

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Department of Commerce

Regulation/Package Title: Ohio Mortgage Loan Act rules-2017

Rule Number(s): 1301:8-3-03 (No Change); 1301:8-3-04 (New); 1301:8-3-05 (No Change); 1301:8-3-06 (Rescind); 1301:8-3-07 (No Change); 1301:8-3-10 (Rescind); 1301:8-3-12 (No Change); 1301:8-3-13 (No Change); 1301:8-3-17 (No Change); 1301:8-3-18 (New); 1301:8-3-23 (No Change); 1301:8-3-24 1301:8-3- 25 (No Change); 1301:8-3-26 (New)

Date: \_\_\_\_\_, 2017

**Rule Type:**

- |                                  |   |
|----------------------------------|---|
| <input type="checkbox"/> New     | <input checked="" type="checkbox"/> 5-Year Review |
| <input type="checkbox"/> Amended | <input type="checkbox"/> Rescinded                |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.*

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.

**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 (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 clarifies 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.

**1301:8-3-05 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 (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 (No Change):** This rule lists general requirements and disclosures that apply to the making, originating, closing or collecting of OMLA 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 (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.

**1301:8-3-18 Continuing Education: (New):** This rule permits a loan originator to receive credit for continuing education in a different year than the year in which the course was taken to make up a deficiency. Continuing education deficiencies must be made up if they occurred after January 1, 2010.

**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.

**1301:8-3-25 Temporary mortgage loan originator licenses application: (No Change):** This rule sets forth the application fee for a temporary mortgage loan origination license, and clarifies how long the license will be valid.

**1301:8-3-26 Challenge to information maintained in the nationwide mortgage licensing system registry (New):** This rule is being promulgated because H.B. 1 of the 128th General Assembly amended Chapter 1321. of the Revised Code. These statutory changes were

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required by the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008. This rule establishes a process by which a loan originator may challenge information the superintendent has provided to the nationwide mortgage licensing system and registry.

This rule is required by R.C. 1321.55(H).

**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 the 2011 S.A.F.E. Act regulations introduced new requirements pertaining to the licensing of mortgage loan originators and mortgage lending practices, those changes are not covered in this 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 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).

**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 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**

### **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 emailed this rule package and requested comments and feedback from approximately 6,346 individuals and companies that are licensed or registered under the Ohio Mortgage Loan Act, including, but not limited to, members of the associations and consumer advocacy groups listed below. Please see the attached spreadsheet for details.

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

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

The Ohio Consumer Lender's association sent the Division a letter regarding the proposed changes contained in the new recordkeeping rule. Legal counsel followed up with Robert Grieser from the association to obtain clarification. Some of the issues were addressed simply by communication and were no longer of concern. Because of the conversation with Mr. Grieser, and discussion with other Division staff members, the Division made two of the requested changes to the rule. The Division declined to make two of the requested changes because the regulations are necessary to protect consumers, and that the rules are supported by sufficient statutory authority. The decisions of the Division were communicated to the association. Mr. Grieser reserved the right to comment again during the CSI review period, and he will be notified when the rules are filed with CSI for this purpose.

### **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?**

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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 are subject to their five-year rule review; therefore, every rule was reviewed and numerous alternatives were considered as part of the process.

**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, these rules clarify the processes that stakeholders must follow to comply with the Ohio Mortgage Loan Act.

**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 licensees under the Ohio Mortgage Loan Act, 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 licensees, and registrants advising them of the changes to these rules.

**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 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**

**1301:8-3-03 Definitions (No Change):** 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):** This rule requires employee time for compliance and some minor monetary costs associated with record keeping by requiring the employer to keep certain records. After incorporating the provisions of rule 1301:8-3-06, this rule will also require the registrant to reimburse the Division for its out-of-state examination costs.

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

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

**1301:8-3-07 General provisions for registrants (No Change):** This rule imposes monetary costs because the rule requires that loans be closed at a registered location, and charges a fee for registering and renewing an office.

**1301:8-3-10 Annual report (Rescind):** The costs associated with this rule were the time cost for compliance to draft and send the annual report. This rule is being rescinded, however the annual report will still have to be filed pursuant to section 1321.09 of the Revised Code.

**1301:8-3-12 Prohibitions (No Change):** 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):** The cost associated with this rule is caused by requiring the registrant to return loan documents when cancelled or paid in full, and giving the borrower a receipt for each payment on the loan. These costs involve minimal printing and postage costs. The Division permits registrants to email the marked note in lieu of U.S. mail which further decreases the cost of compliance.

**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):** The costs associated with this rule is to require disclosure of the borrower's right to cancel and furnish a copy of the credit insurance

policy. These disclosures are minimal and protect the borrower by informing him or her of the right to cancel, and that an insurance policy exists and was in fact purchased by the registrant on their behalf.

**1301:8-3-18 Continuing Education: (New):** There are monetary and time costs associated with completing the required continuing education courses.

**1301:8-3-23 Interpretation (No Change):** There is no cost 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 (No Change):** 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 licenses application: (No Change):** There is a monetary cost, in the form of a licensing fee imposed by statute and reinforced by this rule.

**1301:8-3-26 Challenge to information maintained in the nationwide mortgage licensing system registry (New):** This rule imposes no costs as it merely establishes a process for the loan originator to challenge information provided to the nationwide mortgage licensing system and registry by the superintendent.

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 (No Change):** 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 out-of-state provisions of 1301:8-3-06 that have been incorporated into this rule, there are approximately 200 OMLA registrants who maintain records outside of Ohio, but the Division schedules only 5-10 out of state OMLA examinations per calendar year. The average cost for an out of state examination is \$1,500, and takes 1-2 business days. Reimbursement for this expense is authorized by sections 1321.53(A)(2) and 1321.522(C)(1) of the Revised Code. The Division is required to conduct examinations by section 1321.55(A) of the Revised Code at least once every 18 months in order to determine that registrants are operating honestly, fairly, and in compliance with the requirements of the OMLA. Most out of state examinations are conducted by mail rather than on site. Nevertheless, there are instances where an examination needs to be conducted on site in order to properly evaluate the registrant's compliance with the OMLA and to protect Ohio consumers. The current rule allows registrants only to pay the estimated expenses of the Division upfront, but the new rule will allow the Division to bill a registrant the exact amount of the costs after an out of state exam takes place.

**1301:8-3-05 Advertising (No Change):** Maintaining copies of advertisements requires a minimal expenditure 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 approximately 200 OMLA registrants who maintain records outside of Ohio, but the Division schedules only 5-10 out of state OMLA examinations per calendar year. The average cost for an out of state examination is \$1,500, and takes 1-2 business days. Reimbursement for this expense is authorized by sections 1321.53(A)(2) and 1321.522(C)(1) of the Revised Code. The Division is required to conduct examinations by section 1321.55(A) of the Revised Code at least once every 18 months in order to determine that registrants are operating honestly, fairly, and in compliance with the requirements of the OMLA. Most out of state examinations are conducted by mail rather than on site. Nevertheless, there are instances where an examination needs to be conducted on site in order to properly evaluate the registrant's compliance with the OMLA and to protect Ohio consumers. This rule is being rescinded because the provisions are being updated and moved into rule 1301:8-3-04, recordkeeping. The current rule allows registrants only to pay the estimated expenses of the Division upfront, but the new rule will allow the Division to bill a registrant the exact amount of the costs after an out of state exam takes place.

**1301:8-3-07 General provisions for registrants (No Change):** The cost of compliance for this rule is the cost of registering an office location. An applicant for

a certificate of registration is required to pay a \$200 investigation fee, a \$300 registration fee plus any fees required by the National Mortgage Licensing System. A renewal applicant is required to pay a \$300 annual renewal fee. This rule requires no cost of compliance in addition to what is set forth in section 1321.53 of the Revised Code.

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.

**1301:8-3-10 Annual report (*Rescind*):** The costs associated with this rule are approximately 3-12 hours of employee time to file the rule. This amount depends on the volume of loans made or originated and type and number of loan products the registrant offers to borrowers. This rule is being rescinded, however the annual report will still have to be filed pursuant to section 1321.09 of the Revised Code.

**1301:8-3-12 Prohibitions (*No Change*):** 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 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):** 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.

**1301:8-3-18 Continuing Education: (New):** The cost of the continuing education courses is approximately \$150 to \$300 per year and a required eight hours per year. The Division added the exception for "veterans" which has no cost of compliance and is also supported by the policies and procedures of the NMLS system. These costs can be attributed to the S.A.F.E. Act and the Ohio Mortgage Loan Act rather than the rule itself.

**1301:8-3-23 Interpretation (No Change):** There is no cost 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 (No Change):** 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 licenses application: (No Change):** Pursuant to division (C) of section 1321.537 of the Revised Code, the application for a temporary mortgage loan originator license is required to be accompanied by an application fee of one hundred fifty dollars, plus any fees required

by the Nationwide Mortgage Licensing system and Registry. The rule does not impose any fees in addition to those required by statute.

**1301:8-3-26 Challenge to information maintained in the nationwide mortgage licensing system registry (New):** This rule imposes no costs as it merely establishes a process for the loan originator to challenge information provided to the nationwide mortgage licensing system and registry by the superintendent.

**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 OMLA.

**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 shows “good cause”, 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 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 if the registrant agrees to file the report within thirty 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.