



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Department of Commerce

Rule Contact Name and Contact Information:

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

Criteria for qualifying to provide counselling services.

Rule Number(s): 1301:8-10-01 (No Change).

Date of Submission for CSI Review: 1-2-20

Public Comment Period End Date: _____

Rule Type/Number of Rules:

New/___ rules

No Change/___1___ rules (FYR? yes)

Amended/___ rules (FYR? ___)

Rescinded/___ rules (FYR?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

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should promote transparency, responsiveness, predictability, and flexibility while developing 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):

- a. ☒ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☐ Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ 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.**

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

This rule package contains one rule amplifying sections 1349.27 and 1349.271 of the Revised Code. This rule establishes criteria for purposes of qualifying counseling services that provide prepurchase counseling to consumers and imposes a conflict of interest prohibition.

- 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. Section 1349.36 of the Revised Code.**

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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? No.**
If yes, please briefly explain the source and substance of the federal requirement.
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 needed to enforce and carry out the purposes of sections 1349.27 and 1349.271 of the Revised Code and is necessary to provide stakeholders with clarity regarding the requirements and responsibilities set forth in the Revised Code.
7. **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.
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.**
If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Development of the Regulation

9. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.** The draft regulation was sent the following companies, industry associations, businesses, and consumer advocacy groups:

PYP INC
THE J.O.A.T., LLC
RESTORE CREDIT SCORE AND MORE, LLC
CMS CREDIT REPAIR LLC
OLIVE BRANCH FINANCIAL LLC
CREDIT IMPROVERS, INC.
CREDIT MENTORING AND CONSULTING, INC.
CREDIT REPAIR RESOURCES, LLC
FSH CREDIT SERVICES, LLC
CREDIT SMART SOLUTIONS, LLC
ANEW START SOLUTIONS, LLC

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OHIO NEIGHBORHOOD CREDIT SOLUTIONS, LLC
WITNESS RICHES, LLC
THE CREDIT PROS INTERNATIONAL CORPORATION
LYNX CREDIT REPAIR, LLC
CREDIT SAINT LLC
PAYOFF, INC.
CONTINENTAL CREDIT CONSULTING (CONTINENTAL CREDIT)
HOME LOANS ASSIST CORPORATION
COMPLETE CREDIT REPAIR SERVICES LLC
CREDIT REMEDY, LLC
NATIONAL CREDIT CARE CORPORATION
REAL HOPE CREDIT REPAIR, LLC

Baird Law Offices, LLC
Jackson Vaughn Public Stratiges
Barnes & Thornburg
McGlinchey Stafford
Krieg DeVault LLP
Coalition on Homelessness in Ohio
K&L Gates
CREDITCORP OF OHIO
McGlinchey Stafford
Ice Miller LLP
Ohio Financial Services Association (OFSA)
Dreher Tomkies
American Financial Services Association
Lobbyist (informed by Tom Needles)
Bricker & Eckler
Dreher Tomkies
McGlinchey Stafford
Ohio Council of Retail Merchants
Bradley (Law Firm)
Vorys
McGlinchey Stafford
Baker Law
policy matters Ohio
Ohio Poverty Law Center
Kohrman Jackson & Krantz

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Other
Ohio Association of Mortgage Professionals (Formerly Ohio Association of Mortgage Brokers)
Vorys
Thomson Hine
McGlinchey Stafford
Dreher Tomkies
Ohio State Bar Association (OSBA)
Dickinson Wright
Lobbyist-Compass consulting dba TitleMax
Governmental Policy Group

If applicable, please include the date and medium by which the stakeholders were initially contacted. The division emailed draft regulation for review and comment to the above-mentioned stakeholders on September 5, 2019, and they were given ten days to provide input either by email or phone.

- 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 feedback on this rule.
- 11. 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.
- 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? If none, why didn't the Agency consider regulatory alternatives?** This regulation is subject to its five-year rule review; therefore, it was thoroughly reviewed, and it was decided no change was necessary.
- 13. Did the Agency specifically consider a performance-based regulation? Please explain.**
This regulation is performance based, as it merely sets forth the minimal criteria credit counseling services must meet in order to provide prepurchase consumer counseling, not the process itself.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

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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 regulator of this rule and is not aware of any duplicative regulations.

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 rule was made 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 regulation will be brought to the attention of stakeholders at every available opportunity. Additionally, Division staff will be trained on the regulation to ensure consistent application.

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;** This rule applies to credit counselling companies that wish to provide prepurchase counselling required by R.C. 1349.27. **and**
- b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,);** As required by R.C. 1349.271, this rule establishes criteria for purposes of qualifying counseling services that provide prepurchase counseling to consumers and imposes a conflict of interest prohibition. The adverse impact is the time it takes for a credit counseling company to determine if it meets the rule criteria.
- c. Quantify the expected adverse impact from the regulation.**

The adverse impact will be, at most, a negligible amount of time for a company to determine if it meets the rule criteria.

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.

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17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community? The negligible adverse impact is outweighed by establishing the consumer protection benefits (credit counselling services vetted by a federal agency) intended by R.C. 1349.271

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain. No. This rule must be applied evenly in order for the Division to protect the interests of their consumers.

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? The Division does not have enforcement authority over counseling services beyond this rule, unless such a company is also required to be registered as credit services organization under ORC Chp. 4712.

20. 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.