



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Dept. of Commerce, Div. of Financial Institutions

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

Short-Term Loan Act 5-Year Review

Rule Number(s): 1301:8-11-01 (amend); 1301:8-11-02 (amend); 1301:8-11-03 (amend);
1301:8-11-04 (amend); 1301:8-11-05 (amend); 1301:8-11-06 (amend)

Date of Submission for CSI Review: June 14, 2024

Public Comment Period End Date: June 28, 2024

Rule Type/Number of Rules:

New/ 0 rules

No Change/ 0 rules (FYR?)

Amended/ 6 rules (FYR? Y)

Rescinded/ 0 rules (FYR?)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.

1301:8-11-01 Definitions and general provisions: This rule defines terms used in the Administrative Code. It is being amended as follows:

- Defines “borrower” to mean “a person with either an active or inactive loan”;
- Defines “payable in substantially equal installments” to mean “payable in installments of substantially equal amounts according to a payment schedule in which the first payment is due no later than one month and fifteen days from the date of origination, with subsequent payments due thereafter at substantially consistent time intervals ranging from weekly to monthly”; and
- Defines the time periods involved in calculating interest or fees as follows:
 - One month equals one-twelfth of a year.
 - Each one-month period ends as described in section 1.45 of the Revised Code.

- One day equals one three hundred sixty-fifth of one year when calculation is made for a fraction of a month.
- “Year” has the same meaning as in section 1.44 of the Revised Code.

1301:8-11-02 Recordkeeping requirements: This rule implements recordkeeping requirements for short-term lenders. It specifies the form and content of records and provides that the Division of Financial Institutions may suspend or revoke a license or bring any other authorized administrative enforcement action against a person for failure to maintain records in accordance with R.C. 1321.422.

The rule is being amended to do the following:

- Remove redundant language, e.g. references to the two-year retention period specified by R.C. 1321.422.
- Rephrase and relocate, in a non-substantive manner, certain provisions.
- Replace the loan statement requirement in 1301:8-11-02(A)(2) with a requirement that the information identified be kept in a sortable electronic spreadsheet containing the same information designated in the current rule with the following additions and removals:
 - Whether the borrower or a dependent of the borrower is on active duty in the armed forces of the United States (add);
 - Whether the loan is new or a refinance (add);
 - For a refinanced loan, the prior loan number (add);
 - Frequency of payments (add);
 - Payment due dates (add);
 - Contractual rate of interest (add);
 - Total scheduled amount of interest charges (add);
 - Origination fee (add);
 - Total scheduled amount of maintenance fees (add);
 - Nonsufficient funds fee, if any (add);
 - Check cashing fee, if any (add);
 - Loan status, whether active, paid, rescinded, charged-off, non-accrual, or other status (add);
 - Most recent date of payment (add);
 - Amount of most recent payment (add);
 - Check collection charge, if any, that may be levied (remove);
 - Types and amount of any credit-related insurance (remove).

- Adds an option that, in addition to loan number, loan agreements and other loan documents signed by the obligors may be identified by account number.
- Removes the requirement to maintain an alphabetical index of all borrowers, co-makers, guarantors, and other obligors identified by account number with respect to all persons obligated for interest in excess of the current usury rate.
- Adds a requirement that the record of loans in litigation be maintained as a sortable electronic spreadsheet containing the same information designated in the current rule with the following additions and removals:
 - Account or loan number (account number added; current law only allows loan number);
 - Principal borrower's residential address (add);
 - Court or jurisdiction in which the litigation was filed (add);
 - Case number (add);
 - Status of litigation, whether active, settled, dismissed, final judgment entered, or other status (add);
 - All original litigation records and documents, including pleadings, court orders, judgments, and documentation of all court costs paid by the borrower to or through the licensee, or copies thereof shall be maintained in the file of original papers (remove);
 - In cases of garnishment or attachment, all notices served on employers or copies thereof and the amounts collected shall be maintained in the file of original loan papers (remove);
 - A credit life claim record shall be maintained for all loans upon which a credit life claim has been paid by the insurer. The credit life claims record shall be maintained for at least two years after the final entry has been made on the loan, be kept current, and include certain specified information (remove);
 - Histories of nonpublished indices used to establish interest rates for variable rate loans shall be maintained for two years from date of usage, and shall be available for review by the division of financial institutions (remove).
- Remove the requirement that a licensee segregate loan records from the records of any other business.

1301:8-11-03 Advertising: This rule prohibits false, misleading, or deceptive advertising. It requires a licensee to maintain a records file of all advertising for two years from the date disseminated. Lastly, it requires every advertisement to identify the licensee's name, address, and license number.

The rule is being amended to remove the prohibition on false, misleading, or deceptive advertising, as it is redundant of R.C. 1321.41(N). It is also being amended to remove the requirement to maintain a record of all advertising.

1301:8-11-04 Licensing: This rule prohibits a licensee from doing business under any other name than that on its license. It also specifies the procedure a licensee must use to change its address.

It is being amended to remove the provision requiring a new license be obtained prior to conducting business at the new location, and to replace the word "file" with "pay" re the license application fee.

1301:8-11-05 Short-term loan license renewal application; issuance of renewal license; expiration: This rule implements a process to renew a short-term lender license.

It is being amended to specify that a renewal application must be received by December 31 and to allow a licensee to continue to act as a licensee while the renewal application is pending.

1301:8-11-06 Surety bond: This rule requires an applicant for a short-term lender license to continuously maintain a corporate surety bond that conforms to the requirements set forth in R.C. 1321.37(D). It specifies what happens in case of a lapse in coverage or reduction in the penal sum. It also states that the liability of the surety shall not be affected by misrepresentation or other act on the part of the licensee or the licensee's insolvency or bankruptcy, and that the liability shall be in effect for at least two years after the bond is terminated or canceled. Lastly, it states that the bond shall not be canceled except upon thirty days' notice to the Superintendent.

The rule is being amended to streamline wording and remove a redundant reference to compliance with R.C. 1321.37(D).

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.**

1301:8-11-01:

- Statutory Authority: 1321.43
- Rule Amplifies: 1321.37

1301:8-11-02:

- Statutory Authority: 1321.43
- Rule Amplifies: 1321.422

1301:8-11-03:

- Statutory Authority: 1321.43
- Rule Amplifies: 1321.41

1301:8-11-04:

- Statutory Authority: 1321.43
- Rule Amplifies: 1321.38

1301:8-11-05:

- Statutory Authority: 1321.43
- Rule Amplifies: 1321.37

1301:8-11-06:

- Statutory Authority: 1321.43
- Rule Amplifies: 1321.37

- 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.

No.

- 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)?**

The public purpose of this rule package is to provide clarity to individuals and entities authorized by the Ohio Short-Term Loan Act (STLA) to engage in activities related to short-term lending as to the requirements of the STLA. In addition, the regulations protect consumers in short-term loan transactions by ensuring that licensees have the requisite experience and fitness to engage in residential mortgage transactions, and that consumers have avenues for recourse in case of harm.

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

The Division of Financial Institutions will measure the success of these regulations by continuing to receive industry feedback on the licensing and regulation of STLA licensees and by reviewing consumer complaints submitted to the Division.

- 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.

The proposed rules were sent to all current STLA licensees for informal review and comment. In addition, the Division keeps an ongoing list of individuals and organizations who in the past have expressed interest in being notified of rulemaking developments. The draft rules were sent to these stakeholders as well for informal review and comment. Licensees and stakeholders were given three weeks to review the rule package and submit comments.

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

The initial set of rules sent for informal stakeholder review added a definition of “installments” to 1301:8-11-01 which read, “a payment schedule in which the first payment is due no later than one month from the date of origination, with subsequent payments due thereafter at consistent time intervals ranging from weekly to monthly.”

The Division received a timely comment from Purpose Financial, Inc. DBA Advance America (attached), which holds by far the most STLA licenses of any company in the state. The comment raised two concerns, one regarding the first payment due date and the other regarding the consistency of time intervals. Upon consideration of Advance America’s concerns, the Division extended the time allowed for a first payment from one month to one month and fifteen days to better accommodate a situation in which a borrower is paid monthly and obtains a short-term loan shortly before their next payday. The Division also addressed the consistency concern by changing “consistent” to “substantially consistent.”

The Division’s new proposal is as follows:

1301:8-11-01(C): “Payable in substantially equal installments,” as used in division (D) of section 1321.39 of the Revised Code, means payable in installments of substantially equal amounts according to a payment schedule in which the first payment is due no later than one month and fifteen days from the date of origination, with subsequent payments due thereafter at substantially consistent time intervals ranging from weekly to monthly.

No other comments were received.

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

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.*

These regulations are subject to their five-year rule review. As such, each rule was reviewed and numerous alternatives were considered as part of the process. Ultimately, these regulations clarify and amplify the provisions in R.C. 1321.35-1321.48 and are constrained by the statutory requirements.

13. 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 licensees under the STLA and is not aware of any duplicative regulations.

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.

The regulations have been 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 regulations will be brought to the attention of stakeholders at every available opportunity. Additionally, Division staff will be trained on the regulations to ensure their consistent application.

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

This rule package applies to short-term lenders. As of April 23, 2024, there were 66 active licenses.

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.

1301:8-11-02:

- **Imposes a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms.** The rule allows the Division to suspend or revoke a license or bring any other authorized administrative enforcement action against any person for failure to maintain records in accordance with the statutory recordkeeping requirement in R.C. 1321.422(A).

- **Requires specific expenditures or the report of information as a condition of compliance.** This rule specifies the types of records a licensee must maintain and the form of those records.
- **It is likely that the rule will directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**
Recordkeeping requirements likely increase the expenses of conducting business. The exact amount will vary from business to business.

1301:8-11-03:

- **Requires specific expenditures or the report of information as a condition of compliance.** Requires each advertisement placed by a licensee to include the licensee's name, address, and license number.

1301:8-11-04:

- **Requires specific expenditures or the report of information as a condition of compliance:**
 - Requires each licensee, at least thirty days prior to the effective date of an address change, to notify the Division of a change in address;
 - If the licensee is relocating outside the municipal corporation in which it is currently located, requires the licensee to pay a license application fee. Pursuant to R.C. 1321.37(A), that fee ranges from \$250 to \$1,000 depending on the type of lender (for-profit vs. non-profit) and timing of the application (prior to or after July 1).

1301:8-11-05:

- **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.** This rule specifies the requirements for license renewal.
- **Imposes a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms.** Paragraph (D) specifies that submitting false or incomplete information or omitting information is grounds for denial or revocation and may subject the applicant and those individuals who signed the application to civil or criminal penalties.

- **Requires specific expenditures or the report of information as a condition of compliance:**

- This rule requires a licensee to submit an application with specified information in order to renew their license.
- Pursuant to R.C. 1321.37(A), that fee ranges from \$250 to \$1,000 depending on the type of lender (for-profit vs. non-profit) and timing of the application (prior to or after July 1).

1301:8-11-06: **Requires specific expenditures or the report of information as a condition of compliance.** This rule requires an applicant for a short-term lender license to continuously maintain a corporate surety bond that conforms to the requirements set forth in R.C. 1321.37(D). In particular, R.C. 1321.37(D) requires the bond to be in the penal sum of \$100,000 for a for-profit licensee and \$50,000 for a non-profit licensee.

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*).

1301:8-11-02: Removes the restriction in 1301:8-11-02(B), which provides that a licensee shall segregate loan records and keep them separated from the records of any other business, including, but not limited to, records of check cashing business conducted under sections 1315.21 to 1315.30 of the Revised Code.

1301:8-11-03:

- Removes the restriction in 1301:8-11-03(A) providing that advertising shall not be false, misleading, or deceptive.
- Removes the restriction in 1301:8-11-03(B) providing that every licensee shall maintain a records file of all advertising.
- Removes the restriction in 1301:8-11-03(B) providing that a record or other file shall be readily available for inspection.
- Removes the restriction in 1301:8-11-03(B) providing that every licensee shall upon the surrender or cancellation of its license notify the division of financial institutions in writing of the location of the record or file.

1301:8-11-04: Removes the restriction in 1301:8-11-04(B) providing that a new license must be obtained prior to conducting business at the new location.

1301:8-11-05: Removes the restriction in 1301:8-11-05(C) providing that a renewal application must be received by the division prior to the expiration of the current license to prevent any lapse in licensing and in the ability to act as a short-term lender.

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

Any adverse impacts to individuals and entities regulated by the STLA are justified in order to ensure that the Superintendent has all information needed to ensure compliance by the individuals and entities and to protect borrowers by ensuring that the regulated individuals and entities have the requisite character and fitness to engage in short-term lending.

Regulatory Flexibility

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

No.

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 resolves first-time paperwork violations through the examination process or upon discovery by other means and imposes no fines.

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

Employees of the Division speak with members of short-term lender trade groups periodically regarding compliance with the STLA and other laws and administrative rules affecting licensees. The Division also speaks with regulated persons when they have questions regarding compliance or the proper interpretation of the regulation. The Division's legal counsel, employees, licensing staff, and all examiners are available via telephone, email, and at on-site examinations to answer questions and promote compliance with STLA and its rules.