



# Common Sense Initiative

Mike DeWine, Governor  
Jon Husted, Lt. Governor

Joseph Baker, Director

## Business Impact Analysis

Agency, Board, or Commission Name: Ohio Housing Finance Agency (OHFA)

Rule Contact Name and Contact Information: Angela Hawkins - ahawkins@ohiohome.org

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

Single-Family State Tax Credit Rule for monitoring, reporting and recapture

Rule Number(s): 175-12-01 and 175-12-06

Date of Submission for CSI Review: \_\_\_\_\_

Public Comment Period End Date: \_\_\_\_\_

**Rule Type/Number of Rules:**

New/ 2 rules

No Change/ 0 rules (FYR? 0)

Amended/ 0 rules (FYR? 0)

Rescinded/ 0 rules (FYR? 0)

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 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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

### **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.*

The proposed rule amplifies R.C. 175.17 (G), which allows the Ohio Housing Finance Agency (OHFA) to disallow or recapture tax credits if the project does not or ceases to qualify for the credit. Pursuant to statute, OHFA would certify certain information to the tax commissioner and superintendent of insurance, who would then take action to recapture the tax credit. This rule provides for the process to disallow or claw back (recapture) tax credits when a project does not or ceases to qualify for the credit. The proposed rule also amplifies, R.C. 175.17 (H), allowing for OHFA to receive construction monitoring reports from the business (development team) who develop and construct the single-family dwellings of a qualified project.

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.

R.C. 175.17

4. 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.*

The regulation does not implement a federal program and does not enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program.

5. **If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.** N/A
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)?**

Statute requires specific rules for the implementation of the Ohio Single-Family Tax Credit program. The rules ensure OHFA can properly monitor construction and calculate the tax credit, as well as ensure there is a process to recapture or disallow tax credits received if they are not compliant with the statutory public purpose.

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

The rule that establishes the requirements pertaining to the recapture of tax credits is written in plain language. Overall, the success of the program and the regulations will be measured by the amount of single-family dwellings constructed, the number of Ohio families that become homeowners, and the tax credit reservation and allocations issued each year.

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?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No.

### **Development of the Regulation**

9. **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.*

In August of 2023, OHFA conducted early stakeholder engagement meetings to discuss the new statute's implementation and questions and issues related to program success. These groups included: 1) Ohio Association of Realtors and Ohio Home Builders Association, 2) local government associations such as the Ohio Municipal League, Township Association, etc, 3) organizations such as the Ohio Bankers Association, Ohio Mortgage Bankers, Ohio Home Builders, and Habitat for Humanity of Ohio, 5) housing developers and investors, such as Huntington, Ohio Capital Corporation for Housing, PNC, and Nationwide.

OHFA encouraged participants to send comments and thoughts on the new program to the program email and encouraged them to share the program overview sheet with their colleagues. OHFA established a listserv for this program and added the members of these meetings to the list as well as individuals that requested more information on the program.

Additionally, OHFA held a Single Family Tax Credit Public Forum on September 27<sup>th</sup>. The notice was sent to the Multifamily Office list, the OHFA newsletter list, and the new Single Family Tax Credit list. The multifamily office list includes developers, investors and organizations that have received OHFA funding. The newsletter list is comprised of anyone that would like to have more information on OHFA programs/happenings, it's a broad list of individuals and organizations. The Single Family Tax Credit list is comprised of people that contacted us for more information on this new program.

Finally, OHFA will hold a public hearing on Thursday, November 2, 2023 and will receive written public comment through close of business on the same day at [SingleFamilyTaxCredit@ohiohome.org](mailto:SingleFamilyTaxCredit@ohiohome.org). The hearing will be noticed in the same manner as the previous public forum. The program rules are drafted in consultation with the Department of Taxation and Insurance, pursuant to the statutory requirement.

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

Based on a public forum and initial pre-draft comment period, we received approximately seven written comments along with verbal comments from a diverse group of stake holders. Topics commented on ranged from affordability limits, definition of development team, qualified project, and combined applications for rehabilitation and new construction. OHFA has incorporated changes related to the combined applications for rehabilitation and new construction and hopes to obtain additional comments the next round of comments.

**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?**

N/A – the proposed rule is to implement part of a process mandated in statute.

**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?**

*Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

The proposed regulation reflects the prescriptive language in statute. Alternate regulations were not an option based on the requirements of the Ohio revised code.

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

The Ohio Single Family Tax Credit program was created in the FY 24-25 biennial budget. OHFA is the only administrator of Ohio Single Family Tax Credit in Ohio and this project is the first of its kind in Ohio. Therefore, OHFA is certain that there is no duplication in existing Ohio regulation.

**14. 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.**

OHFA's proposed rule provides for a uniform process and clear instances of when construction monitoring and recapture occur. Therefore, the regulation will be applied consistently and predictably. The regulation will be outlined in the program guidelines, which will be posted to the program webpage when complete. The program webpage currently provides comprehensive and clearly stated information on the development of the regulation as well as information on how stakeholders can provide feedback on the regulations.

**Adverse Impact to Business**

**15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

- a. Identify the scope of the impacted business community, and**
- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

*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.*

The impacted business community may include as part of the Development Team: a housing developer, (2) building contractor, (3) third-party appraiser, (4) if not provided by the project development owner, a housing counseling agency, (5) construction lender, and (6) if applicable, a project architect and/or businesses that received or tax credits

There are possibly three potential adverse impacts to business. The first adverse impact is the required quarterly construction reports during the construction period (which should be a limited period). Each project's construction report will vary based on the size of the project and the stage of construction. Expected impact should be minimal as the construction reports would be providing information that would be readily known as project construction progresses.

The second potential adverse impact, created in the statute, is the disallowance and recapture of a tax credit if the project development owner or the project development owner's qualified project does not or ceases to qualify for the credit. The project development owner is a unit of government as defined in statute. Ultimately, the rule mirrors the statute and provides additional processes to implement the statute.

The third impact comes from definitions such as “development costs,” which will play into the calculation and claiming of the tax credit, as well as designated reporters to claim taxes by filing annual reports pursuant to statute.

- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

Not at this time. This is a brand new program, and OHFA will amend rules accordingly to reduce unnecessary regulatory burdens.

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

The regulatory intent is driven by statute and is therefore justified.

#### **Regulatory Flexibility**

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

No. The Project Development Owner comprised of a government entity would only be considered to receive any exemptions that may be available.

- 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?**

There are no paperwork violations for small businesses applicable in the proposed rule.

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

OHFA will provide businesses participating in the program with the appropriate forms and/or requirements for program reporting.