

NOTICE OF INTENT

Office of the Governor Office of Financial Institutions

Virtual Currency Business Activity (LAC 10:I.1901-1937)

On October 20, 2022, the Office of Financial Institutions (“OFI”) adopted an emergency rule, pursuant to R.S. 49:962A(1)(a). OFI’s Declaration of Emergency prevented imminent peril to the public health, safety, or welfare in implementation of licensure and registration to engage in virtual currency business activities in the State of Louisiana, as provided by the Virtual Currency Businesses Act (“VCBA”), R.S. 6:1381, et seq., enacted by Act 341 of the 2020 Regular Session of the Louisiana Legislature, without interruption, limitation or restriction of exchange and transfer of virtual currency during the initial application and renewal application processes. OFI is concurrently proceeding with adoption of this identical rule, pursuant to R.S. 49:961A and 962A(5).

This proposed rule amends LAC 10:I.1901, 1905, 1913, 1915, 1917, 1923, and 1927; and repeals LAC 10:I.1903, 1907, 1909, 1919, 1921 and 1925, in accordance with provisions of the Administrative Procedure Act, R.S. 49:950, et seq. This proposed rule is intended to provide clear and concise guidance for implementation and enforcement of provisions of the VCBA, as required by R.S. 6:1394. The proposed amendment of LAC 10:I.1901 addresses industry concerns expressed to OFI. LAC 10:I.1903, 1917 and 1919 are consolidated into the surviving §1917; and LAC 10:I.1907, 1909, 1921 and 1925 are repealed in the interest of streamlining the initial application and renewal processes. LAC 10:I.1931 is amended in consistency with the amendment of §1901.

In considering industry concerns, OFI determined that it would be in the best interest of the industry and persons in Louisiana seeking to engage in the exchange and transfer of virtual currency to revisit the Rule. After further review, OFI determined that it is in the best interest of both the industry and persons wishing to exchange and transfer virtual currency to repeal LAC 10:1.1907, 1909, 1921 and 1925 in the interest of streamlining the initial application and renewal process.

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC

Part XV. Other Regulated Entities

Chapter 19. Virtual Currency

§1901. Definitions

A. In addition to the definitions provided in Section 1382 of the Virtual Currency Businesses Act, (“VCBA”), R.S. 6:1381 et seq., as enacted by Act 341 of the 2020 Regular Session of the Louisiana Legislature, the following definitions are applicable to this Chapter.

Acting in Concert—persons knowingly acting together with a common goal of jointly acquiring control of a licensee whether or not pursuant to an express agreement.

Commissioner—the commissioner of the office of financial institutions.

Control—includes, but is not limited to the following:

- a. any and all circumstances inherent within the scope of section 1382(2) of the VCBA;
- b. power to directly or indirectly vote at least 25 percent of outstanding voting shares or voting interests of any:
 - i. applicant, licensee or registrant; or
 - ii. applicant’s, licensee’s or registrant’s responsible individual or responsible individuals, including persons acting in concert;
- c. power to directly or indirectly elect, appoint or remove any applicant’s, licensee’s or registrant’s responsible individual or a majority of responsible individuals including persons acting in concert;
- d. power to directly or indirectly participate in a licensee’s or registrant’s day-to-day decisions or operations, including persons acting in concert; and
- e. any other set of facts or circumstances that may constitute control.

Nationwide Multistate Licensing System and Registry (NMLS)—the multistate system developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the State Regulatory Registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in financial services industries.

Net Worth—the difference between total business assets and total business liabilities, after deducting estimated income taxes on the differences between the estimated current values of business assets and the current amounts of business liabilities and their tax bases.

Tangible Net Worth—includes all business assets minus liabilities minus intangible assets (goodwill and other intangible assets, such as favorable leasehold rights, trademarks, trade names, internet domain names, and non-compete agreements.)

Unfair or Deceptive Act or Practice—failure to provide any disclosure or disclosures described in this Chapter is an unfair or deceptive act or practice by a licensee, registrant, or person that is neither a licensee nor registrant but is engaging in virtual currency business activity or activities, pursuant to R.S. 6:1393(3)(b).

Unsafe or Unsound Act or Practice—inability of any applicant, licensee or registrant to meet its withdrawal requests; violation of the applicant’s, licensee’s or registrant’s articles of incorporation; or violation of any law or any regulation governing the applicant, licensee or registrant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1391, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2561 (October 2022), amended LR 49:

§1903. Implementation

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1383, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1391, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2562 (October 2022), repealed LR 49:

§1905. Application for License or Notice of Registration

A. The department shall begin accepting initial applications for licensure and notices of registration through the NMLS on January 1, 2023.

B. Completed applications for licensure and notices of registration submitted on or before April 1, 2023 will be approved, conditionally approved or denied on or before June 30, 2023.

C. This rule shall become effective on July 1, 2023.

D. Applications for licensure and notices of registration pursuant to this Section shall not be complete until the department:

1. receives all information required by applicable provisions of the VCBA; and
2. completes its investigation pursuant to R.S. 6:1385D.

E. By force of law, no applicant shall have a right of appeal, as provided by R.S. 6:1387, before the 30th day after the effective date of this rule.

F. After July 1, 2023, initial and renewal applications shall be submitted in accordance with the VCBA and this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1383, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2562 (October 2022), amended LR 49:

§1907. Approval of Control Person

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2562 (October 2022), repealed LR 49:

1909. Approval of Change of Control

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2562 (October 2022), repealed LR 49:

§1913. Renewal of License or Notice of Registration

A. Any application for renewal of a license or notice of registration issued pursuant to provisions of the VCBA shall be submitted through the NMLS and satisfy all renewal requirements of the VCBA, including but not limited to those required by R.S. 6:1388.

B. Beginning July 1, 2023, the period for submitting applications for renewal of all licenses and notices of registration to engage in virtual currency business activities shall begin on the first day of November of each calendar year.

C. A renewal application submitted on or before the thirty-first day of December shall be considered timely and the license or notice of registration seeks to renew shall remain in force and effect, as provided by the VCBA.

D. An application for renewal of any license or notice of registration shall be accompanied by both:

- a. the renewal fee; and
- b. the late fee.

2. If a licensee or registrant does not submit an application for renewal on or before the last day of February, the license or notice of registration shall lapse on the first day of March and the licensee or registrant shall cease engaging in virtual currency business in Louisiana, with persons and individuals in Louisiana or on behalf of persons or individuals in Louisiana, as provided by R.S. 6:1384.

3. Any person whose license or notice of registration has lapsed may apply for a new license or notice of registration, in accordance with the VCBA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2564 (October 2022), amended LR 49:

§1917. Examination

A. The commissioner may:

1. conduct on-site examination or investigation of the books, records, and accounts used in the business of every a licensee or registrant;

2. consider results of an inspection conducted by a comparable official in any in which the books, records, and accounts used in a licensee's or registrant's virtual currency business are located;

3. enter into agreements or relationships with other government officials or state and federal regulatory agencies;

4. consider licensing or examination reports prepared by other governmental agencies or officials, within or outside Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1391, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2564 (October 2022), amended LR 49:

§1919. Network Examination

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1391, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2564 (October 2022), repealed LR 49:

§1921. Renewal/Quarterly Reports

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1391; and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2565 (October 2022), repealed LR 49:

§1923. Records

A. Licensees engaging in virtual currency business activity in Louisiana shall maintain and preserve such books, records, and accounts of its virtual currency business activities, pursuant to R.S. 6:1391, for a period of five years, or longer, if required by the commissioner to resolve any examination, investigation, or complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1391, R.S. 6:1393, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2561 (October 2022), amended LR 48:

§1925. Policies and Procedures

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1391, R.S. 6:1393, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2565 (October 2022), repealed LR 49:

§1927. Consent Agreements

A. The commissioner may enter into a consent agreement at any time with a person to resolve a matter arising under the VCBA, or a rule adopted, or an agreement entered into, under the VCBA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1391, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2561 (October 2022), amended LR 49:

§1929. Civil Penalties

A. The commissioner, in his discretion, may assess a civil penalty against a person that violates the VCBA or any rule promulgated pursuant to the VCBA, or any order issued by the commissioner pursuant thereto, not to exceed \$1,000 for each violation, plus the department's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1387, R.S. 6:1388, R.S. 6:1392, R.S. 6:1393, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2561 (October 2022), amended LR 49:

§1931. Miscellaneous Provisions

A. Failure to comply with this rule, or any other rule, or with any order issued by the department within a reasonable period of time may be considered in determining whether to waive any regulatory fee or to allow the filing of additional information relating to the application process. Noncompliance with any provisions of the VCBA, including but not limited to any provision or provisions pertaining to ownership, control, security, net worth, registration, or failure to pay any fee may likewise be considered in determining whether to deny issuance or renewal of a license or notice of registration, or the commissioner's institution of any investigative, administrative, or regulatory action within the scope of his authority.

B. All persons must be properly registered with the Louisiana Secretary of State, if required, prior to engaging in virtual currency business activity in the State of Louisiana.

C. Licensees engaging in virtual currency business activity in Louisiana are to provide proper disclosures to persons wishing to transfer or exchange virtual currency through the licensee or registrant. Disclosures are to be made separately from any other information provided by the licensee to such persons in a clear and conspicuous manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1392, R.S. 6:1393, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2561 (October 2022), amended LR 49:

§1933. Fees

A. Pursuant to the authority granted under R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, and R.S. 6:1391, the following fee structure is hereby established to cover necessary costs associated with the administration of the VCBA, R.S. 6:1381, et seq., as enacted by Act 341 of the 2020 Regular Session of the Louisiana Legislature.

Description	Fee
1. Initial Application Fee (\$2,500) and Investigation/Review Fee (\$2,500)	\$5,000
2. License Renewal Fee (\$2,000) and Investigation/Review Fee (\$2,000)	\$4,000/\$1,500 late fee
3. Examination Fee	\$50 per/hour for each examiner, plus the actual cost of subsistence, lodging, and transportation for out-of-state exams, not to exceed the amounts provided for in Division of Administration travel regulations in force at the time of such exam
4. Registration Fee	\$750 for initial application
5. Registration Renewal Fee	\$500 for any subsequent annual renewals /\$250 late fee

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1385, R.S. 6:1388, R.S. 6:1389, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2565 (October 2022), amended LR 49:

§1935. Exceptions

A. Any request for an exception and/or waiver must be submitted in writing and requires the written approval of the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2566 (October 2022), amended LR 49:

§1937. Severability

A. If any provision or item of this regulation, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the regulation which can be given effect without the invalid provisions, items, or applications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:121.2, R.S. 6:1385, R.S. 6:1386, R.S. 6:1387, R.S. 6:1388, R.S. 6:1389, R.S. 6:1392, and R.S. 6:1394.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 48:2566 (October 2022), amended LR 49:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed rule on the family has been considered. This proposed rule has no known impact on family formation, stability, or autonomy as described in R.S. 49:972.

Small Business Analysis

Pursuant to R.S. 49:965.6, methods for reduction of the impact on small business, as defined in the Regulatory Flexibility Act, have been considered when creating this proposed Rule. This proposed Rule has no known impact on small businesses, pursuant to R.S. 49:978.4.

Poverty Impact Statement

The proposed Rule has no known impact on poverty, pursuant to R.S. 49:973.

Provider Impact Statement

The proposed Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

Interested persons may offer public comment through 5 p.m. CST on December 10, 2022, to Susan Rouprich, General Counsel, Office of Financial Institutions, 8660 United Plaza Boulevard, Second Floor, Baton Rouge, LA 70809.

Stanley M. Dameron
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will increase cost in the Office of Financial Institutions (OFI) by \$144,306 in FY 23, \$330,806 in FY 24 and \$336,758 in FY 25. The OFI is currently responsible for the regulatory oversight of persons engaging in virtual currency business activity in the State of Louisiana pursuant to the Virtual Currency Businesses Act (VCBA), R. S. 6:1381 et. seq., as enacted by Acts 341 of the 2020 Regular Session of the Louisiana Legislature. Virtual currency business licensees and registrants are persons who engage in virtual currency business activity, or hold themselves out as being able to engage in virtual currency business activity, with or on behalf of a Louisiana resident, pursuant to the VCBA. The proposed rule will not result in any cost or savings to local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will increase revenue collection by \$265,750 in FY 23, \$286,250 in FY 24, and \$372,250 in FY 25. The proposed rule will not have a material impact on OFI's source of funding, since the revenues generated will exceed the implementation costs. OFI expects revenue collections to increase in subsequent years as more entities are licensed and/or file registrations in order to conduct virtual currency business activity in the State of Louisiana.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)

OFI anticipates the costs associated with implementation and regulation will be reasonable to directly affected persons, small businesses, or non-governmental groups resulting from the proposed rule. However, the economic benefits to directly affected persons, small business, or non-governmental groups could be substantial through the expansion of virtual currency business activity in the State of Louisiana.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

OFI anticipates that the proposed rule will have a favorable impact on competition and employment in the private sector through the expansion of virtual currency business activity in the State of Louisiana.