CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: ___Department of Commere________

Regulation/Package Title: ____Ohio Mortgage Loan Act rules-2014_______________

Rule Number(s): __1301:8-3-03; 1301:8-3-04; 1301:8-3-05; 1301:8-3-06; 1301:8-3-07; 1301:8-3-10; 1301:8-3-12; 1301:8-3-13; 1301:8-3-17; 1301:8-3-23; 1301:8-3-24_____

Date: ____December 3, 2014____________________

Rule Type:

- ☐ **New**
- ☐ **Amended**
- X **5-Year Review**
- ☐ **Rescinded**

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. **Please briefly describe the draft regulation in plain language.**
   Please include the key provisions of the regulation as well as any proposed amendments.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

This rule package contains 12 rules amplifying the Ohio Mortgage Loan Act ("OMLA") which is codified at Ohio Revised Code ("R.C.") 1321.51 to 1321.60.

These rules are being filed as a no-change rule package with a review date shorter than 5 years due to litigation pertaining to the applicability of the OMLA to certain transactions. As a result of this litigation, the Division of Financial Institutions ("Division") was not able to engage its stakeholders. The Division, therefore, submits this rule package without changes and intends to begin the process of reviewing this rule with stakeholders in 2015 with a new review date of January 2016.

1301:8-3-03, Definitions (*No change*): This rule contains definitions of terms used in the OMLA and the rules promulgated thereunder.

1301:8-3-04, Recordkeeping (*No change*): This rule details the types of records that a registrant is required to maintain. For instance, a registrant must keep copies of loan statements, ledger records, loan agreements, and cash receipts and disbursement records. The rule allows for electronic records retention. It also explains that records must be kept for at least two years after making the final entry on the loan.

1301:8-3-05, Advertising (*No change*): This rule sets forth permissible advertising practices for residential mortgage loan registrants, mortgage loan originators, and secured and unsecured lenders. It defines "advertisement" and clarifies which advertising practices are considered false, misleading or deceptive to consumers. It requires registrants to maintain all advertisements for two years from usage which is consistent with the recordkeeping requirement in the new federal mortgage acts and practices advertising regulations set forth in 12 C.F.R. Part 1014.

1301:8-3-06, Out-of-state examination (*No change*): This rule sets forth how registrants will pay for expenses the Division incurs in conducting examinations of records held outside the state.

1301:8-3-07, General provisions for registrants (*No change*): This rule lists general requirements and disclosures that apply to the making, originating, closing or collecting of OMLA loans. For instance, loans must be closed at or made at (for direct mail loans) a registered location. Registrants must give borrowers a certain amount of advance notice when interest rates re-set for certain loan products. A borrower's written consent is required for certain insurance products. Borrowers are permitted to make advance payments on contracts. Registrants may hold more than one license or certificate issued by the Division as long as the registrant complies with R.C. 1321.551. Registrants must state the statutory authority pursuant to which the loans are being made. Registrants must release mortgages in compliance with Ohio law. Payment histories should be clear and accurate. The registrant's contact information should be provided to borrowers in default. Registrants and consumers may opt to use mediation services for disputed matters.

1301:8-3-10, Annual report (*No change*): This rule clarifies that annual reports shall include a sworn statement affirming the validity of the reported interest, loan origination charges, points and credit line charges and upon the request of the superintendent, the registrant shall demonstrate the method by which these figures were calculated.

1301:8-3-12, Prohibitions (*No change*): This rule sets forth the conduct that the superintendent considers to be improper, fraudulent, or dishonest dealings and/or shows a lack of character and general fitness to command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the OMLA.

1301:8-3-13, Cancellation and return of original loan documents; receipt upon payment (*No change*): This rule requires a registrant to return the original note or a copy of the original note mark "paid" or "canceled" to the obligor upon repayment of the loan in full. Upon request, the registrant is required to give to the borrower a receipt for each payment made on account of any interest-bearing or pre-computed loan.

1301:8-3-17, Policy or certificate of insurance; disclosure of credit life, credit accident and health, and unemployment insurance cancellation rights; Ohio insurance law (*No change*): This rule clarifies the disclosures and documents a registrant must provide to a borrower who purchases an insurance product in connection with a loan.

1301:8-3-23, Interpretation (*No change*): This rule permits registrants to use fees charged for recording, filing and releasing security interests and mortgages on a loan for purchasing insurance protecting against losses and/or creating a self-insurance fund for such losses.

1301:8-3-24, Points and prepayment penalties on real estate loans (*No change*): This rule clarifies that prepayment penalties and points may only be charged on residential mortgage loans and not on other loans permitted under the OMLA. It also clarifies and harmonizes the R.C. 1321.57(G) with the prepayment penalty provisions in R.C. 1343.011.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**

   R.C. 1321.54(A).

3. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

If yes, please briefly explain the source and substance of the federal requirement.

No. While there are new federal requirements pertaining to the licensing of mortgage loan originators and mortgage lending practices, those changes are not covered in this no-change rule package.

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

This no-change rule package contains no provisions that exceed federal requirements.

5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The public purpose of this rule package is to provide clarity to registrants as to the requirements of the OMLA and to protect consumers in certain lending transactions by ensuring that registrants have the requisite financial responsibility, experience, character, and general fitness to command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the OMLA. Further, the regulations ensure that in certain mortgage transactions, registrants do not engage in improper, dishonest or fraudulent conduct. See R.C. 1321.53(A)(7) and 1321.59(G).

How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The rules will not affect the output of mortgage loan originator licenses or certificates of registration issued by the Division. Rather, the Division will measure the success of these regulations by continuing to receive industry feedback on the licensing and regulation of the industry and reviewing consumer complaints submitted to the Division.

Development of the Regulation

6. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**
If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Division emailed the no-change rule package to over 50 individuals representing the industry associations and consumer advocacy groups listed below.

Ohio Mortgage Bankers Association
Mortgage Bankers Association of America

Ohio Association of Mortgage Professionals
MBA of NW Ohio
Greater Cleveland Mortgage Bankers Association
Greater Cincinnati Mortgage Bankers Association
Dayton Area Mortgage Bankers Association
Columbus Mortgage Bankers Association
Ohio Financial Services Association
Coalition on Homelessness and Housing in Ohio
Ohio Poverty Law Center

7. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

   There was no opposition to filing this no-change rule package. Stakeholders are looking forward to the process of amending the rules in 2015.

8. **What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

   Not applicable.

9. **What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

   Not applicable because this is a no-change rule package. The Division will begin the process of engaging stakeholders in 2015 and will be considering alternative regulations at that time.

10. **Did the Agency specifically consider a performance-based regulation? Please explain.** ***Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

    Not applicable.

11. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

    Not applicable because this is a no-change rule package. The Division will begin the process of substantive revisions in 2015 and will review all Ohio regulations to ensure there are no duplicative regulations.

12. **Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The Division will post these rules on the Department of Commerce website, and send a notice to all licensees, registrants, and credit union service organizations advising them of this no-change rule package.

Adverse Impact to Business

13. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

These rules apply to mortgage lenders, credit union service organizations, lenders who make secured and unsecured loans, and mortgage loan originators.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

- The recordkeeping rule requires employer time for compliance.
- Maintaining records of advertisements requires employer time for compliance.
- Registrants that keep records out of state may be required to pay for the Division's cost to travel out of state to conduct an examination.
- Having to close loans at or make loans from a registered location incurs a certificate of registration fee ($500) and annual renewal fee ($300).
- Having to notify borrowers in writing of interest rate re-sets or payment changes requires employer time for compliance and postage.
- Providing payment histories on request requires employer time for compliance, and possibly postage.
- Providing written notice to borrowers that includes contact information for loss mitigation or foreclosure prevention staff, toll free numbers and the amount of any payment deficiency requires employer time for compliance and postage.
- Filing an annual report requires employer time for compliance.
- Marking notes "paid in full" or "cancelled" requires employer time and possibly postage.
- Written notifications required to be given when insurance products are sold to borrowers requires employer time and possibly postage.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

- Recordkeeping requirements take approximately 30 minutes or less per loan file because most of the documentation is computerized. Further the Truth In Lending Act and Regulation Z already require records to be maintained such that the Ohio rule does not add any additional cost.
- Maintaining copies of advertisements takes a minimal amount of time—5 minutes per advertisement. It requires the employee to file a copy of the advertisement in a filing system.
- Registrants that opt to keep records out of state may be required to pay for the Division's out of state travel to conduct an examination. This cost ranges between $400-$2,000 depending on the distance from Ohio and size of the company. However, the Division conducts most out of state examinations by mail. Only 5-10 out of state examinations are conducted per year. Therefore, very few registrants are impacted by this cost.
- Having to close loans at or make loans from a registered location may incur a registration fee of $500 for the first certificate of registration and $300 for the annual renewal fee for each location. However, R.C. 1321.53(C) requires separate certificates of registration for every place of business. Thus, this requirement is statutory.
- Having to notify borrowers in writing of interest rate re-sets or payment changes incurs a cost for employer time. However, there is no additional expense to meet this Ohio rule because it is already required under federal law. See 15 U.S.C. 1638a.
- Providing payment histories on request takes minimal time because these records are usually kept electronically. If the borrower makes payments at the store location, the employee simply queues the payment history to print and hands it to the borrower directly. If the borrower calls to request a copy, the employee queues it to print and mails it to the borrower. Both take a minimal amount of employee time—5 minutes and possibly the cost of postage. In addition, for installment loans, most registrants mail account statements, which, if maintained by the borrower, provide a record of all payments made obviating the need to request a payment history. Thus, not all borrowers request payment histories.

In addition, for residential mortgage loans, the Real Estate Settlement Procedures Act already requires that servicers provide payment histories in response to a Qualified Written Request from a borrower. See 12 U.S.C. 2605(e). Therefore, there is no additional cost associated with this rule with respect to lenders or servicers of residential mortgage loans because it is already a requirement of federal law.

- The Ohio rule requiring written notice to borrowers who are in default adds no additional expense because it is already a requirement of federal law. See 12 C.F.R. 1024.39.
- Filing an annual report takes approximately 3-12 hours of employee time depending on the volume of loans made or originated and type and number of loan products the registrant offers to borrowers. These records are usually kept electronically and require an employee to run computer queries, and then pull, organize and review the data. After ensuring that the data is accurate, the employee types the data into the web-based annual report form. For a registrant originating residential mortgage loans, federal law requires the submission of a "mortgage call report." See 12 U.S.C. 5104(e). Recent changes in Ohio law allow the Division to accept the mortgage call report in lieu of the annual report. See R.C. 1321.55(B)(1). Therefore, for a registrant originating residential mortgage loans, there will be no cost associated with this rule because it is already a requirement of federal law. For registrants making non-residential mortgage loans, this rule is necessary in order for the Division to fulfill its statutory duty to publish an annual report concerning the business and operations of all lenders for the preceding calendar year. See R.C. 1321.55(B)(2).
- Processing documents for loans that have been paid in full and providing copies to the borrower of the note marked "paid in full" or "cancelled" takes a minimal amount of time--less than five minutes of employee per loan (plus postage if a hardcopy is mailed). It involves pulling the note from the borrowers loan file or, if electronically stored, printing a copy of the note from the computer records and stamping the note "paid in full" or "canceled." The Division permits an emailed copy in lieu of sending a hardcopy. Many borrowers make the final payment in person and receive the documentation of payment in full at the registrant's business location.
- Providing a copy of the insurance policy or certificate of insurance to borrowers requires minimal time because most registrants' computer systems are programmed to automatically generate the certificate and/or the policy at the same time the loan documents are generated. Also, providing this information to

borrowers is required by Ohio insurance law. See R.C. 3918.06. Therefore, there is no additional cost associated with this requirement.

14. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Many of the adverse impacts to registrants are imposed by federal laws pertaining to lending, which is a highly-regulated field. Any rules that are not required by federal or state law are necessary in order to protect consumers from improper, dishonest or fraudulent conduct and to ensure that registrants have the requisite financial responsibility, experience, character, and general fitness to command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the OMLA.

Regulatory Flexibility

15. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

This regulation permits registrants to maintain records electronically in lieu of hardcopy. O.A.C. 1301:8-3-04(B)

This regulation permits the purchase of insurance or the creation of a self-insurance fund in lieu of having to record, file and release security interests and mortgages on loans. O.A.C. 1301:8-3-23.

16. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The Division has been waiving fines for first-time violations of the requirement to file a mortgage call report or annual report. The fine is waived for the first violation as long as the registrant agrees to file the report within thirty days.

17. **What resources are available to assist small businesses with compliance of the regulation?**

The Division is available to answer questions via phone and email. In addition, the Deputy Superintendent and senior staff regularly attends industry meetings in every region of Ohio in order to answer questions in person.