

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Commerce Division of Unclaimed Funds

Regulation/Package Title: Claims Authority

Rule Number(s): 1301:10-4-02 (“Authority to present claims”)

Date: January 15, 2016

Rule Type:

- New
 Amended

- 5-Year Review (NO CHANGE)
 Rescinded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.

OAC 1301:10-4-02 (“Authority to present claims”) – No changes are recommended for this rule, which is up five-year review. This rule sets out the types of documentary evidence needed to present a claim for unclaimed funds and to prove ownership or authority to claim an owner’s unclaimed funds pursuant to Ohio Revised Code §169.08 (“Filing A Claim for Refund”). The rule amplifies ORC §§169.08 (“Filing claim for refund”) and 169.13

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

(“Agreements to pay fee, compensation, commission, or other remuneration to locate, deliver, recover, or assist in recovery of unclaimed funds”), which mandates specified statutory requirements for paid professional finders and their agreements with owners who have unclaimed funds in the custody of the Ohio Department of Commerce Division of Unclaimed Funds (“Division”).

Evidentiary requirements specified in the rule depend on the nature of the unclaimed funds and the relationship of the claimant to the original owner, as well as other factors such as, for example, whether the original owner is deceased. The rule describes documentary evidence for different types of property and various situations (e.g., original owner deceased, dissolved businesses, garnishments, bankruptcies, trustees, etc.). The documentary evidence reflects various, applicable authority outside ORC Chapter 169 establishing ownership or the right to the unclaimed funds, such as, statutes regarding probate administration, corporate dissolution, garnishments, and other relevant situations. For example, an individual who claims to be authorized to claim corporate property must present documentary proof of the authority and a claim executed by the person authorized to act on behalf of the corporation. 1301:10-4-02(A)(3). Monies due companies in receivership are to be claimed by the receiver with proof of authority. 1301:10-4-02(A)(5). Creditors must present or provide for proper service of execution orders. 1301:10-4-02(A)(5). Probate orders are needed when the original owner of property that is part of the probate estate is deceased. 1301:10-4-02(A)(7). Trustees must provide a certification of trust pursuant to ORC §5810.13. Paid professional finders must be registered and provide proof that their agreement with the owner of the funds meets all the requirements of ORC §169.13. 1301:10-4-02(A)(4).

The rule cannot be changed to allow for more flexibility at the local level or to eliminate unnecessary paperwork. The requested information is necessary to justify payment of an owner’s unclaimed funds to the claimant, and its requirements reflect authority regarding property and ownership rights applicable to all jurisdictions within the state. The rule does not incorporate any text by reference, and includes no duplication, overlap or conflict with other rules. Further, the rule contains no words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.** ORC §§ 119.03 and 169.09.
3. **Does the regulation implement a federal requirement?** No. **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?** No. *If yes, please briefly explain the source and substance of the federal requirement.*

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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

This does not apply to the rule under review.

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)?** Under ORC §169.08, the “director shall pay to the owner or other person who has established the right to payment” unclaimed funds, upon proof of ownership or authority. Further, the director is required to consider all relevant evidence in that process. ORC §169.08. Persons seeking to claim unclaimed funds, whether individuals, heirs to deceased original owners, or business entities whose funds have been reported to the Division, need information regarding what documentary evidence they must present, and what documents the Division needs to see and review, in order for them to claim unclaimed funds. The rule must remain in place to identify evidence establishing ownership or authority to claim the funds and to provide consistency, in accordance with Ohio law regarding ownership and rights to property, in the processing of unclaimed funds payments.
6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?** The success of this regulation is evident in the regular processing of unclaimed funds payments. Claims examiners who process the claims and members of the public, including individuals, heirs, businesses, trustees, receivers and others, rely on the rule to provide consistent guidance and authority regarding the type of evidence needed in various situations, and to formulate questions regarding specific and unique circumstances, if any, with respect to the property they are seeking to claim. The Division plans to track the number of telephone calls and written inquiries and communications regarding evidence needed to establish ownership or authority to claim unclaimed funds to measure more precisely the impact of the rule in providing consistent guidance and information.

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 Credit Union League, Community Bankers’ Association of Ohio, Ohio Council of Retail Merchants, Ohio State Bar Association, Ohio Bankers’ League, National Federation of Independent Businesses, Ohio Manufacturers’ Association, Ohio Chamber of Commerce, Ohio Association of Realtors, and Ohio-registered paid professional finders.

8. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?** None of the stakeholders objected to the agency’s recommendation to continue the rule without change. One finder provided

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

suggestions, via email, regarding the development of a standard form for the finder's agreement for the Division's consideration unrelated to amending the rule.

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?

None. 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?

None. As this is the only agency charged with safeguarding and paying unclaimed funds, there are no other regulations to consider. Further, this regulation is necessary to carry out the statutory mandates contained in ORC §§ 169.08, 169.13 and 169.14. These statutes require the director to pay the owner or other person who has established the right to payment; consider all relevant evidence in the claims process, and prohibit the processing of a claim involving an unregistered finder or a finder's agreement failing to meet the requirements specified in ORC §169.13. Since the rule was last amended or reviewed, there have been no changes, requiring amendment, relevant to proof of ownership or authority regarding any of the types of property or circumstances.

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. This rule is aimed at providing guidance and authority for any person among the general public, including individuals and businesses, regarding the types of documentary evidence needed to establish ownership or right to claim various unclaimed properties in a myriad of situations. Potential claimants faced with such varying circumstances need clear guidance, in advance of filing a claim, regarding the evidence they should search for, obtain and present to claim the funds successfully. The rule is necessary to enable the director to carry out the statutory mandates contained in ORC §§ 169.08, 169.13 and 169.14 without unnecessary delays or expense for claimants. Moreover, the Director of Commerce is the sole authority under the Ohio Revised Code and its regulations mandated to pay unclaimed funds to the owner or other person "who has established the right to payment." ORC §169.08.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation? The Division of Unclaimed Funds is the only state agency administering unclaimed funds and paying unclaimed funds pursuant to ORC Chapter 169, the Ohio Unclaimed Property Law. Therefore, no opportunity exists for duplication by other agencies or regulations outside of OAC Chapter 1301:10.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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. This is an existing rule that will not be changed at this time. The evidence set out in the rule is communicated and applied consistently in claim form instructions provided to the public with the claim form and procedures followed by Division claims examiners and supervisors.

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:** Any member of the public, whether an individual, operating business, dissolved business, trustee, creditor, or other person, who seeks to claim unclaimed funds held by the Division, is impacted by the rule.
- b. **Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance);** Businesses, like any individual or other person or member of the public, seeking to claim unclaimed funds, must expend time and effort to provide information to the Division, specifically, documentary evidence showing the business owns the funds or is otherwise entitled to claim them. For example, a creditor-business with a judgment against an unclaimed funds owner must garnish the debtor’s unclaimed funds pursuant to Chapter 2716 of the Ohio Revised Code as required by ORC §2715.091(B). This requirement is reflected in OAC 1301:104-02(A)(5). A trustee, whether an individual or a business, is asked to provide a certification of trust pursuant to ORC §5810.13, as applicable, and the person claiming authority to be paid funds belonging to a dissolved corporation is asked to provide documentary proof (e.g., corporate resolution or dissolution agreement) of his or her authority to wind up the corporate affairs. The documentary evidence requested reflects applicable authority outside of ORC Chapter 169, establishing ownership, authority or the right to the funds. This includes statutes such as the examples cited above and related case law in areas like probate administration, corporations, partnerships, guardianships, receiverships and bankruptcy, and other relevant owner types and situations. The evidence requested in the rule reflects what already is required by the law. No authority exempts businesses from the requirement of proving ownership or right to claim the funds.
- 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. Due to the differences in types of claims and types of unclaimed properties

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

and the evidence needed to establish ownership and right to claim the funds, it is not possible to quantify in terms of dollars and hours what it would involve for a business to comply. For example, a successor company would have to provide documentary proof of its right to claim the funds of a predecessor; or the business might need to request a certified copy of an order from a court, or a copy of a corporate resolution granting authority to claim the funds. Related fees, if any, such as the cost of obtaining a certified copy of a court order, filing fees related to garnishments under ORC Chapter 2716 or other executions, or filings with the Secretary of State, etc., are not set by the Division, but are governed by various statutory processes outside of Chapter 169 and are a standard part of conducting business.

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

Under ORC §169.08, the “director shall pay to the owner or other person who has established the right to payment” unclaimed funds, upon proof of ownership or authority. Further, the director is required to consider all relevant evidence in that process. ORC §169.08. The rule is necessary to enable the director to carry out the statutory mandates contained in ORC Chapter 169 related to payment of unclaimed funds. The rule describes documentary evidence for different types of property and various situations (e.g., original owner deceased, dissolved businesses, garnishments, guardianship, bankruptcies, trustees, etc.). The documentary evidence reflects various, applicable authority outside ORC Chapter 169 establishing ownership or the right to the unclaimed funds, such as, statutes regarding probate administration, corporate dissolution, garnishments, and other relevant situations. Businesses seeking to claim funds in their names, or the names of their predecessors, successors, or debtors are required to establish right to claim the funds like any other claimant. There is no exception in the law (ORC Chapter 169 or any other statutory authority) permitting a business to claim funds the business deems owed to it without proof of its ownership or right to the monies. Businesses must establish the right to payment like any other claimant, and the evidence requested is necessary for the Division to determine the payee entitled to the funds in accordance with the requirements of ORC §169.08.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain. No. Small businesses, like any other business or person, may claim unclaimed funds; however, no law exempts them from having to prove they either own the funds or are authorized to claim the funds. Small businesses are not authorized by any law to claim property without presenting proof of ownership or other authority to claim.

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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

regulation? Not applicable. No fines or penalties are assessed against unclaimed funds claimants, whether individuals or businesses, and none are set out in the rule.

18. What resources are available to assist small businesses with compliance of the regulation? Instructions on how to file a claim for unclaimed funds with the type of evidence needed to prove ownership or authority to claim are provided with the claim form; businesses may contact the Division’s research section for assistance in researching unclaimed property reported to the Division; and claims supervisors, examiners and other Division staff are available to respond to questions over the telephone or in writing.