

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Commere

Regulation/Package Title: Ohio Small Loan Act rules-2014

Rule Number(s): 1301:8-2-01; 1301:8-2-04; 1301:8-2-05; 1301:8-2-06; 1301:8-2-07;
1301:8-2-12; 1301:8-2-16; 1301:8-2-20

Date: December 3, 2014

Rule Type:

New

5-Year Review

Amended

Rescinded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.

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This rule package contains 8 rules amplifying the Ohio Small Loan Act ("SLA") which is codified at Ohio Revised Code ("R.C.") 1321.01 to 1321.19.

This amended rule is being proposed by the Division of Financial Institutions ("Division") as part of a 5-year rule review.

1301:8-2-04, Recordkeeping (Amended): This rule details the types of records that licensees are required to maintain and keep available during normal business hours for review by the Division. For instance, licensees are required to keep copies of loan statements, loan agreements, disclosure forms, security agreements, an alphabetical index of borrowers, and a litigation record. An amendment to the rule allows for electronic record retention. The rule explains that records must be kept for at least 2 years after making final entry on the loan. To reduce the risk of consumer fraud, the rule also requires compliance with the federal Fair and Accurate Credit Transactions Act of 2003 (FACTA) and the Gramm Leach Bliley Act (GLBA), both of which pertain to the maintenance, security, and disposal of consumer information and records. The rule is being amended to accurately cite to provisions of FACTA and GLBA and the regulations promulgated thereunder and to eliminate a paragraph concerning when a license may be suspended or revoked, as those powers already exist in R.C. 1321.08.

The following rules are being filed as a no-change rule package with a review date shorter than 5 years. The Division, therefore, submits these rules without changes and intends to begin the process of reviewing these rules with stakeholders in 2015 with a new review date of January 2016.

1301:8-2-01, Definitions (No change): The rule defines terms utilized in the SLA. Defining the terms "current assets," "direct mail," "condition of the loan," "affiliation/affiliated with," and "final entry on a loan" as used in the SLA and OAC Chapter 1301:8-2 provides clarity for stakeholders and those otherwise affected by the SLA and the rules promulgated thereunder.

1301:8-2-05, Advertising (No change): This rule defines "advertisement" and sets forth permissible advertising practices for licensees. It requires licensees to maintain all advertisements for two years from the date disseminated and to make such records available for inspection by the Division.

1301:8-2-06, Locations of a licensee's records out-of-state; 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.

1301:8-2-07, General provisions for small loan licensees (No change): This rule lists general requirements and disclosures that apply to the making, closing and servicing of SLA loans. For instance, loans must be closed (or for direct loans--made) at a licensed location. Licensees have an ongoing duty to notify the Division of material changes to the information submitted in or with the application. Licensees are required to notify borrowers in writing of interest rate changes and, in the instance of a non-amortized or partially amortized interest-bearing loan, of loan maturity. A borrower's written consent is required for certain loan insurance products. Licensees must state the statutory authority pursuant to which the loans are being made. Also, licensees may hold other licenses or registrations issued by the Division as long as the licensee complies with R.C. 1321.12 and 1321.59.

1301:8-2-12, Prohibitions (No change): The rule prohibits licensees from taking any note or promise to pay that does not set forth the entire agreement made with the borrower; prohibits licensees from charging or collecting interest prior to the disbursement of loan funds; prohibits licensees from making a loan to a borrower to pay off an existing loan from the licensee unless the existing loan is paid in full by proceeds from the new loan; and prohibits a licensee from collecting more than one default charge per unpaid installment. The rule also clarifies that lenders regulated or licensed in another state and operating in Ohio under R.C. 1321.17 shall not close loans in Ohio by face-to-face personal contact without first obtaining an SLA license. Also, the rule prohibits loans made under the SLA from being sold, transferred, assigned to or collected by persons other than an SLA licensee or exempt entity.

1301:8-2-16, Policy or certificate of insurance; disclosure of credit life and credit accident and health insurance cancellation rights; Ohio insurance law (No change): This rule clarifies the disclosures and documents a licensee must provide to a borrower who purchases an insurance product in connection with a loan.

1301:8-2-20, Interpretation (No change): This rule clarifies that R.C. 1321.13(G) does not limit the rights of licensees to engage in other transactions with borrowers, provided the transactions are not a condition of the loan. The rule clarifies that the Division will not construe a licensee's act or omission to be in violation of the SLA if the act or omission was made in reliance on a written notice or examination report from the Division. Also, the rule permits licensees 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.

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

R.C. 1321.10.

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- 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.

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

These regulations contain 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 these regulations is to provide clarity to licensees as to the requirements of the SLA and to protect consumers in certain lending transactions by ensuring that registrants have the requisite financial responsibility, experience, reputation, and general fitness to warrant the belief that the business will be operated lawfully, honestly and fairly in compliance with the purposes of the SLA. Further, the regulations ensure that in certain transactions, licensees do not engage in false, misleading or deceptive conduct. See R.C. 1321.11.

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

These regulations will not affect the output of SLA licenses 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 amended and no-change regulations to individuals representing the industry associations and consumer advocacy groups listed below.

Bricker & Eckler

Community Choice Financial

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Coalition on Homelessness and Housing in Ohio
Ohio Financial Services Association
Ohio Poverty Law Center
Ohio State Bar Association

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

With respect to amended rule 1301:8-2-04 Recordkeeping, there was support for updating the citations to FACTA and GLBA and removing the duplicative language that would permit the Division to suspend or revoke a license for failure to comply with the recordkeeping rule. Industry recommended that the Division provide for electronic recordkeeping and such a provision was added in conformity with language found in the Division's Insurance Premium Finance recordkeeping rule. There was no opposition to filing the no-change rules. Stakeholders are looking forward to the process of further reviewing 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?

With respect to 1301:8-2-04, the Division considered whether it is necessary to define the term "litigation" and determined that the term does not need to be defined in rule. "Litigation," not being defined, has the common meaning of the term per R.C. 1.42 and would involve matters brought before a court of law, not arbitration or mediation. With respect to the no-change rules, the Division will begin the process of engaging stakeholders in 2015 and will further consider 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?

As noted above, the Division proposes to strike language in 1301:8-2-04 that duplicates the Division's ability under 1321.08 to suspend or revoke a license for failure to comply with the SLA.

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 regulations on the Department of Commerce website, and send a notice to all licensees advising them of the amended and no-change regulations.

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 lenders who make secured and unsecured loans of \$5,000 or less.

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 licensed location incurs a licensing fee and annual renewal fee.
- Having to notify the Division of material changes to information submitted with the application requires employer time for compliance and postage.
- Having to notify borrowers in writing of interest rate adjustments and maturity of the loan requires employer time for compliance and 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.
- Licensees 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-\$2,500 depending on the distance from Ohio and size of the company. However, the Division conducts most out of state examinations by mail and, in 2014, all out of state examinations were conducted by mail. Therefore, very few licensees are impacted by this cost.
- Having to close loans at or make loans from a licensed location may incur a licensing fee of \$350-\$500 for each location and \$250 for the annual renewal fee for each location. However, R.C. 1321.06 requires a separate license for every place of business. Thus, this requirement is statutory. In addition, the cost of having multiple licensed locations can be mitigated by originating loans by direct mail, which is permitted by 1301:8-2-07.
- Having to notify the Division of material changes to information submitted with the application requires anywhere from 10 minutes to an hour of employer time for compliance and postage.
- Having to notify borrowers in writing of interest rate adjustments or loan maturity 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.
- Providing a copy of the insurance policy or certificate of insurance to borrowers requires minimal time because most licensees 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, reputation to warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the SLA.

Regulatory Flexibility

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

This regulation, as amended, permits registrants to maintain records electronically in lieu of hardcopy. O.A.C. 1301:8-2-04(D)

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. 1301:8-2-201

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 an annual report. The fine is waived for the first violation as long as the licensee 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 attend industry meetings in every region of Ohio in order to answer questions in person.