

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Commerce

Regulation/Package Title: Short Term Loan Act Rules 2016

Rule Number(s): 1301:8-11-01 (Amend); 1301:8-11-02 (Amend); 1301:8-11-03 (No Change); 1301:8-11-04 (No Change); 1301:8-11-05 (No Change); 1301:8-11-06 (No Change).

Date: _____

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☐ Rescinded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

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

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

This rule package contains 6 rules amplifying the Ohio Short Term Loan Act which is codified in sections 1321.35 to 1321.48 of the Revised Code.

1301:8-11-01 Definitions and general provisions. (Amend): This rule contains definitions of terms used in the Revised Code and in the rules contained in this package. This rule is being amended to remove a reference to an obsolete date. The rule requires that "net worth," as used in section 1321.37 of the Revised Code be determined by using generally accepted accounting principles. It limited this to those principles in effect in 2008, and that limitation was removed to allow current generally accepted accounting principles to be used when determining net worth.

1301:8-11-02 Recordkeeping requirements. (Amend): This rule details the types of records that a licensee is required to maintain, the manner in which those records must be kept, and the length of time that the records must be retained. The rule also clarifies what must be done to preserve records should the licensee cease to conduct business, and requires compliance with federal guidelines related to the protections of consumers from identity theft and other types of fraud. The rule is being amended to properly cite to the Fair and Accurate Credit Transaction Act of 2003 and the Gramm Leach Bliley Act, and to update the dates of those Acts and rules promulgated thereunder.

1301:8-11-03 Advertising. (No Change): This rule sets forth permissible advertising practices for licensees, details recordkeeping requirements that relate to advertising, and requires that advertisement not be false, misleading or deceptive.

1301:8-11-04 Licensing. (No Change): This rule requires that licensees shall not do business under any name other than that set forth on the license, and requires notice to the superintendent of an intent to relocate the business. If the new place of business will be located outside the current municipal corporation where the licensee is doing business, then the licensee must obtain a new license for the new location.

1301:8-11-05 Short-term loan license renewal application; issuance of renewal license; expiration. (No Change): This rule clarifies the requirements for licensing set forth in section 1321.37 of the Revised Code. It further explains the process for an individual to obtain an original license or a renewal, sets forth the schedule for the renewal of a short-term loan license and the procedure for withdrawing an application.

1301:8-11-06 Surety bond. (No Change): This rule clarifies the provisions set forth in division (D) of section 1321.37 of the Revised Code.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.** Section 1321.43 of the Revised Code.
3. **Does the regulation implement a federal requirement?** Paragraph (E) of rule 1301:8-11-02 of the Administrative Code requires licensees to comply with two federal consumer protection laws in order to reduce the risk of consumer fraud. **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.

Not applicable.

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)?** These rules are needed to enforce and carry out the purposes of sections 1321.35 to 1321.48 of the Revised Code, and are necessary to provide stakeholders with clarity regarding the requirements and responsibilities set forth in the Revised Code. They are being amended to remove outdated language and update citations.
6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?** Success will be measured by the clarity and guidance that these regulations will bring to stakeholders as it pertains to their regulatory interactions with the Division going forward.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

There are currently no licensees under this chapter, however, individuals that are currently licensed under the Mortgage Loan Act were contacted. They were chosen based on their business model. These individuals could choose to obtain a short-term loan license in addition to or instead of their current license.

The draft regulations were sent to 23 individuals who represent the following industry associations, businesses, and consumer advocacy groups:

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Springleaf
Ohio Association of Financial Service Centers
Ohio Financial Services Association
Coalition on Homelessness in Ohio
Advance America
Ace
Stonerock
Ohio Retail Merchant's Association
American Financial Services Association
Eagle Financial Services, Inc.
Baird Law Offices, LLC
Bricker & Eckler
Ice Miller
Vorys
Dreher Tomkies
Ohio State Bar Association
Ohio Poverty Law Center
Ohio Council for Retail Merchants
Cash America

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The division emailed draft regulations for review and comment to the above mentioned stakeholders on September 12, 2016, and they were given ten days to provide input either by email or phone.

- 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 Springleaf, who indicated that they have no concerns with any of the proposed rules or amendments. No other stakeholders responded to the division with questions or concerns.
- 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**

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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 are for the purpose of carrying out the processes that stakeholders must follow in order to comply with the provisions of sections 1321.35 to 1321.48 of the Revised Code.

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 Short-Term 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 regulations have been available to stakeholders throughout the rule review process, and will continue to be available to them through the Division's website throughout the JCARR process. Once finalized, the regulations will be brought to the attention of stakeholders at every available opportunity. Additionally, Division staff will be trained on the regulations to ensure their consistent application.

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 short-term loan businesses subject to licensure by the Ohio Division of Financial Institutions.
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

1301:8-11-01 Definitions and general provisions: This rule does not impact the cost of compliance or create an adverse impact, it simply defines terms used throughout the Revised Code and Administrative Code.

1301:8-11-02 Recordkeeping requirements: This rule does not impact the cost of compliance, as the records it requires are standard business records. Additionally, this rule is required by section 1321.422 of the Revised Code in order to enable the Division to determine whether the licensee is complying with sections 1321.35 to 1321.48 of the Revised Code, the Fair and Accurate Credit Transactions Act, and the Gramm Leach Bliley Act. It also ensures that accurate and complete records are kept so that the Division may effectively carry out its licensing and examination function. The rule requires a minimal expenditure of time and resources. The proposed amendment will not require an additional cost of compliance to licensees.

1301:8-11-03 Advertising: Compliance with this rule requires a minimal expenditure of time and resources, and it is necessary to ensure the customers of short-term loan businesses are accurately informed.

1301:8-11-04 Licensing: This rule requires a minimal expenditure of time to provide notice to the Division that a licensee intends to relocate. If the licensee is moving to a new place of business in a municipal corporation outside that in which it currently located, the licensee would be responsible for the original licensing fee required by section 1321.37 of the Revised Code.

1301:8-11-05 Short-term loan license renewal application; issuance of renewal license; expiration: Obtaining a license and renewing a license require an expenditure of time, and fees that are set forth in section 1321.37 of the revised code, however the division does not charge any fees in addition to those required by statute.

1301:8-11-06 Surety bond: Obtaining a surety bond requires an expenditure of time and financial resources.

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.

1301:8-11-01 Definitions and general provisions: This rule does not impact the cost of compliance or create an adverse impact, it simply defines terms used throughout the Revised Code and Administrative Code.

1301:8-11-02 Recordkeeping requirements: This rule does not impact the cost of compliance, as the records it requires are standard business records. Additionally, this rule is required by section 1321.422 of the Revised Code in order to enable the division to determine whether the licensee is complying with sections 1321.35 to 1321.48 of the Revised Code and otherwise ensures accurate and complete records are kept so that the division may effectively carry out its licensing and examination function. The rule requires a minimal expenditure of time and resources. Division (E), which requires compliance with the Fair and Accurate Credit Transactions Act, the Gramm Leach Bliley Act, and the rules promulgated thereunder, does not impact the cost of compliance, as short-term lenders are already required to comply with these federal statutes and regulations. The estimate is based upon information provided by examiners who investigate compliance with the rule.

1301:8-11-03 Advertising: Compliance with this rule requires a minimal expenditure of time and resources, approximately 5 minutes per advertisement, and it is necessary to ensure the customers of short-term loan businesses are accurately informed. The estimate is based upon information provided by examiners who investigate compliance with the rule.

1301:8-11-04 Licensing: This rule requires a minimal expenditure of time to provide notice to the Division that a licensee intends to relocate, approximately ten minutes, and a minimal amount of funds for postage if the notice is mailed. The division does not charge any fees in addition to those that are required by statute to license each location. The estimate is based upon information provided by division licensing staff who work with licensees to obtain new, renewal, and relocation licenses.

1301:8-11-05 Short-term loan license renewal application; issuance of renewal license; expiration: Obtaining a license and renewing a license require an expenditure of time, approximately ten to thirty minutes, and fees that are set forth in section 1321.37 of the revised code, however the division does not charge any fees in addition to those required by statute. The estimate is based upon information provided by division licensing staff who work with licensees to obtain new, renewal, and relocation licenses.

1301:8-11-06 Surety bond: Section 1321.37 of the Revised Code requires that licensees obtain a surety bond in the amount of no less than \$100,000, or \$50,000 if they are a nonprofit corporation that is incorporated under Chapter 1702. of the Revised Code, and paragraph (A) of this rule sets forth terms that the licensee must comply with when obtaining that bond. This rule does not increase the cost of compliance set forth in the Revised Code, it simply sets forth procedures surrounding the obtaining, and mainlining of the required surety bond, and the procedure upon cancellation of a bond.

- 15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?** The recordkeeping requirements are minimal, reflect standard business practices requiring only a minimal expenditure of time and resources, and are necessary for the Division to carry out its delegated responsibility to regulate short-term lenders under chapter 1321. of the Revised Code. The rules do not increase the financial cost of compliance set forth in the Revised Code in any significant way.

Regulatory Flexibility

- 16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.** No. These rules must be applied evenly in order for the Division to effectively regulate short-term loan businesses, and to protect the interests of their consumers.
- 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?** Prior to initiating any action under chapter 119. of the Revised Code, the Division will waive any fine for a first time violation as long as the error is corrected in a reasonable period of time.
- 18. What resources are available to assist small businesses with compliance of the regulation?** The Division widely publicizes to stakeholders the fact that its staff is available directly via phone or email. Additionally, the Deputy Superintendent and senior staff regularly attend industry meetings in order to answer questions in person.