

## IC 28-11-3

### Chapter 3. Supervision of Financial Institutions

#### IC 28-11-3-1

#### **Examination of financial institutions; independent audit; report of condition; data processing services; use of report by Federal Home Loan Bank; unauthorized actions concerning reports; examination of vendors**

Sec. 1. (a) The department shall examine the affairs of every financial institution as often as the department considers necessary. Examinations may be made without notice to the institution to be examined.

(b) In making an examination, the department may examine any of the officers or agents of the institution under oath.

(c) The department may require an independent audit by a certified public accountant, subject to the standards the department determines.

(d) The department, in the classification of assets, may disregard the amount of an asset in its analysis of capital adequacy of the financial institution until the amount of the asset is recovered.

(e) After the examiners complete the examination of a financial institution, the examiners:

- (1) shall submit their written findings and recommendations to:
  - (A) the board of directors; and
  - (B) other parties authorized by the board of directors and approved by the director; and
- (2) may confer with the parties listed in subdivision (1) on the findings and recommendations.

(f) Upon the conclusion of an examination, a full, true, and detailed report of the condition of the financial institution shall be made to the department by the examiners in the form prescribed by the department.

(g) A financial institution subject to examination by the department may not cause, by contract or otherwise, any data processing or other similar service to be performed, either on or off its premises, until written assurances are furnished to the department by the financial institution and the entity providing the service that the performance of the service will be subject to regulation and examination by the department to the same extent as if the service was being performed by the financial institution on its own premises. Entities that provide data processing or other similar services to more than one (1) financial institution need only file one (1) written assurance to cover all financial institutions to which the entity provides services.

(h) The report of an examination conducted under this section:

- (1) is the exclusive property of the department; and
- (2) except as provided in subsection (i), shall not be distributed, published, or duplicated without the prior authorization of the director.

(i) A financial institution that is or seeks to become a member of

the Federal Home Loan Bank System may provide a copy of a report of an examination conducted by the department to the Federal Home Loan Bank for the confidential use of the Federal Home Loan Bank if the director and the Federal Home Loan Bank have entered into a written agreement that provides that the report of the examination:

(1) remains the property of the department; and

(2) is not:

(A) subject to inspection under IC 5-14-3;

(B) subject to subpoena;

(C) subject to discovery; or

(D) admissible in evidence in any civil action.

(j) Except as provided in subsection (i), a person who knowingly or intentionally possesses, distributes, publishes, or duplicates a report of an examination conducted under this section without the prior authorization of the director commits a Class B misdemeanor.

(k) If a financial institution contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the financial institution and be subject to the department's routine examination procedures, the person that provides the service to the financial institution shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any financial institution that receives services from the person refusing the examination to:

(1) discontinue receiving one (1) or more services from the person; or

(2) otherwise cease conducting business with the person.

*As added by P.L.33-1991, SEC.56. Amended by P.L.262-1995, SEC.75; P.L.90-2008, SEC.69; P.L.35-2010, SEC.196.*

### **IC 28-11-3-2**

#### **Visitorial powers**

Sec. 2. The department has visitorial powers with respect to any financial institution for the purpose of maintaining the safety and soundness of the financial institution.

*As added by P.L.33-1991, SEC.56.*

### **IC 28-11-3-3**

#### **Disclosure of confidential information; information sharing agreements**

Sec. 3. (a) The director or the director's designee may disclose or make available to a:

(1) state, federal, or foreign law enforcement agency;

(2) state, federal, or foreign financial institution supervisory agency;

(3) state, federal, or foreign prosecutorial agency;

(4) state, federal, or foreign money services business

supervisory agency;

(5) private insurer of deposit accounts or share accounts of a financial institution;

(6) state, federal, or foreign agency responsible for licensing, registering, chartering, or supervising any regulated:

(A) business; or

(B) nonprofit activity; or

(7) the Federal Home Loan Bank;

confidential information described under IC 28-1-2-30 or pertaining to a regulated business or nonprofit activity.

(b) Confidential information provided by the director or the director's designee under this section is privileged by law, remains the property of the department, and is not:

(1) subject to inspection under IC 5-14-3;

(2) subject to subpoena;

(3) subject to discovery; or

(4) admissible in evidence in any civil action.

(c) The director may enter into information sharing agreements with parties authorized to receive information under this section.

*As added by P.L.33-1991, SEC.56. Amended by P.L.213-2007, SEC.99; P.L.217-2007, SEC.97; P.L.90-2008, SEC.70.*

#### **IC 28-11-3-4**

##### **Documents, reports, and other papers; certified copies; prima facie evidence**

Sec. 4. A copy of a document, report, or other paper received and filed by the department, when certified by the director, shall be received in all courts and places as prima facie evidence of the facts stated in the certified copy.

*As added by P.L.33-1991, SEC.56.*

#### **IC 28-11-3-5**

##### **Schedule of fees; classification of assets; changes or modifications of fees; excess costs of examinations**

Sec. 5. (a) As used in this section, "assets" means the assets of a financial institution as disclosed by a report made by the financial institution at the end of the year immediately preceding the fiscal year in which a fee is fixed under this section.

(b) The department shall fix and collect, on an annual basis, a schedule of fees for the services rendered and the duties performed by the department in the administration of financial institutions.

(c) The fees may not exceed the comparative cost to the department in the administration of financial institutions. In determining the costs, the department may classify the assets of financial institutions and fix fees at different rates for the examination, supervision, regulation, and liquidation of the classes of assets, based on the proportionate cost and expense incurred by the department in making examinations and in the administration of financial institutions.

(d) The fees shall be charged and collected until changed or

modified by the department. A change or modification of fees may not be adopted more often than one (1) time each state fiscal year. A modified schedule of fees is effective on the first day of the state fiscal year following the fiscal year in which the modification is adopted.

(e) Administrative charges included in the fee are in addition to charges collected under other statutes.

(f) If the reasonable costs of performing an examination of a financial institution exceed the fees established under this section, the financial institution shall pay the excess costs not later than thirty (30) days after receipt of an invoice from the department. The department may impose a fee, in an amount fixed by the department under this section, for each day that the excess costs are not paid, beginning on the first day after the thirty (30) day period described in this subsection.

*As added by P.L.33-1991, SEC.56. Amended by P.L.10-2006, SEC.73 and P.L.57-2006, SEC.73; P.L.35-2010, SEC.197.*

### **IC 28-11-3-6**

#### **Federal preemption; exemption of state chartered entities and subsidiaries from provisions of state law**

Sec. 6. (a) As used in this section:

(1) "federally chartered" means an entity organized or reorganized under the law of the United States; and

(2) "state chartered" means an entity organized or reorganized under the law of Indiana or another state.

(b) If the department determines that federal law has preempted a provision of IC 24, IC 26, IC 28, IC 29, or IC 30, the provision of IC 24, IC 26, IC 28, IC 29, or IC 30 applies to a state chartered entity only to the same extent that the department determines the provision is applicable to the:

(1) same; or

(2) functionally equivalent;

type of federally chartered entity.

(c) A state chartered entity seeking an exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 based on the preemption of the provision as applied to a federally chartered entity shall submit a letter to the department:

(1) describing in detail; and

(2) documenting the federal preemption of;

the provisions from which it seeks exemption. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter submitted by the requesting entity.

(d) The department shall notify the requesting entity of the department's receipt of the request not later than ten (10) business days after the department's receipt of a letter described in subsection (c). Except as provided in subsection (e), upon receipt of the notification, the requesting entity may operate as if it is exempt from the provision of IC 24, IC 26, IC 28, IC 29, or IC 30 ninety (90) days after the date on which the department receives the letter, unless

otherwise notified by the department. This period may be extended for an additional ninety (90) days if the department determines that the requesting entity's letter raises issues requiring additional information or additional time for analysis. If the department extends the period for the department's review of the request, the requesting entity may operate as if the requesting entity is exempt from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 during the extended period of review only if the requesting entity receives prior written approval from the department. However:

(1) the department must:

(A) approve or deny the requested exemption; or

(B) convene a hearing;

not later than ninety (90) days after the department receives the requesting entity's letter, unless the department has extended the period for the department's review under this subsection; and

(2) if a hearing is convened, the department must approve or deny the requested exemption not later than ninety (90) days after the hearing is concluded.

(e) The department may refuse to exempt a requesting entity from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 if the department finds that any of the following conditions apply:

(1) The department determines that a described provision of IC 24, IC 26, IC 28, IC 29, or IC 30 is not preempted for a federally chartered entity of the:

(A) same; or

(B) functionally equivalent;

type.

(2) The extension of the federal preemption in the form of an exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 to the requesting entity would:

(A) adversely affect the safety and soundness of the requesting entity; or

(B) result in an unacceptable curtailment of consumer protection provisions.

(3) The failure of the department to provide for the exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 will not result in a competitive disadvantage to the requesting entity.

(f) The operation of a financial institution in a manner consistent with exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 under this section is not a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(g) If a financial institution is exempted from the provisions of IC 24, IC 26, IC 28, IC 29, or IC 30 in compliance with this section, the department shall do the following:

(1) Determine whether the exemption shall apply to all financial institutions that, in the opinion of the department, possess a charter that is:

(A) the same as; or

(B) functionally the equivalent of;  
the charter of the exempt institution.

(2) For purposes of the determination required under subdivision (1), ensure that applying the exemption to the financial institutions described in subdivision (1) will not:

(A) adversely affect the safety and soundness of the financial institutions; or

(B) unduly constrain Indiana consumer protection provisions.

(3) Issue an order published in the Indiana Register that specifies whether the exemption applies to the financial institutions described in subdivision (1).

(h) If the department denies the request of a financial institution under this section for exemption from Indiana Code provisions that are preempted for federally chartered institutions, the requesting institution may appeal the decision of the department to the circuit court of the county in which the principal office of the requesting institution is located.

(i) If the department determines that federal law has preempted a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 as the provision applies to an operating subsidiary of a federally chartered entity, the provision of IC 24, IC 26, IC 28, IC 29, or IC 30 applies to a qualifying subsidiary (as defined in IC 28-13-16-1) of a state chartered entity only to the same extent that the department determines the provision applies to the operating subsidiary of:

(1) the same; or

(2) the functionally equivalent;

type of federally chartered entity. In determining whether to extend the exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 to a qualifying subsidiary (as defined in IC 28-13-16-1) of a state chartered entity under this subsection, the department shall use the procedures and undertake the considerations described in this section for a preemption determination with respect to a state chartered entity.

*As added by P.L.73-2004, SEC.41. Amended by P.L.141-2005, SEC.21.*