

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Commerce

Regulation/Package Title: Homeownership Counseling Services

Rule Number(s): 1301:8-10-01 to 1301:8-10-02

Date: November 20, 2013

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☒ Rescinded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.

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

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The Division of Financial Institutions (DFI) is rescinding Ohio Administrative Code (OAC) § 1301:8-10-02. This rule duplicates the language in R.C. 1349.43 and is not necessary.

DFI is also rescinding OAC § 1301:8-10-01 and promulgating an updated version of the rule. The rule is being rewritten to provide clarity and in response to the request of stakeholders. The requirements in the revised rule are substantially the same as in the rescinded version of the rule. The revised rule is promulgated under the authority of the Ohio Home Ownership and Equity Protection Act (Ohio HOEPA), Ohio Revised Code (RC) §§ 1349.25 to 1349.44. RC 1349.271 requires the Superintendent of the DFI to establish criteria a counseling services must meet to provide prepurchase counseling to consumers. RC 1349.271 requires the Superintendent to accept any not-for-profit credit counseling service approved by a federal agency to perform housing or credit counseling. Federal law requires that counselors be certified by the U.S. Department of Housing and Urban Development (HUD) pursuant to 12 C.F.R. section 1026.34(a)(5).

OAC § 1301:8-10-01(A)(1) is being revised to accept counseling services that appear on a list maintained by the new federal Bureau of Consumer Financial Protection. OAC § 1301:8-10-01 (B) is being revised at the request of the stakeholders who were concerned that some prepurchase counselors who also originate mortgage loans may have a profit motive which could negatively impact the impartiality of their counseling. The revised version of OAC § 1301:8-10-01 (B) prohibits a prepurchase counselor from acting as a mortgage broker and prepurchase counselor in the same transaction.

The language in OAC § 1301:8-10-01(C) is different but not a new requirement. This language appeared in subsection (B) of the rescinded rule.

Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 1349.271 and 1349.36.

- 2. 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.

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

Not applicable

- 3. 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)?**

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The Ohio HOEPA expressly requires the Superintendent of the DFI to promulgate a regulation establishing the criteria for approving prepurchase counselors. Also, it is important for consumers to receive counseling from qualified and impartial counselors.

4. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

DFI will measure the success of this regulation by communicating with stakeholders who provide prepurchase counseling and the consumers they counsel to ensure that consumers are receiving beneficial counseling.

Development of the Regulation

5. 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.

DFI met with the following stakeholders in December 2013: (i) The Coalition on Homelessness and Housing (Bill Faith) and (ii) The Ohio Poverty Law Center (Linda Cook, Esq.). They circulated the proposed rules to the entire network of housing advocates statewide. As a result, The Neighborhood Housing Services of Greater Cleveland and the Ohio Housing Finance Agency submitted comments to DFI.

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

DFI received two suggested amendments which were incorporated into the draft regulation. It was recirculated and approved by the stakeholders.

7. 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.

8. 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?

Not applicable.

9. 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.*

Not applicable.

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

DFI reviewed all existing regulations and is eliminating any duplication.

11. 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.

DFI will conduct outreach to the counseling services to ensure that they are aware of the changes to the rules.

Adverse Impact to Business

12. 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 regulations impact nonprofit housing counseling services.

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

OAC 1301:8-10-01 requires counseling services to be certified by HUD and prohibits the counseling services from acting as a counselor and mortgage broker in the same transaction. The impact to stakeholders from this regulation is minimal because this is not a new requirement. Federal law requires counseling services be certified by HUD. Further, stakeholders requested DFI to prohibit a counseling service from acting as the mortgage broker and counselor in the same transaction.

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.

OAC 1301:8-10-01 impact is minimal.

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

There is no cost to stakeholders as a result of the Ohio rule specifying that a prepurchase counselor be HUD certified. Prepurchase counselors are already required to be HUD certified as a result of federal regulations.

Regulatory Flexibility

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

No. In order to provide low- or no-cost housing counseling services to consumers as required by Ohio HOEPA, there are no exemptions or alternative means of compliance.

14. 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?

There are no fines or penalties associated with these regulations.

15. What resources are available to assist small businesses with compliance of the regulation?

HUD-approved, nonprofit housing counseling services are eligible for grants and funding through HUD.