

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Commerce

Regulation/Package Title: General Loan Law rules-2019

Rule Number(s): 1301:8-3-03 (Amended); 1301:8-3-04 (New); 1301:8-3-04 (Rescind)
1301:8-3-05 (No Change); 1301:8-3-06 (Rescind); 1301:8-3-07 (Amend); 1301:8-3-10
(Rescind); 1301:8-3-12 (Amend); 1301:8-3-13 (No Change); 1301:8-3-17 (No Change);
1301:8-3-23 (Rescind); 1301:8-3-24 (Rescind); 1301:8-3-25 (Rescind)

Date: June 1, 2019

Rule Type:

New

Amended

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Rescinded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

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1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

This rule package contains 10 rules amplifying the General Loan Law (“GLL”) which is codified at Ohio Revised Code (“R.C.”) 1321.51 to 1321.60.

1301:8-3-03 Definitions (Amend): This rule contains definitions of terms used in the GLL and the rules promulgated thereunder. Some definitions are being deleted as they only applied to mortgage lending. Some remain intact because they apply to GLL lending.

1301:8-3-04 Recordkeeping (New): This rule details the types of records that a registrant is required to maintain. The rule requires electronic record keeping in the form of a sortable electronic spreadsheet for certain records, however, for good cause the superintendent may allow a business to keep the records in paper form. It also explains that records must be kept for at least two years after making the final entry on the loan. The rule also explains the process for out of state examinations, allows for the electronic upload of documents when possible, and creates flexibility by allowing businesses to be billed after an examination for the division's expenses rather than paying for them up front.

1301:8-3-04 Recordkeeping (Rescinded): This rule is being rescinded and replaced based on the new 50 percent rule.

1301:8-3-05 Advertising (no change): This rule sets forth permissible advertising practices for registrants. 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.

1301:8-3-06 Out-of-state examination (Rescind): This rule sets forth how registrants will pay for expenses the Division incurs in conducting examinations of records held outside the state. The provisions of this rule have been incorporated into rule 1301:8-3-04.

1301:8-3-07 General provisions for registrants (Amend): This rule lists general requirements and disclosures that apply to the making, originating, closing or collecting of GLL loans. It sets forth requirements for where loans can be originated and closed, when loans are considered to be closed, and requires registrants to notify the Division of if there is a material change in the information contained in the registrant's application. The rule also sets forth notifications that the registrant must give borrowers, disclosures the registrant must make, and procedures to be followed in the case of default. Additionally, the rule allows for mediation if a loan modification is being considered.

1301:8-3-10 Annual report (Rescind): This rule is being rescinded because the requirements for an annual report are adequately set forth in the Revised Code.

1301:8-3-12 Prohibitions (Amend): 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 GLL.

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 the 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. This rule is being rescinded because it is no longer relevant under the GLL.

1301:8-3-23 Interpretation (Rescind): This rule permits registrants to use fees charged for recording, filing and releasing security interests on a loan for purchasing insurance protecting against losses and/or creating a self-insurance fund for such losses. This rule is being rescinded because it is no longer relevant under the GLL.

1301:8-3-24 Points and prepayment penalties on real estate loans (Rescind): This rule is being rescinded because mortgage loans are not subject to the GLL.

1301:8-3-25 Temporary mortgage loan originator license application (Rescind): This rule is being rescinded because mortgage loans are not subject to the GLL.

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.

- 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)?**

The public purpose of this rule package is to provide clarity to registrants as to the requirements of the GLL 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 GLL.

- 6. 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 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

- 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.

The Division initially emailed the rule package to individuals representing companies who had an Ohio Mortgage Loan Act license and received no feedback. When the law changed certain companies were required to transfer to a GLL registration. The Division sent a new rule package and email to the companies potentially affected by the changes.

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

The Division received feedback from multiple stakeholders, and as a result made the following adjustments to the original draft rules.

1. The Division had proposed to remove the definition of “direct mail” from 1301:8-3-03, and other provisions relating to “direct mail” that appeared in 1301:8-3-07

The commentary was concerned this proposed revision would call into question a registrant’s authority to make internet loans. This was not the Division’s intent, but, to address stakeholder concerns, the Division will leave all provisions intact and submit these provisions as “no change”.

2. “Condition of the loan” definition: The Division proposed revising this definition in order to provide further clarification as to what transactions were and were not “conditions” of the loan. The Division has in the past received a number of questions regarding whether another transaction with a borrower is a “condition of a loan,” and, therefore, the Division sought to clarify. Stakeholders perceived that the revised definition exceeded statutory authority. The Division does not agree with that perception, and therefore will remove this definition from the rule.
3. “Using proceeds in whole or in part” definition: Industry feedback was the proposed definition exceeded statutory authority. The Division does not agree, however it has elected to remove it from consideration.
4. Recordkeeping: Most comments related to two new categories in the proposed recordkeeping rule 1301:8-3-04(A)(8) and (9). 1301:8-3-04(A)(8) requires registrants keep general business records, including financial statements, bank statements, policy and procedure manuals, and training materials. 1301:8-3-04(A)(9) requires registrants to maintain copies of all contracts and agreements that relate to business relationships with other Division registrants or licensees. Some commenters believe that this requirement goes beyond the Division’s statutory authority in Section 1321.55 of the Revised Code. The Division disagrees and as these records are necessary for the Division to obtain in order to regulate GLL registrants as required by law. Additionally, substantially similar recordkeeping requirements exist for other consumer lending license types regulated by the Division.
5. “Secured Loan”: definition: The comments related to a concern that this proposed definition would prevent registrants from charging certain statutorily permitted origination fees. Based on the feedback, the Division will no longer proceed with defining this term.

6. Toll free number: The proposed removal of the word mortgage from 1301:8-3-07(I) was a concern noted by several stakeholders because it formerly applied only to mortgage lenders. As proposed, GLL lenders would be required to give notice to a borrower and provide a toll-free number to discuss payment problems and work out a solution. The Division is cognizant that the removal of one word creates new requirement for GLL lenders, but the Division also believes that it is an appropriate consumer protection practice to provide specific contact information to discuss payment problems. In response to the stakeholder feedback, the Division proposes to remove the toll-free number requirement, but still require the notice, and an ordinary phone number and email address that the consumer can use to contact the company to discuss their options.

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?

These regulations were carried over from the Ohio Mortgage Loan Act to the GLL and adjusted to eliminate now outdated references to mortgage loans. Prior to that, these rules were subject to their five-year review. During our review, we considered numerous alternatives but decided the proposed rules are necessary to protect Ohio's consumers.

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.*

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No, these rules clarify the processes that stakeholders must follow to comply with the GLL.

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

The Division is the primary regulator of registrants under the GLL and is not aware of any duplicative regulations.

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 Division will post these rules on the Department of Commerce website and send a notice to all GLL registrants advising them of this amended rule package.

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;

These rules apply to GLL registrants and lenders that should be operating under the GLL.

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

1301:8-3-03 Definitions (Amend): There are no costs associated with this rule as it simply defines the terms used by sections 1321.51 to 1321.60 of the Revised Code, and Chapter 1301:8-3 of the Administrative Code.

1301:8-3-04 Recordkeeping (New): This rule requires employee time to keep and maintain records required under the rule and some minor monetary costs associated with recordkeeping by requiring the employer to keep certain records electronically. With adding the provisions of rule 1301:8-3-06, this rule also requires the out-of-state registrant to pay for the Division's out-of-state examination costs, should there be an in-person exam.

1301:8-3-04 Recordkeeping (Rescind): There are no costs associated with the rescission of this rule, but the costs that were associated with this rule were the employee time to keep and maintain the required records and the minor monetary costs associated with keeping records.

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1301:8-3-05 Advertising (No Change): This rule requires employer time to ensure that their advertisements are in compliance with this rule, and to maintain records of compliance.

1301:8-3-06 Out-of-state examination (Rescind): The costs associated with this rule are absorbed into the new rule 1301:8-3-04. However, there were monetary costs associated with paying for the Division's transportation costs for the out-of-state examination.

1301:8-3-07 General provisions for registrants (Amend): This rule imposes monetary costs and employee time costs associated with notifying the Division of any material changes related to their original application. The rule also requires certain notifications to be made to borrowers.

This rule further imposes liability for the payment of annual assessment, should there be one, on any loan made by the registrant when the servicing rights have been retained by the registrant.

The rule also requires employee time and potential monetary cost to provide a phone number and email address so that the borrower can talk to the registrant and negotiate options for repayment upon default.

1301:8-3-10 Annual report (Rescind): The costs that were associated with this rule were the time cost for compliance to draft and send the annual report. But, this rule is being rescinded and there will be no costs in the future.

1301:8-3-12 Prohibitions (Amend): This rule does not create a cost of compliance, it simply clarifies the types of conduct that is prohibited.

1301:8-3-13 Cancellation and return of original loan documents; receipt upon payment (No Change): There are minimal time and postage costs associated with issuing receipts for consumer payment and marking a note "paid in full" and sending it to the borrower.

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): Costs associated with this rule are minimal time and monetary costs resulting from printing a copy of the insurance policy, as well as a notice that the borrower has a right to cancel within 25 days after the loan is made.

1301:8-3-23 Interpretation (Rescind): There are no costs associated with the rescission of this rule, but there were no costs associated with this rule because the fees involved with the recording, filing, and releasing liens are borne by the consumer.

1301:8-3-24 Points and prepayment penalties on real estate loans (Rescind): There are no costs caused by this rule because the penalty fees and discount points mentioned in the rule were implemented by the Revised Code and various federal laws.

1301:8-3-25 Temporary mortgage loan originator license application (Rescind): There were minimal time costs associated with applying for the temporary mortgage loan originator license. But, there are no costs associated with the rescission of this 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.

1301:8-3-03 Definitions (Amend): There are no costs associated with this rule as it simply defines the terms used by Chapter 4728. of the Revised Code, and Chapter 1301:8-3 of the Administrative Code.

1301:8-3-04 Recordkeeping (New): 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.

Regarding the addition of the out-of-state provisions of 1301:8-3-06 to this section creates an addition cost if 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 electronically, or by mail. Only 5-10 out of state examinations are conducted per year. Therefore, very few registrants are impacted by this cost.

1301:8-3-04 Recordkeeping (Rescind): There are no costs associated with the rescission of this rule, but the costs that were associated with this rule were the

approximately 30 minutes of employee time that were associated with keeping and maintaining the required records.

1301:8-3-05 Advertising (No Change): Maintaining copies of advertisements takes a minimal amount of time—5 minutes per advertisement; doing so requires the employee to file a copy of the advertisement in a filing system.

1301:8-3-06 Out-of-state examination (Rescind): There are no costs associated with this rule as it is being rescinded, but the former cost ranged between \$400-\$2,000 depending on the distance from Ohio and the size of the company.

1301:8-3-07 General provisions for registrants (Amend):

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.

The Ohio rule requiring written notice adds approximately 1-2 hours of employee time to comply.

1301:8-3-10 Annual report (Rescind): There are no costs associated with this rule as it is being rescinded, but the costs associated with this rule were approximately 3-12 hours of employee time to file the report. This amount depended on the volume of loans made or originated and type and number of loan products the registrant offers to borrowers.

1301:8-3-12 Prohibitions (Amend): This rule does not create a cost of compliance, it simply clarifies the types of conduct that are prohibited.

1301:8-3-13 Cancellation and return of original loan documents; receipt upon payment (No Change): 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 time per loan (plus postage if a hardcopy is mailed). It involves pulling the note from the borrower’s 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.

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): There are no costs associated with complying with this rule as it’s being rescinded. The costs of 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.

1301:8-3-23 Interpretation (Rescind): There is no cost associated with the rescission of this rule, but there were no costs associated with this rule because the fees involved with the recording, filing, and releasing liens are borne by the consumer.

1301:8-3-24 Points and prepayment penalties on real estate loans (Rescind): There are no costs associated with the rescission of this rule, but there were no costs caused by this rule because the penalty fees and discount points mentioned in the rule were implemented by the Revised Code and various federal laws.

1301:8-3-25 Temporary mortgage loan originator license application (Rescind): There are no costs associated with this rule as it is being rescinded.

15. 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 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 GLL.

Regulatory Flexibility

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

This regulation requires the registrant to keep records electronically, but if the registrant provides evidence of good cause to the superintendent, the registrant may keep paper records. 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.

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?

The Division will excuse fines for first-time paperwork violations. The penalty will be excused for the first violation as long as the registrant corrects the violation within 30 days.

18. 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 to answer questions in person.