

BANKING CODE OF 1999 (EXCERPT)
Act 276 of 1999

487.12202 Examination of institution, its subsidiaries, and service entities.

Sec. 2202.

(1) Each institution and its subsidiaries and service entities are subject to examination of their condition and affairs by the director or his or her authorized agent at least once every 18 months.

(2) The director shall examine an institution under the director's jurisdiction when requested by its board of directors. In connection with an examination, the director, or his or her authorized agent, may examine under oath a director, officer, agent, employee, or shareholder of an institution concerning the affairs and business of the institution. The director shall ascertain whether the institution transacts its business in the manner prescribed by law and the rules promulgated under law.

(3) If an institution under the director's jurisdiction, by contract or otherwise, engages a service provider to perform any services of a service provider, whether on or off its premises, that performance is subject to regulation, examination, and enforcement by the director, or his or her authorized agent, to the same extent as if those services were performed by the institution itself on its own premises.

(4) The director, or his or her authorized agent, may examine an affiliate or bank holding company of an institution that is under the director's jurisdiction.

(5) The director may examine the branch or branches located in this state of an out-of-state bank as permitted under the federal deposit insurance act.

(6) In fulfilling the requirements of subsections (1) and (2) and the authority granted under subsections (3) and (4), the director may use an examination made by any federal or state bank regulatory agency. The director may require the institution to furnish a copy of any report required by a federal or state bank regulatory agency.

(7) An examination required under this section may include the fiduciary activities of the institution.

(8) The director may contract with other state bank regulatory agencies to assist in the conduct of examinations of banks with 1 or more branches located in other states and in examinations of out-of-state banks with 1 or more branches located in this state.

(9) The contents of a report of examination of a bank and examination-related documents prepared or obtained under this section remain the property of the director. Any document, material, or information related to an examination under this act is confidential by law and privileged, is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. However, the director is authorized to use the documents, materials, or information in the furtherance of any supervisory activity or legal action brought as part of the director's duties.

(10) The director, or any person that received documents, materials, or information while acting under the director's authority, is not permitted and may not be required to testify in any private civil action concerning any confidential documents, materials, or information described in subsection (9).

(11) To assist in the performance of the director's duties under this act, the director may do any of the following:

(a) Share documents, materials, or information, including the confidential and privileged documents, materials, or information that are subject to subsection (9), with other state, federal, and international regulatory agencies, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or information.

(b) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from regulatory and law enforcement officials of other foreign or domestic jurisdictions. The director shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that the documents, materials, or information the director receives are confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, or information.

(c) Enter into agreements governing the sharing and use of information that are consistent with this subsection.

(12) The disclosure of any documents, materials, or information to the director, or the sharing of documents, materials, or information under subsection (11), is not a waiver of, and shall not be construed as a waiver of, any privilege applicable to or claim of confidentiality in those documents, materials, or information.

(13) A person to which confidential and privileged documents, materials, or information is disclosed shall not further disseminate those confidential and privileged documents, materials, or information.

(14) Any person on which a demand for production of confidential and privileged documents, materials, or information is made, whether by subpoena, order, or other judicial or administrative process, must withhold production of the confidential and privileged documents, materials, or information and must notify the director of the demand. If the director is notified of a demand under this subsection, the director may intervene for the purpose of enforcing the limitations of this section or seeking the withdrawal or termination of the attempt to compel production of the confidential and privileged documents, materials, or information.

(15) Any request for discovery or disclosure of confidential and privileged documents, materials, or information, whether by subpoena, order, or other judicial or administrative process, shall be made to the director, and the director shall determine within 21 days whether to disclose the documents, materials, or information under this act. If the director determines that the documents, material, or information will not be disclosed, the director's decision is subject to judicial review.

(16) The judicial review of a decision of the director under subsection (15) may include in camera judicial review of the confidential and privileged documents, materials, or information. After judicial review, a court may only order disclosure of the portions of the confidential and privileged documents, materials, or information that are relevant and otherwise unobtainable by the requesting party.

(17) The director may immediately appeal any court order described in subsection (16) that compels disclosure of confidential and privileged documents, materials, or information, and the order is automatically stayed pending the outcome of the appeal.

(18) In an addendum to a report of an examination under this section, the director or his or her authorized agent may suggest best practices or other improvements in the operation of a bank that are not required by law or regulation or to address safety and soundness of the bank. The manner in which a bank addresses issues concerning its operations is within the discretion of the bank in the exercise of its business judgment, except as required by law or regulation or to address a concern over safety and soundness. The director shall not take action against a bank under this act based on a failure or refusal of a bank to follow a best practice or other recommended improvement in the operation of the bank that is suggested informally by an examiner or that is contained in an addendum to a report of examination.

(19) Within 1 year after the effective date of the amendatory act that added this subsection, the director shall issue guidance to promote consistency and due process in the examination process under this section, including, but not limited to, establishing guidelines that define the scope of the examination process and clarify how examination issues will be resolved.

History: 1999, Act 276, Eff. Mar. 1, 2000 ;-- Am. 2016, Act 175, Eff. Sept. 12, 2016