Commonwealth agencies’ fiscal year, which is defined as “. . . the period beginning on July 1 of each calendar year and ending on June 30 of the calendar year next succeeding.”

### Subsection 5.5(b.1)

New subsection 5.5(b.1) (*Notice of inflation adjustment or surcharge*) sets forth the procedures for notifying an institution if the Department is applying either the inflation adjustment or the surcharge, or both, to that institution's semiannual assessment. The revised final-form regulation reflects that the Department will notify institutions of the inflation adjustment through a general notice. Because the surcharge due to condition would be institution-specific, the revised final-form regulation indicates that the Department will make a notation regarding such a surcharge on the invoice sent to each institution that may be subject to such a surcharge.

### ***Conclusion***

Upon review of the concern raised in the Disapproval Order, the Department revised the final-form regulation to address the concern. The revised final-form regulation is consistent with the Credit Union Code (17 Pa. C.S. § 503(a)) (regulation of credit unions by the Department) and the Department of Banking and Securities Code (71 P.S. §§ 733-202.C, 733-204.A) (assessment of expenses of Department upon institutions), the intent of the General Assembly and is reasonable. The Department respectfully requests that the Commission determine that the revised final-form regulation is in the public interest and approve the revised final-form regulation.

The revised final-form regulation, the Disapproval Order and a signed transmittal sheet are attached to this Report in keeping with the requirements of 1 Pa. Code § 311.4.

Date: March 21, 2014

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Glenn E. Moyer  
Secretary  
Commonwealth of Pennsylvania  
Department of Banking and Securities  
17 N. 2<sup>nd</sup> St., Suite 1300  
Harrisburg, PA 17101

**INDEPENDENT REGULATORY REVIEW COMMISSION  
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held February 27, 2014

John F. Mizner, Esq., Chairman  
George D. Bedwick, Vice Chairman  
Russell W. Faber  
Lawrence J. Tabas, Esq.  
Dennis A. Watson, Esq.

Order Issued March 5, 2014  
Regulation No. 3-51 (#3021)  
Department of Banking and Securities  
Assessments

On September 10, 2013, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of Banking and Securities (Department). This rulemaking adds Chapter 5 to 10 Pa. Code. The proposed regulation was published in the September 14, 2013 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on January 8, 2014.

This final-form rulemaking establishes an assessment schedule for the Commonwealth's state-chartered institutions. Section 5.5(a) of the rulemaking sets forth criteria for the adjustment of assessments based upon an optional adjustment for inflation. We find that this section of the rulemaking is not in the public interest. We believe the inflation adjustment would be difficult to implement because the mechanism for determining what the adjustment should be is unclear. 71 P.S. § 745.5b(b)(3).

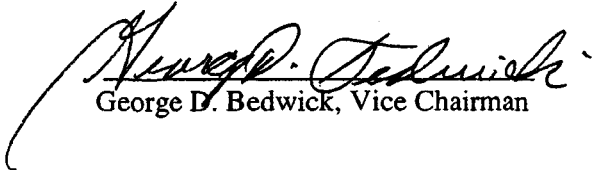
As explained by the Department at the Commission's meeting, if the Department determines that an adjustment is needed, it will be based on the June Consumer Price Index indicated by the "Consumer Price Index – All Urban Consumers: U.S. All Items 1982-1984 = 100" (CPI) published by the United States Department of Labor, Bureau of Labor Statistics, or other similar index published by the United States Department of Labor, Bureau of Labor Statistics of the prior year. The Department will determine the rate of adjustment by calculating the percentage change of the immediate prior June CPI to the June CPI issued twelve months prior. This percentage increase will be applied to the next two semi-annual assessments. While this method of implementing the inflation adjustment may be appropriate, Section 5.5(a) does not clearly set forth that this is the methodology that will be used in implementing the CPI. Therefore, we suggest that the methodology be clarified in the regulation. This will ensure a more stable and predictable regulatory environment as the assessment schedule and the inflation adjustment is implemented in the future.

We have determined that this regulation is consistent with the statutory authority of the Department (71 P.S. § 733-202.C) and the intention of the General Assembly. However, after considering all of the other criteria of the Regulatory Review Act discussed above, we find promulgation of this regulation is not in the public interest.

**BY ORDER OF THE COMMISSION:**

This regulation is disapproved.



  
George D. Bedwick, Vice Chairman

## **Annex A.**

### **TITLE 10. BANKING AND SECURITIES PART I. GENERAL PROVISIONS CHAPTER 5. ASSESSMENTS**

Sec.

- 5.1. Definitions.
- 5.2. Semiannual assessment for banks, bank and trust companies, savings banks and savings associations.
- 5.3. Semiannual assessment for trust companies.
- 5.4. Semiannual assessment for credit unions.
- 5.5. Adjustments to assessments; invoicing.
- 5.6. Implementation schedule.

#### **Authority**

The provisions of this Chapter 5 issued under section 503(a) of the Credit Union Code (17 Pa.C.S. § 503(a)) and sections 202.C and 204.A of the Department of Banking and Securities Code (71 P.S. §§ 733-202.C, 733-204.A), unless otherwise noted.

#### **Source**

The provisions of this Chapter 5 adopted \_\_\_\_\_, 2013, effective, \_\_\_\_\_, 2013, \_\_\_ Pa.B. \_\_\_\_, unless otherwise noted.

#### **§ 5.1. Definitions.**

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

*Bank* - As defined in section 102(f) of the Banking Code (7 P.S. § 102(f)).

*Bank and trust company* - As defined in section 102(g) of the Banking Code.

*Consolidated total assets* - The total assets as reflected in the FFIEC Call Report's "Schedule RC – Balance Sheet of the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only – FFIEC 041" or "Schedule RC – Balance Sheet of the Consolidated Report of Condition and Income for a Bank with Domestic and Foreign Offices – FFIEC 031," as applicable.

*Credit union* - As defined in 17 Pa.C.S. § 102 (relating to application of title).

*FFIEC Call Report* - A report promulgated by the Federal Financial Institutions Examinations Council that sets forth consolidated total assets and fiduciary assets.

*Fiduciary assets* - The sum of the total fiduciary assets in the FFIEC Call Report's "Schedule RC – T Fiduciary and Related Services of the Consolidated Report of Condition and Income for a Bank with Domestic Offices Only – FFIEC 041."

*Fiscal year* – As defined in section 617(a) of The Administrative Code of 1929 (71 P.S. § 237(a)).

*NCUA Call Report* - A report promulgated by the National Credit Union Administration that sets forth total assets.

*Savings association* – An association as defined in section 102(3) of the Savings Association Code of 1967 (7 P.S. § 6020-2(3)).

*Savings bank* - A savings bank as defined in section 102(x) of the Banking Code.

*Total assets* - The total assets as reflected on the “Statement of Financial Condition” contained in the NCUA Call Report.

*Trust company* - A trust company as defined in section 102(dd) of the Banking Code.

*UFIRS* - The Uniform Financial Institutions Rating System.

*UITRS* - The Uniform Interagency Trust Rating System.

**§ 5.2. Semiannual assessment for banks, bank and trust companies, savings banks and savings associations.**

(a) Banks, bank and trust companies, savings banks and savings associations shall pay a semiannual assessment to the Department.

(b) The semiannual assessment on banks, bank and trust companies, savings banks and savings associations will be calculated as follows:

| If the amount of the consolidated total assets is: |                  | The semiannual assessment will be: |   |                  |             |
|--|------------------|------------------------------------|---|------------------|-------------|
| Over:  | But not over:    | Base amount:                       |   | The excess over: | Times (x):  |
| 0  | \$20,000,000     | \$6,070                            | + | 0                | 0           |
| \$20,000,000                                       | \$100,000,000    | \$6,070                            | + | \$20,000,000     | 0.000112059 |
| \$100,000,000                                      | \$200,000,000    | \$15,035                           | + | \$100,000,000    | 0.000072836 |
| \$200,000,000                                      | \$1,000,000,000  | \$22,319                           | + | \$200,000,000    | 0.000061631 |
| \$1,000,000,000                                    | \$2,000,000,000  | \$71,623                           | + | \$1,000,000,000  | 0.000050425 |
| \$2,000,000,000                                    | \$6,000,000,000  | \$122,048                          | + | \$2,000,000,000  | 0.000044822 |
| \$6,000,000,000                                    | \$20,000,000,000 | \$301,338                          | + | \$6,000,000,000  | 0.000038139 |
| \$20,000,000,000                                   |                  | \$835,284                          | + | \$20,000,000,000 | 0.000019409 |

(c) Banks, bank and trust companies, savings banks and savings associations will be billed semiannually in December and June based upon the consolidated total assets reported in the immediately preceding FFIEC Call Report.

**§ 5.3. Semiannual assessment for trust companies.**

(a) Trust companies shall pay a semiannual assessment to the Department.

(b) The semiannual assessment on trust companies will be calculated on consolidated total assets plus fiduciary assets as follows:

| If the amount of the consolidated total assets is: |                  | The semiannual assessment will be: |   |                  |             |
|--|------------------|------------------------------------|---|------------------|-------------|
| Over:  | But not over:    | Base amount:                       |   | The excess over: | Times (x):  |
| 0  | \$20,000,000     | \$6,070                            | + | 0                | 0           |
| \$20,000,000                                       | \$100,000,000    | \$6,070                            | + | \$20,000,000     | 0.000112059 |
| \$100,000,000                                      | \$200,000,000    | \$15,035                           | + | \$100,000,000    | 0.000072836 |
| \$200,000,000                                      | \$1,000,000,000  | \$22,319                           | + | \$200,000,000    | 0.000061631 |
| \$1,000,000,000                                    | \$2,000,000,000  | \$71,623                           | + | \$1,000,000,000  | 0.000050425 |
| \$2,000,000,000                                    | \$6,000,000,000  | \$122,048                          | + | \$2,000,000,000  | 0.000044822 |
| \$6,000,000,000                                    | \$20,000,000,000 | \$301,338                          | + | \$6,000,000,000  | 0.000038139 |
| \$20,000,000,000                                   |                  | \$835,284                          | + | \$20,000,000,000 | 0.000019409 |

plus

| If the amount of the fiduciary assets is: |                   | The semiannual assessment will be: |   |                   |              |
|---|-------------------|------------------------------------|---|-------------------|--------------|
| Over:                                     | But not over:     | Base amount:                       |   | The excess over:  | Times (x):   |
| 0   | \$500,000,000     | \$6,746                            | + | \$0               | 0            |
| \$500,000,000                             | \$1,000,000,000   | \$13,492                           | + | \$500,000,000     | 0            |
| \$1,000,000,000                           | \$10,000,000,000  | \$13,492                           | + | \$1,000,000,000   | 0.000002689  |
| \$10,000,000,000                          | \$100,000,000,000 | \$37,689                           | + | \$10,000,000,000  | 0.000000449  |
| \$100,000,000,000                         |                   | \$78,081                           | + | \$100,000,000,000 | 0.0000001425 |



(c) Trust companies will be billed in December and June based upon the consolidated total assets and fiduciary assets reported in the immediately preceding FFIEC Call Report.

**§ 5.4. Semiannual assessment for credit unions.**

(a) Credit unions shall pay a semiannual assessment to the Department.

(b) The semiannual assessment on credit unions will be calculated as follows:

| If the amount of the total assets is: |                 | The semiannual assessment will be: |   |                  |               |
|---------------------------------------|-----------------|------------------------------------|---|------------------|---------------|
| Over:                                 | But not over:   | This amount:                       |   | The excess over: | Times (x):    |
| 0                                     | \$24,503,168    | \$2,500                            | + | \$0              | 0             |
| \$24,503,168                          | \$1,115,871,488 | \$2,500                            | + | \$24,503,168     | 0.00010739750 |
| \$1,115,871,488                       | \$3,376,610,357 | \$119,842                          | + | \$1,115,871,488  | 0.00003130250 |
| \$3,376,610,357                       |                 | \$190,609                          | + | \$3,376,610,357  | 0.00001045000 |

(c) Credit unions will be billed in December and June based upon the total assets reported in the immediately preceding NCUA Call Report.

**§ 5.5 Adjustments to assessments; invoicing.**

(a) *Inflation adjustment to assessments.* The Department may increase the amount of assessments generated by the calculations in §§ 5.2-5.4 (relating to semiannual assessment for banks, bank and trust companies, savings banks and savings association; semiannual assessment for trust companies; and semiannual assessment for credit unions) [ in an amount up to the increase in the Consumer Price Index indicated by the “Consumer Price Index- All Urban Consumers: U.S. All Items 1982-84=100” published by the United States Department of Labor Bureau of Labor Statistics, or other similar index published by the United States Department of Labor Bureau of Labor Statistics, ] if the projected assessments are insufficient to provide for the Department’s budget due to [ inflation ] increased costs of operation.

(a.1) *Amount of inflation adjustment.* The increase permitted by subsection (a) may not exceed the percentage increase in the Consumer Price Index over the fiscal year immediately preceding the fiscal year in which the Department submits its proposed budget to the General Assembly, as indicated by the “Consumer Price Index- All Urban Consumers: U.S. All Items 1982-84=100” published by the United States Department of Labor Bureau of Labor Statistics, or other similar index published by the United States Department of Labor Bureau of Labor Statistics.

(b) *Surcharge based on condition.* The Department may increase the amount of a specific assessment generated by the calculations in §§ 5.2-5.4 by:

- (1) Thirty percent for a bank, bank and trust company, savings bank, savings association, trust company or credit union with a UFIRS or UITRS composite rating of 4; and
- (2) Fifty percent for a bank, bank and trust company, savings bank, savings association, trust company or credit union with a UFIRS or UITRS composite rating of 5.

(b.1) Notice of inflation adjustment or surcharge. The Department will provide notice to institutions of an increase in assessments according to subsections (a) and (b) by:

- (1) A general notice within 30 days of the enactment of the Department's budget by the General Assembly if an increase is generated by subsection (a).
- (2) A note on each semiannual assessment invoice issued to an institution subject to an increase generated by subsection (b).

(c) *Assessment invoicing.* The Department will round all assessments calculated under this chapter to the nearest dollar on the semiannual assessment invoice issued to each assessed entity.

#### **§ 5.6. Implementation schedule.**

(a) *General rule.* The Department will provide an implementation schedule for banks, bank and trust companies, savings banks, savings associations and trust companies to adjust to the assessments generated by this chapter.

(b) *Implementation schedule.* Banks, bank and trust companies, savings banks, savings associations and trust companies shall pay assessments according to the following implementation schedule:

- (1) Seventy percent of the total assessment calculated by §§ 5.2, 5.3 and 5.5 (relating to semiannual assessment for banks, bank and trust companies, savings banks and savings associations; semiannual assessment for trust companies; and adjustments to assessments; invoicing) for the first 12 months after \_\_\_\_\_ .
- (2) Eighty-five percent of the total assessment calculated by §§ 5.2, 5.3 and 5.5 for the second 12 months after \_\_\_\_\_ .
- (3) One hundred percent of the total assessment calculated by §§ 5.2, 5.3 and 5.5 for the third 12 months after \_\_\_\_\_ .

**Department of Banking and Securities  
Commentator Address List  
Regulation 3-51 Assessments**

The Department has provided notice of the submission of the revised final-form regulation to the following parties:

1. Daniel J. Reisteter  
Vice President of Government Relations  
Pennsylvania Bankers Association  
3897 N. Front St.  
Harrisburg, PA 17110
2. Tim Arthun  
Director of Government Relations  
Pennsylvania Association of Community Bankers  
2405 N. Front St.  
P.O. Box 5319  
Harrisburg, PA 17110
3. Patrick C. Conway  
President/CEO  
Pennsylvania Credit Union Association  
4309 N. Front St.  
Harrisburg, PA 17110-1618
4. Richard D. Carpenter  
Chief Financial Officer  
Vanguard  
P.O. Box 2600  
Valley Forge, PA 19482-2600



**COMMONWEALTH OF PENNSYLVANIA**  
**DEPARTMENT OF BANKING AND SECURITIES**

March 21, 2014

The Honorable John F. Mizner, Esq.  
Chairman, Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

Dear Chairman Mizner:

Re: Revised Final-Form Regulation #3-51 (IRRC #: 3021); Assessments

Enclosed is a report for the Commission's review consisting of a detailed explanation of the Department's revised final-form regulation, the Commission's disapproval order, the revised final-form regulation and a fully-signed IRRC transmittal sheet. This revised final-form regulation is in response to the concern raised by the Commission in its disapproval order.

Any questions should be directed to Carter D. Frantz, Chief Counsel,  
17 North 2<sup>nd</sup> Street, Suite 1300, Harrisburg, PA 17101-2290; telephone:  
717-787-1471; fax: 717-783-8427; email: [cafrantz@pa.gov](mailto:cafrantz@pa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn E. Moyer".

Glenn E. Moyer

Enclosures

cc: Carter D. Frantz, Chief Counsel (w/enclosures)  
Paul H. Wentzel, Jr., Senior Legislative & Policy Director (w/enclosures)

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

**I.D. NUMBER:** 3-51

**SUBJECT:** ASSESSMENTS

**AGENCY:** DEPARTMENT OF BANKING AND SECURITIES

**TYPE OF REGULATION**

- Proposed Regulation
- X Final Regulation (Resubmitted with Revisions)
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
- a. With Revisions      b. Without Revisions

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IRRC

**FILING OF REGULATION**

| <u>DATE</u>  | <u>SIGNATURE</u>     | <u>DESIGNATION</u>                               |
|--|----------------------|--|
| <i>HOUSE COMMITTEE ON COMMERCE</i>                 |                      |  |
| 3/21/14  | <u>Ripie Minnick</u> | MAJORITY CHAIR <u>Honorable Chris Ross</u>       |
| 3/21/14  | <u>Wade Coleman</u>  | MINORITY CHAIR <u>Honorable W. Curtis Thomas</u> |
| <i>SENATE COMMITTEE ON BANKING &amp; INSURANCE</i> |                      |  |
| 3/21/14  | <u>G. Calabrese</u>  | MAJORITY CHAIR <u>Honorable Donald C. White</u>  |
| 3/21/14  | <u>Alvin Shank</u>   | MINORITY CHAIR <u>Honorable Michael J. Stack</u> |
| <i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>    |                      |  |
| N/A  | N/A                  | ATTORNEY GENERAL (for Final Omitted only)        |
| N/A  | N/A                  | LEGISLATIVE REFERENCE BUREAU (for Proposed only) |

March 21, 2014