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# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Department of Commerce

Regulation/Package Title: OMBA 2013, OMBA 2013 Part 2, OMBA 2013 Part 3

Rule Number(s): 1301:8-7-01 to 1301:8-7-32

Date: October 24, 2014

**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☒ Rescinded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.

**1301:8-7-01, Definitions (Rescission):** This rule contains eleven definitions of words and phrases that appeared in the Ohio Mortgage Broker Act (OMBA), R.C. Chapter 1322, as it existed prior to the passage of the Secure and Fair Enforcement for Mortgage Licensing Act

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of 2008 (S.A.F.E. Act) and enactment of the S.A.F.E. Act's requirements in H.B. 1 of the 128<sup>th</sup> General Assembly. The S.A.F.E. Act sets minimum standards for the licensing and regulation of State-licensed loan originators as well as requiring States to participate in the Nationwide Mortgage Licensing System and Registry (NMLS). See 12 U.S.C. § 5107.

**1301:8-7-01, Definitions (New Rule):** This rule contains twenty-four definitions of words and phrases appearing in the current enactment of the OMBA and these proposed rules.

**1301:8-7-02, Mortgage broker registration; office requirements and restrictions (Rescission):** This rule sets forth branch and main office requirements for mortgage brokers. It describes the meaning of pre-S.A.F.E. Act status designations, such as revoked or suspended, that are assigned to certificates of registration.

**1301:8-7-02, Registration, letters of exemption, office requirements and restrictions (New Rule):** This rule sets forth branch and main office requirements for mortgage brokers, mortgage bankers and credit union service organizations. It details restrictions for office sharing arrangements. It explains the scope of the mortgage banker exemption. It clarifies the difference between a residential mortgage loan and an investment property. It prohibits evasion of federal mortgage fee limitations by using the Credit Services Organizations Act in Revised Code Chapter 4712.

**1301:8-7-03, Mortgage broker application for a certificate of registration—main office, branch office; issuance and expiration of certificate (Rescission):** This rule explains the pre-S.A.F.E. Act requirements for applications for main and branch office certificates of registration.

**1301:8-7-03, Standards for applications, certificates of registration, letters of exemption, and licenses (New Rule):** This rule sets forth standards that apply when obtaining and renewing certificates of registration, letters of exemption, and licenses. It sets forth standards that apply to escrowed or suspended certificates and licenses. It sets forth standards for withdrawing applications and the surrender of certificates and licenses.

**1301:8-7-04, Mortgage broker renewal application for registration; issuance of renewal certificate; expiration (Rescission):** This rule explains the pre-SAFE Act procedures to renew a certificate of registration or license. This rule is no longer necessary as a result of amendments to the OMBA in H.B. 1 of the 128<sup>th</sup> General Assembly.

**1301:8-7-05, Special account requirements, (Rescission):** This rule states how the special account into which mortgage brokers deposit upfront fees received from borrowers must be set up and maintained.

**1301:8-7-05, Special account requirements, (New Rule):** This rule states how the special account into which mortgage brokers deposit upfront fees received from borrowers must be set up and maintained.

**1301:8-7-06, Recordkeeping (Rescission):** This rule sets forth the recordkeeping requirements for mortgage brokers.

**1301:8-7-06, Recordkeeping (New Rule):** This rule sets forth the recordkeeping requirements for mortgage brokers, mortgage bankers, and credit union service organizations. It establishes the tolling of the recordkeeping requirement, the requirement to make the records available to the superintendent for inspection, the types of documents that must be kept and how to organize them. It provides for electronic record retention and protection of records to avoid identity theft.

**1301:8-7-07, Advertising (Rescission):** This rule sets forth permissible advertising practices for mortgage brokers.

**1301:8-7-07, Advertising (New Rule):** This rule sets forth permissible advertising practices for mortgage brokers and loan originators. It permits a mortgage broker, mortgage banker, credit union service organization, or loan originator to use their nationwide mortgage licensing system and registry (NMLS) unique identifier in lieu of the Ohio registration or license number in advertisements. In order to be consistent with new federal rules, this rule incorporates by reference the federal mortgage acts and practices advertising regulations set forth in 12 C.F.R. Part 1014.

**1301:8-7-08, Loan officer license requirement; exemptions; license status (Rescission):** This rule sets forth the pre-S.A.F.E. Act activities that trigger the licensing requirement for a loan officer and the definitions of various license status designations. This rule is no longer necessary as a result of amendments to the OMBA in H.B. 1 of the 128<sup>th</sup> General Assembly.

**1301:8-7-09, Loan officer license application, issuance of loan officer license; license display (Rescission):** This rule sets forth the pre-S.A.F.E. Act licensing requirements for issuance of a loan officer license. This rule is no longer necessary as a result of amendments to the OMBA in H.B. 1 of the 128<sup>th</sup> General Assembly.

**1301:8-7-10, Loan officer renewal application for licensure; issuance of renewal license; expiration (Rescission):** This rule sets forth the pre-S.A.F.E. Act requirements for renewal and expiration of a loan officer license. This rule is no longer necessary as a result of amendments to the OMBA in H.B. 1 of the 128<sup>th</sup> General Assembly.

**1301:8-7-11, Loan officer license transfer (Rescission):** This rule sets forth the requirements to transfer a loan officer license from one mortgage broker to another. This rule is no longer necessary as a result of amendments to the OMBA in H.B. 1 of the 128<sup>th</sup> General Assembly.

**1301:8-7-12, Operations manager (Rescission):** This rule sets forth the procedures for a registered mortgage broker to designate its operations manager. It sets forth the examination and experience prerequisites the designee must satisfy in order to be approved as an operations manager.

**1301:8-7-12, Operations manager (New Rule):** This rule sets forth the experience prerequisites a designee must satisfy in order to be approved as an operations manager. It sets forth the documents that must be submitted to the superintendent as part of the request for approval.

**1301:8-7-13, Division examinations and investigations (Rescission):** This rule sets forth the parameters for conducting an examination or investigation of a registrant's records. It establishes six mandatory days when a regulated entity must be open for business and have records available for inspection. It sets forth the process for responding to the superintendent's written examination report.

**1301:8-7-13, Division examinations and investigations (New Rule):** This rule sets forth the parameters for conducting an examination or investigation of a registrant's, mortgage banker's, or credit union service organization's records. It establishes six mandatory days when a regulated entity must be open for business and have records available for inspection. It sets forth the process for responding to the superintendent's written examination report.

**1301:8-7-14, Surety bonds (Rescission):** This rule sets forth the pre-S.A.F.E. Act requirements for surety bonds obtained and maintained by registered mortgage brokers.

**1301:8-7-14, Surety bonds (New Rule):** This rule sets forth the requirements for surety bonds obtained and maintained by registered mortgage brokers, mortgage bankers, and credit union service organizations holding a valid letter of exemption, or by individuals originating for a mortgage banker or credit union service organization. It establishes a bond requirement for loan processing or underwriting companies.

**1301:8-7-15, Mortgage loan origination disclosure statements and good faith estimates and other required disclosures to buyers (Rescission):** This rule sets forth the information required to be in a mortgage loan origination disclosure statement (MLODS). It also establishes the timing for providing the initial and revised MLODS to buyers as well as permissible ways to document that the MLODS disclosure was timely made.

**1301:8-7-15, Disclosures (New Rule):** This rule establishes the timing for disclosure of the MLODS and the "notice of change in mortgage terms" forms. It permits a registered mortgage broker or licensed loan originator to substitute the federal "notice of change in mortgage terms" form for the state form, thus eliminating the need for providing borrowers with two forms containing identical information.

**1301:8-7-16, Prohibited practices (Rescission):** This rule sets forth conduct or activities that the superintendent considers to be improper, fraudulent, or dishonest dealings in violation of R.C. 1322.07(C).

**1301:8-7-16, Prohibited practices (New Rule):** This rule sets forth conduct or activities that the superintendent considers to be improper, fraudulent, or dishonest dealings in violation of R.C. 1322.07(C).

**1301:8-7-17, Licensing examination (Rescission):** This rule sets forth the pre-S.A.F.E. Act requirements for administering, taking, and passing the loan originator and operations manager tests. This rule is no longer necessary as a result of amendments to the OMBA in H.B. 1 of the 128<sup>th</sup> General Assembly.

**1301:8-7-18, Continuing education (Rescission):** This rule sets forth the pre-S.A.F.E. Act requirements for continuing education for loan officers and operations managers. It also sets

forth pre-S.A.F.E. Act procedures for providers of continuing education to apply for and obtain approval to offer continuing education classes. This rule is no longer necessary as a result of amendments to the OMBA in H.B. 1 of the 128<sup>th</sup> General Assembly.

**1301:8-7-18, Continuing education (New Rule):** 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 in order to make up a deficiency. Continuing education deficiencies only have to be made up if they occurred after January 1, 2010.

**1301:8-7-19, Notification requirements (Rescission):** This rule establishes the proper method and timing for notifying the superintendent of an event or change.

**1301:8-7-19, Notification requirements (New Rule):** This rule establishes the proper method and timing for notifying the superintendent of an event or change, such as changes in ownership, application information, new criminal convictions, etc.

**1301:8-7-20, Compensation (Rescission):** This rule sets forth pre-S.A.F.E. Act restrictions for how a registered mortgage broker may compensate a licensed loan officer.

**1301:8-7-20, Compensation (New Rule):** This rule sets forth the current restrictions for how a registered mortgage broker, mortgage banker, and credit union service organization may compensate a loan originator. It establishes how to compensate a loan originator for origination activities after the individual's license was cancelled or expired. It prohibits a registered mortgage broker, mortgage banker, and credit union service organization from compensating an individual who is not licensed to originate loans in a manner designed to evade the licensing requirements.

**1301:8-7-21, Character, general fitness, and financial responsibility (Rescission):** This rule sets forth the pre-S.A.F.E. Act criteria that may be considered by the superintendent when evaluating whether an applicant for a certificate of registration or license possesses the requisite character and general fitness to hold a certificate of registration or loan officer license.

**1301:8-7-21, Character, general fitness, and financial responsibility (New Rule):** This rule sets forth the current criteria the superintendent may consider when evaluating whether an applicant for a certificate of registration or license possesses the requisite character, general fitness, and financial responsibility to hold a certificate of registration or license.

**1301:8-7-22, Trade names, alternative business names and service marks (Rescission):** This rule sets forth the requirements for a mortgage broker's use of a trade name, service mark, or alternative business name.

**1301:8-7-22, Trade names, fictitious names, and change of names (New Rule):** This rule sets forth the requirements for a mortgage broker's, mortgage banker's, and credit union service organization's use of a trade name or fictitious name.

**1301:8-7-23, Mortgage broker appraisal misconduct (Rescission):** This rule sets forth the permissible and impermissible conduct when a mortgage broker or loan officer engages the services of a licensed appraiser.



**1301:8-7-23, Mortgage broker appraisal misconduct (New Rule):** This rule sets forth permissible and impermissible conduct when a mortgage broker or loan originator engages the services of a licensed appraiser.

**1301:8-7-24, Restrictions on promises of future financing (Rescission):** This rule sets forth requirements for and restrictions on a loan officer or mortgage broker promising to refinance a borrower's residential mortgage loan in the future.

**1301:8-7-25, Affiliated business disclosures, (Rescission):** This rule requires that the State affiliated business disclosure form be an addendum to the federal affiliated business disclosure form. It also provides the timing for making the disclosure and the definition of a settlement service provider.

**1301:8-7-26, Challenge to erroneous information maintained in NMLS (New Rule):** 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 process is required by 12 U.S.C. § 5107(d)(5) and R.C. 1322.061(H).

**1301:8-7-27, Expedited hearing upon automatic suspension (Rescission):** This rule establishes a process for holding an expedited hearing upon the issuance of an automatic suspension order by the superintendent.

**1301:8-7-27, Expedited hearing upon automatic suspension (New Rule):** This rule requires the superintendent to schedule a hearing (which may be continued by either party for good cause shown) no later than thirty days after an automatic suspension order has been issued.

**1301:8-7-28, Pre-licensing education (Rescission):** This rule sets forth the pre-S.A.F.E. Act requirements for providers to become approved to provide pre-licensing education. This rule is no longer necessary as a result of amendments to the OMBA in H.B. 1 of the 128<sup>th</sup> General Assembly.

**1301:8-7-29, Public actions database (Rescission):** This rule requires clerks of court to submit final judgments and supporting opinions to the superintendent for inclusion in a public database maintained by the Division of Financial Institutions. This rule is being proposed for rescission because it is duplicative of language in R.C. §§ 1322.11(B)(5) and 1349.43.

**1301:8-7-30, Temporary loan originator license application (Amendment):** This rule establishes the fee for applying for a temporary loan originator license and the term of the license. It is being amended to add criteria for evaluating an applicant's "experience in the field of residential mortgage lending."

**1301:8-7-31, Nonprofit organizations exemption (New Rule):** This rule establishes a letter of exemption to be issued by the superintendent to nonprofit organizations that meet all of the criteria and seek to be exempt from registration. This rule is required by 12 U.S.C. § 1008.103(e)(7).

**1301:8-7-32, Loan processors and underwriters (New Rule):** This rule establishes a letter of exemption to be issued by the superintendent to loan processing and underwriting companies that meet all of the criteria and seek to be exempt from registration. This rule is required by 12 U.S.C. § 5103(b)(2) and Appendix C of 12 C.F.R. § 1008.

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

R.C. 1322.12 is the authorizing statute for all rules in this package. In addition, R.C. 1322.024 authorizes the expansion of the definition of “loan originator” and “mortgage broker” as proposed in rule 1301:8-7-01. It also authorizes the addition of exempt persons in the definition of “mortgage banker” as proposed in rule 1301:8-7-01. Finally, it authorizes the addition of exemptions from registration for nonprofit organizations and loan processing and underwriting companies as in rules 1301:8-7-31 and 1301:8-7-32. These expansions of and exemptions from definitions are consistent with the purposes and fairly intended by the policy and provisions of the OMBA and the S.A.F.E. Act.

**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.**

Yes, these regulations implement the S.A.F.E. Act, which sets minimum standards for the licensing and regulation of State-licensed loan originators as well as requiring States to participate in the Nationwide Mortgage Licensing System and Registry. Failure to meet the S.A.F.E. Act’s minimum standards could result in the Director of the Consumer Financial Protection Bureau administering the licensing program for the State. See 12 U.S.C. § 5107 and 12 C.F.R. 1008.115.

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

The Division is not promulgating rules that apply to loan originators which are more stringent than the minimum standards set by the S.A.F.E. Act. Rather, the rules are consistent with the minimum standards. The S.A.F.E. Act does not set any standards for mortgage brokers, mortgage bankers, or credit union service organizations except that it requires them to submit a “mortgage call report.”

These proposed rules incorporate by reference some federal standards for advertising practices and loan originator compensation that will apply to mortgage brokers, mortgage bankers, and credit union service organizations. However, such incorporation by reference is intended to achieve consistency between the state and federal regulation and not to exceed the federal standards. Any attempt in the future to exceed the minimum requirements in federal regulations would therefore require a rule change.

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**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 being proposed because the current rules do not meet the needs of the mortgage industry. Both state and federal laws and regulations have changed significantly since the passage of the S.A.F.E. Act and H.B. 1 of the 128<sup>th</sup> General Assembly. These rules are needed in order to meet the minimum requirements of the S.A.F.E. Act and to eliminate rules that contradict the S.A.F.E. Act and current provisions of the OMBA.

**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 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. These rules should provide clarity and guidance 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.**

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

The Division engaged stakeholders in a months-long process developing these rules. Representatives of the Division and stakeholders met on November 15, 2013, December 10, 2013, February 10, 2014, and May 23, 2014. Prior to each meeting, the Division issued a draft of the proposed rules to stakeholders. At each meeting, the Division reviewed each and every rule with stakeholders. Verbal and written comments were reviewed, discussed and, if authorized by law, incorporated into the language of the rules. The following is the list of stakeholders who were invited to participate in the rule-development meetings:

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

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The Division also met with consumer advocates on November 21, 2013 (Linda Cook, Senior Staff Attorney for the Ohio Poverty Law Center and Bill Faith, Executive Director for the Coalition on Homelessness and Housing in Ohio).

In addition, the Division provided the draft proposed rules to consumer finance attorneys and examiners who regularly interact with the Division as a result of representing clients who are stakeholders. Some also attended the stakeholder meetings.

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

The stakeholders requested and received the following changes to these proposed regulations:

- Expand the definition of “loan originator” to include loan processors and underwriters who are independent contractors and creating a licensing scheme for such independent contractors as well as third party loan processing or underwriting companies.
- Expand the “mortgage banker” exemption to include U.S.D.A. loans and Federal Home Loan Bank of Cincinnati loans, thus allowing mortgage bankers to offer two additional products not previously covered by the exemption.
- Narrow the definition of “resident of this state” so that licensure is not required for borrowers who are purchasing primary residences in other states as a result of job relocations.
- Define “transaction of business as a mortgage broker in this state” in a broad manner in order to protect as many consumers as possible.
- Define “underwrites the loan” to allow mortgage bankers to engage the services of third party underwriters.
- Clarify the scope of the mortgage banker exemption.
- Clarify the mortgage transactions that fall within the ambit of the mortgage broker, mortgage banker, and mortgage lender under the Ohio Mortgage Loan Act.
- Clarify the difference between “residential mortgage loans” and business loans.
- Ensure that real estate licensees can receive commissions for selling property in situations where the mortgage lender is also the owner of the property.
- Permit loan originator licenses to be issued into escrow and subsequently maintained in escrow to allow bank loan originators a way to quickly transition between bank jobs and non-bank jobs.
- Permit electronic recordkeeping of mortgage loan files without the need to request pre-approval from the superintendent.

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- Allow a registrant or licensee the option of using the NMLS number in lieu of the Ohio certificate or license number on advertisements.
- Passage of the loan originator test constitutes passage of the operations manager test.
- Require a surety bond for third party loan processing and underwriting companies as well as independent contractors.
- Accept the federal “notice of change in mortgage terms” and “affiliated business arrangement disclosure” forms in lieu of both the state and federal forms to reduce duplication of disclosures containing the same information.
- Limiting the requirement to make up missed continuing education classes to only the NMLS-approved continuing education classes.
- Establish specific and objective criteria and mitigating circumstances used by the Division to evaluate an individual’s financial responsibility to obtain or maintain a loan originator license.
- Expand the exemption from the definition of mortgage broker and loan originator for nonprofit entities that meet all state and federal requirements to be exempt from the S.A.F.E. Act.
- Create a new exemption from the definition of mortgage broker and loan originator for independent contractors who act as loan processors and underwriters for others as well as for third party loan processing or underwriting companies.

**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?**

The Division considered numerous alternatives. In general, if an alternative regulation was suggested but not incorporated into the draft proposed rules, it was because the regulation would have directly conflicted with the Ohio Mortgage Broker Act, S.A.F.E. Act, or another federal regulation governing the residential mortgage lending industry.

**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.**

Not applicable.

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

The Division and the Ohio Attorney General are the only state agencies that regulate non-bank mortgage brokering and non-bank mortgage lending under the Ohio Revised Code. The Division regulates the industry pursuant to the Ohio Mortgage Broker Act while the Attorney General regulates the industry pursuant to the Ohio Consumer Sales Practices Act, specifically R.C. 1345.031 and O.A.C. 109:4-3-19 to 109:4-3-24.

To ensure there are no duplicative regulations, the Division reviewed the Ohio Attorney General's regulations relating to non-bank mortgage businesses. There is one Division rule that is nearly identical to an Attorney General rule. See 1301:8-7-23 (Mortgage broker appraisal misconduct) and 109:4-3-24 (Improperly influencing appraiser). Both rules amplify nearly identical statutory language in R.C. 1345.031(B)(10) and 1322.07(G) which prohibit improperly influencing an appraiser.

The Division and the Attorney General's office worked together in 2006 to craft the current appraiser misconduct rules, and the Division has again provided the Attorney General's office with a copy of the draft proposed O.A.C. 1301:8-7-23 so that the same rule can again be adopted by both agencies. While the Division is working with the Attorney General's office to maintain the rules in a form that is substantially similar, the duplication cannot be avoided unless the General Assembly eliminates the duplication in the Ohio Revised Code.

**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.**

Before the rules become effective, the Division will post the new rules on the Division's website, distribute the new rules via email to licensees, registrants, mortgage bankers and credit union service organizations, and hold multiple stakeholder meetings around the state to roll out the rules and answer questions at all local mortgage banker monthly meetings. Further, the 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 mortgage brokers, mortgage bankers, credit union service organizations, loan originators, nonprofit organizations that originate mortgage loans, and

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loan processors or underwriters and companies providing loan processing or underwriting services.

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

1301:8-7-01: This rule expands the definitions of loan originator and mortgage broker as allowed by R.C. 1322.024. This could generate additional licensing and/or registration fees for some entities not currently licensed/registered.

1301:8-7-02: Maintaining a physical office location incurs a cost to businesses in the form of rent, wages and other costs.

1301:8-7-03: The cost of complying with this rule is the time necessary to fill out and/or update information on the NMLS database.

1301:8-7-05: There may be a nominal bank fee for maintaining a special account. There is also a cost of employer time in making deposits, withdrawals, and balancing the special account.

1301:8-7-06: The recordkeeping rule requires employer time for compliance.

1301:8-7-07: Maintaining records of advertisements requires employer time for compliance.

1301:8-7-12: Filling out the application to have a loan originator designated as the registrant's operations manager requires employer time.

1301:8-7-13: Responding to and cooperating with Division examinations takes employer time.

1301:8-7-14: Purchasing and maintaining a surety bond costs money.

1301:8-7-15: Filling out disclosure forms and delivering them to prospective borrowers takes employer time.

1301:8-7-16: Ensuring that prohibited practices do not occur requires employer time supervising employees and the creation and implementation of policies and procedures.

1301:8-7-18: Continuing education incurs a cost of money to pay for the CE classes and employer time to attend the classes.

1301:8-7-20: Properly compensating loan originators requires employer time and the creation and implementation of policies and procedures.

1301:8-7-21: Clarifying financial responsibility, character and general fitness does not incur a monetary or time cost to employers.

1301:8-7-22: Properly registering trade names and fictitious names incurs the cost of filling out the form and paying a fee to the Secretary of State.

1301:8-7-23: Ensuring that prohibited appraisal practices do not occur requires employer time supervising employees and the creation and implementation of policies and procedures.

1301:8-7-26: This is an internal administrative rule with no cost of compliance to businesses.

1301:8-7-27: This is an internal administrative rule with no cost of compliance to businesses.

1301:8-7-30: Clarifying the types of experiences that qualify as meeting the statutory requirement of “two years of experience in the field of residential mortgage lending” does not incur a monetary or time cost to employers.

1301:8-7-31 and 1301:8-7-32: Permitting an application for a letter of exemption as either a nonprofit organization, a loan processor/underwriter who is an independent contractor, or a third party loan processing/underwriting company incurs a nominal NMLS fee.

**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.**

1301:8-7-01: While this rule expands the definitions of loan originator and mortgage broker as allowed by R.C. 1322.024, there is no cost of compliance associated with expanding these definitions because the Division is responding to requests from small

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businesses, large mortgage insurance companies and mortgage bankers to expand these definitions in order for their businesses to be able to operate lawfully and expand in Ohio. The Division is not receiving any fees as a result of these expanded definitions.

1301:8-7-02: R.C. 1322.02 requires a physical office location in this state. The cost of rent could range from \$500 to \$1000 per month. The cost for staffing the location with a licensed loan originator could be approximately \$3000 per month. Plus the rental and leasing of office furniture and equipment costs approximately \$1000 per month.

1301:8-7-03: The cost of complying with this rule is the time necessary to fill out and/or update information on the NMLS database. The time necessary to comply depends on how often the licensee or registrant has changes to its information on NMLS. For a licensee, it could be 30 minutes on NMLS per year and for a large mortgage business with high loan originator turnover, it could be a full-time employee whose sole job is to keep the registrant's information on NMLS current.

1301:8-7-05: The charge for maintaining the special account with a banking institution is often free or a minimal monthly charge. The cost of reconciling the special account depends upon the number of loans originated per month. It can range from an hour of employee time to a full work day. This rule applies to a small number of businesses because most registrants no longer charge borrowers directly for third party fees, instead, working the cost into their overall fee structure. This avoids the need for a special account altogether. The statutory requirement to maintain a special account protects consumers from overcharges for third party fees such as appraisals and credit reports.

1301:8-7-06: Organizing and maintaining accurate records of mortgage transactions is a compliance cost incurred by registered mortgage brokers, mortgage bankers, and credit union service organizations to comply with state and federal law. R.C. 1322.06 requires that records be maintained for four years. Federal law requires records to be maintained for three years. See 12 U.S.C. 1024.10 and 12 U.S.C. 1026.25. The CFPB chose three years because that is the statute of limitations for a consumer to bring a lawsuit alleging a violation of the Truth In Lending Act. See 78 FR 11293. While Ohio law imposes an incremental cost on the industry in the form of maintaining records for one additional year, this rule attempts to mitigate this additional cost by permitting electronic record retention. Retaining electronic records eliminates the cost of renting physical storage space. 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 incremental cost.

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1301:8-7-07: Maintaining copies of advertisements takes a minimal amount of time—5 minutes per advertisement. It requires an employee to file a copy of the advertisement in a filing system.

1301:8-7-12: The operations manager will need to spend approximately eight hours compiling the documentation and filling out the form required by this rule. There are currently 232 designated operations managers. The operations manager is responsible for the day-to-day operations of the mortgage broker business and is responsible for ensuring compliance with applicable state and federal mortgage lending laws. It is important to ensure that the operations manager has the requisite knowledge and experience to operate the business. Mortgage bankers and credit union service organizations are required by federal law to have a designated Qualified Individual which is similar to Ohio's operations manager but not subject to the Division's approval.

1301:8-7-13: The Division usually conducts examinations at the business location where the loans are originated. Most examinations take one to two business days. A more complex examination for an entity with high loan volume can take three to five business days. The examiner may request staff to print documents, find files, and answer questions. The cost to the business is the wages of the employee who is assigned to assist the Division's examiner. Assuming the operations manager is assisting and that individual is paid \$30 per hour, the cost to the business of complying could be \$240 for a one-day examination up to \$1200 for a five-day examination. Examinations measure compliance with state and federal mortgage lending laws and are designed to protect the public. However, the Division treats examinations as an opportunity to educate and train mortgage professionals on how to properly fill out various forms and comply with complex, new federal rules which gives value back to the business. The Division provides a comprehensive report after the examination which assists businesses in improving their practices and achieving success. Businesses may be required to acknowledge receipt of the report and that violations noted in the report, if any, have been fixed and how they were fixed. Since most violations are fixed at the time of the examination because the examiner and company representative review the violations together, only a small group of businesses will have to provide a detailed response to the report.

1301:8-7-14: The bond requirement is imposed by federal and state law. The bond amount minimum in R.C. 1322.05 is \$50,000 and the maximum is \$150,000. The cost of a typical surety bond is approximately \$500 per year depending on loan volume. This rule also establishes a bond requirement for third party loan processing or underwriting

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companies. Loan processing companies and mortgage insurance companies need to obtain a bond before their employees can engage in the business of third party loan processing or underwriting in Ohio. These changes and the costs incurred are required in order for the state to meet the minimum requirements of the S.A.F.E. Act and the federal regulations promulgated by the Consumer Financial Protection Bureau. See 12 U.S.C. 5107(d)(6) and 12 U.S.C. 5103(b)(2).

1301:8-7-15: The cost of compliance is the staff time associated with filling out disclosure forms and delivering them to the borrower for signature. It typically takes one half hour of staff time to prepare and deliver the forms required by this rule or the equivalent federal forms. The rule mitigates this cost by accepting a substantially similar federal form in lieu of the state form where both are required.

1301:8-7-16: This rule will affect a small group of businesses who are not in compliance with the law. It requires daily employer time to supervise employees. Most companies employ a compliance professional who ensures compliance with all state and federal regulations pertaining to mortgages. This rule is needed to protect borrowers. Businesses that comply with the laws and rules are at a competitive disadvantage when other businesses act improperly, dishonestly, or fraudulently.

1301:8-7-18: A loan originator is required to complete eight hours of continuing education every calendar year pursuant to the federal S.A.F.E. Act and the Ohio Mortgage Broker Act. The cost is approximately \$150 to \$300 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.

1301:8-7-19: Notifications take a minimal amount of employer time usually 5-10 minutes, plus postage. Most notifications are now made via the NMLS system or email so there is no postage necessary. Only a few types of notifications occur outside of the NMLS system and email--Paragraphs (I) and (J). These paragraphs require a certified copy of final judgment entries, are mandatory notifications in the Ohio Mortgage Broker Act. See R.C. 1322.05(B) and 1322.07(D). To assist businesses, the Division made all of the timeframes for advance notifications outside of the NMLS system consistent (15 days) which reduces the time and cost of compliance.

1301:8-7-20: This rule imposes a minimal expense that businesses ordinarily incur regardless of the existence of this rule when issuing paychecks or direct depositing paychecks to employees' checking accounts. Most companies employ a compliance

professional who ensures compliance with federal regulations pertaining to loan originator compensation.

1301:8-7-21: There is no cost of compliance associated with this rule. The Division added more detail at the request of regulated businesses in order to guide them in their hiring decisions.

1301:8-7-22: Trade names and fictitious business names must be registered with the Ohio Secretary of State. Entities doing business in Ohio are required to maintain such registrations pursuant to other Ohio laws. It is a typical cost of business for a legal entity to have to register actual names, trade and fictitious business names in order to conduct business in Ohio.

1301:8-7-23: This rule imposes minimal employer time to ensure compliance with state and federal laws prohibiting a loan originator or registrant from improperly influencing an appraiser. Most companies employ a compliance professional who ensures compliance with all state and federal regulations including establishing policies and procedures on how to properly request a property appraisal.

1301:8-7-31 and 1301:8-7-32: These rules will allow (i) nonprofit organizations, (ii) loan processors or underwriters who are independent contractors, and (iii) third party loan processing or underwriting companies to operate in Ohio as an exempt entity. The Division is not charging a fee of any kind for the filing, processing, investigation or examination of these entities. This rule allows these entities to lawfully operate in Ohio without having to obtain a full registration. By having the letter of exemption, the entities will not be subject to all of the same requirements of a fully registered entity. The NMLS fee is \$100 per year.

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

The Division is required by 12 U.S.C. § 5103(b)(2) and Appendix C to 12 C.F.R. Part 1008 to ensure that a loan processor or underwriter acting as an independent contractor obtain a state-issued loan originator license and that a third party loan processing or underwriting company employs at least one state-licensed loan originator to supervise loan processors or underwriters. The surety bond is required by 12 U.S.C. § 5104(b)(6) and 12 U.S.C. § 5107(d)(6). Failure to meet the minimum requirements of the S.A.F.E. Act could result in the Director of the Consumer Financial Protection Bureau taking over the state's duties to administer the licensing requirements of the S.A.F.E. Act per 12 U.S.C. § 5107(a) and 12 C.F.R. 1008.115.

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### **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 consistently in order to meet the minimum requirements of the S.A.F.E. Act.

**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 as long as the registrant agrees to file the report within thirty days.

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

After the rollout of the rules, the Division's examiners will work with small businesses to ensure compliance with the new rules. In addition, Division staff will be available via phone and email to answer questions.