



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Commerce, Division of Financial Institutions

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Reimbursement to registrants and licensees for assembling or providing financial records

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

Date of Submission for CSI Review: 3/18/2020

Public Comment Period End Date: 3/27/2020

Rule Type/Number of Rules:

New/ rules

No Change/ rules (FYR?)

Amended/ 1 rules (FYR? yes)

Rescinded/ rules (FYR?)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing

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regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

- 1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- Requires specific expenditures or the report of information as a condition of compliance.**
- Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

- 2. Please briefly describe the draft regulation in plain language.**

This rule is required by R.C. 9.02(C) and it establishes the rates and conditions for reimbursement of actual and necessary costs directly incurred by Division registrants of the Small Loan Act and General Loan Law in assembling or providing customer financial records to any party. The rule is being amended as a result of recent legislation to add a reference to mortgage lenders registered under the Residential Mortgage Lending Act.

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

R.C. 9.02 both authorizes and amplifies the rule.

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4. **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? Not applicable.**
5. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement. Not applicable.**
6. **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)? This rule is mandated by R.C. 9.02.**
7. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes? Success will be measured by industry/stakeholder feedback.**
8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931? No.**

Development of the Regulation

9. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.** All affected licensees/registrants subject to the rule and the proposed amendment, along with other stakeholders who've requested notification of proposed rulemaking, were emailed a copy of the draft rule on 2/21/20 and given 7 days to comment. The proposed rule and BIA is also posted on the Department of Commerce website.
10. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?** The Division did not receive any stakeholder comments.
11. **What scientific data was used to develop the rule or the measurable outcomes of the rule? R.C. 9.02 sets most of the parameters How does this data support the regulation being proposed? Not applicable.**
12. **What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? None. If none, why didn't the Agency consider regulatory alternatives? R.C. 9.02 sets the parameters of the rule and leaves little discretion to the Division to consider alternatives.**
13. **Did the Agency specifically consider a performance-based regulation? Yes. Please explain.** This rule is arguably a performance-based regulation as it merely sets the rates and conditions for the reimbursement of providing customer financial records, without dictating the process.

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14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation? The Division is the primary Ohio regulator for these registrants and is not aware of any duplicative regulation.

15. 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 directly inform affected stakeholders once the rule is effective. Registrants affected by the rule are also subject to Division examination, which will provide an indication of whether it’s being applied consistently and predictably.

Adverse Impact to Business

16. 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;** registered mortgage lenders under the Residential Mortgage Lending Act, licensees of the Small Loan Act, and registrants under General Loan Law.
- b. **Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,) compliance;** The rule may create a minimal compliance cost to ensure the rates are being applied properly
- c. **Quantify the expected adverse impact from the regulation.** Any employer time resulting from the rule should be minimal and will vary depending on the existing resources and processes of each registrant.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community? The rule and its provisions are required by R.C. 9.02.

Regulatory Flexibility

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

19. 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? Not applicable. The rule does not impose any fines or other penalties.

20. What resources are available to assist small businesses with compliance of the regulation? The rule’s detailed cost breakdowns should provide clarity to registrants and anyone requesting records with the necessary details behind any applicable reimbursement charges.

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