

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Department of Commerce

Regulation/Package Title: Consumer Finance General Provisions

Rule Number(s): 1301:8-1-01 and 1301:8-1-02

Date: August 1, 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Rescinded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.*

**1301:8-1-01, Notification of Public Hearings (Rescind)** – This rule describes when public notice is required for administrative rule changes proposed by the Superintendent of the Division of Financial Institutions (“Division”). It is recommended that this rule be rescinded because such notice requirements already exist and apply to the Division pursuant to Chapter 119 of the Revised Code. Therefore, the rule is duplicative.

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**1301:8-1-05, Reimbursement to small loan licensees and mortgage loan act registrants for assembling or providing financial records** (*Amend*) – As required by Revised Code (“R.C.”) §9.02, this rule establishes the rates and conditions for the reimbursement of costs incurred when a licensee under the Small Loan Act (R.C. §§ 1321.01-.19) or registrant under the Mortgage Loan Act (R.C. §§ 1321.51-.59) provides the financial records of a customer to any party in litigation or an investigation, and the licensee or registrant is not a party to the litigation or the subject of the investigation. The proposed amendments will bring the reimbursement rates and exceptions to reimbursement in line with the federal rules as required by Revised Code Section 9.02.

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

Revised Code §§ 9.02(C), 1181.21, 1321.10(A), and 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.

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

Not applicable.

**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)?**

Ohio Administrative (“O.A.C.”) Rule 1301:8-1-02 is required by R.C. §9.02(C).

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

Success will be measured by stakeholder response to the rule and feedback.

**Development of the Regulation**

**7. 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.*

**Ohio Financial Services Association (OFSA)**

21 West Broad Street, Suite 800

Columbus, OH 43215-4115

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**Ohio Mortgage Bankers Association**

570 N. State Street, Suite 210  
Westerville, OH 43082

**Ohio Association of Mortgage Professionals**

6025 Memorial Drive  
Dublin, OH 43017

**Ohio Association of Financial Service Centers**

7001 Post Road, Suite 200  
Dublin, OH 43016

**Ohio Pawnbrokers Association**

2600 St. Clair Avenue  
Cleveland, OH 44114

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

The stakeholders supported the proposed rules and the increased reimbursement rates.

- 9. 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.

- 10. 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?**

The Division did not consider alternative regulations because R.C. § 9.02 states that the rule must be substantially like the rule adopted by the board of governors of the federal reserve system to regulate similar fees which, in turn, are required by the "Right to Financial Privacy Act of 1978."

- 11. 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.***

No. Not applicable.

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

The Division is rescinding O.A.C. Rule 1301:8-1-01 because it is duplicative of R.C. § 119.03.

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**13. 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 regulations have been emailed to stakeholders and posted on the Department of Commerce’s website. Once finalized, the regulations will be brought to the attention of stakeholders at outreach events and via correspondence.

**Adverse Impact to Business**

**14. 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;**

Neither of these proposed rules have an adverse impact (as that term is defined in R.C. § 107.52) on licensees or registrants. In fact, the changes to O.A.C. Rule 1301:8-1-02 increase reimbursement rates that licensees and registrants are entitled to when they respond to requests for consumer financial information.

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

The rescission of O.A.C. Rule 1301:8-1-01 has no license fees, fines or employer time for compliance.

In order to be compensated, O.A.C. Rule 1301:8-1-02 necessarily requires that the financial institution keep track of the time any employee spends gathering responsive financial records and the copying costs. But the purpose of R.C. § 9.02 is to compensate licensees and registrants for that very time. Therefore, financial institutions are fairly compensated, and any adverse impact is mitigated by the law and rule.

**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.*

The rules do not have an adverse impact as that term is defined in R.C. § 107.52.

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

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The rules do not have an adverse impact. Further, O.A.C. Rule 1301:8-1-02 is designed to reimburse licensees and registrants so they do not incur any costs when they provide financial records of customers to others in any action where they are not a party or subject to investigation.

### **Regulatory Flexibility**

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

No. These rules do not require compliance with a regulation by any licensee or registrant. Therefore, there are no alternative means for compliance to consider.

**17. 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?**

R.C. § 119.14 is not applicable because these rules impose no affirmative requirements or burdens on licensees or registrants, except to submit an invoice to a governmental agency or party in order to be made whole and not incur any cost associated with assembling requested financial records.

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

The Division staff will answer any questions regarding the rules.