

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Insurance
Regulation/Package Title: Ohio Fair Plan- Plan of Operation
Rule Number(s): 3901-1-18

Date: January 6, 2016

Rule Type:

☐ New

☒ Amended

☐ Rescinded

☐ 5-Year Review

☐ No Change

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.

The statute creates Ohio Fair Plan Underwriting Association (Ohio Fair Plan) which consists of all insurers authorized to write basic property and homeowners insurance to assist applicants in urban areas to secure basic homeowners insurance, and to formulate and administer a program for the equitable apportionment of homeowners insurance which cannot be obtained in the normal insurance market. Per statute the association shall submit a proposed plan of operation to the superintendent of insurance for approval. This rule sets the plan of operation.

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Ohio resident insurance agents are required to provide assistance to a property owner in completing application for insurance with the Ohio Fair Plan Association. The current operation plan/rule prohibits payment of commission to non-resident agents. The proposed amendment allows commission to be paid to non-resident agencies for assistance provided by a resident agent affiliated with that non-resident agency.

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

Sections 3901.041 and 3929.43 of the Revised Code.

3. Does the regulation implement a federal requirement? ☐ Yes ☒ 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?

☐ Yes ☒ 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)?

Per statute the association shall submit to the superintendent of insurance, for approval, a proposed plan of operation. The rule sets the plan of operation.

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

Success is measured by adequate access to insurance coverage through the Ohio Fair Plan for qualified property owners. Success of the proposed amendment will be measured by allowance of commission to be paid to non-resident agencies for assistance provided by an individual resident agent affiliated with that non-resident agency.

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 Ohio Fair Plan requested the amendment, per request of Professional Insurance Agents of Ohio (PIAA). The department additionally circulated the proposed amendment for review

by insurers, by working with Ohio Insurance Institute (OII) and Property and Casualty Insurers Association of America (PCI).

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

PIAA sought the proposed amendment in order to better facilitate appropriate commission payments for Ohio agents. The additional associations, each of which represents insurers that are members of the Ohio Fair Plan as required by statute, reviewed and supported the proposed amendment.

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?

Review of data is not applicable as this rule is the Ohio Fair Plan's operations plan, and is specifically limited to the scope and requirements of Ohio Fair Plan's administration of its insurance program.

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?

There were no alternative regulations deemed necessary as the sole purpose of the rule is the plan of operation implemented by the Ohio Fair Plan for the basic property and homeowners insurance it provides.

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. Performance-based regulation would not be applicable as the rule deals entirely with the Ohio Fair Plan's insurance policy coverage details and requirements.

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

The Ohio Fair Plan is the sole entity required to administer the program covered by the plan of operation, and the Ohio Department of Insurance is the sole agency required to review and approve the plan of operation. There are no duplicative rules.

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.

Implementation of the rule will not change with the proposed amendment. Ohio Fair Plan implements the operation plan and will continue to do so. The proposed amendment will

allow the plan to begin paying commissions to agents affected by the circumstances addressed in the amendment, and those payments will be provided as needed/as work is performed.

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

a.) The rule affects urban homeowners seeking coverage through the Ohio Fair Plan, insurers writing basic property/homeowners insurance in Ohio and Ohio insurance agents. The impacted insurers are required by statute to be members of the Ohio Fair Plan. Agents are required, upon request, to assist qualified homeowners in applying for coverage through the program.

b.) The rule sets the processes and requirements in administering the program, as well as for applying for coverage through the program.

c.) Impact is generally positive for applicable urban homeowners. Statute requires an Ohio Fair Plan Association to assist applicants in urban areas to secure basic property/homeowners insurance, and to formulate and administer a program for the equitable apportionment of homeowners insurance which cannot be obtained in the normal insurance market.

The proposed amendment reduces adverse impact for affected agents by allowing commission to be paid to non-resident agencies for assistance provided by individual resident agents affiliated with that non-resident agency.

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

The impact of the proposed amendment creates a positive impact rather than an adverse impact. The rule/plan of operation prohibits the Ohio Fair Plan from paying commission to non-resident agents because it is an Ohio specific program. However, in modern practice, it

is more and more common for resident agents to work under the umbrella of or be employed by non-resident agencies. With those scenarios, the current rule creates unintended potential loss of income for the Ohio agent working within such a structure.

Regulatory Flexibility

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

No. The Ohio Fair Plan of operations deals with the insurance coverage it is required to provide and the procedures and qualifications required to secure coverage. All insurers authorized to provide homeowners insurance in this state, regardless of size, are statutorily required to participate in the program as members.

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?

Statute does not apply.

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

Not applicable as the rule pertains to the plan of operation of the Ohio Fair Plan.