



June 3, 2021

## PROPOSED RULES FOR OHIO SMALL LOAN ACT AND REQUEST FOR FEEDBACK

The Ohio Division of Financial Institutions circulated proposed rules under the Ohio Small Loan Act ("SLA") for preliminary feedback on June 2, 2021. The Division requested feedback by June 11, 2021.

The proposed rules make various changes to the SLA rules, with the most substantive changes being to the definitions and recordkeeping rule. The proposed rules delete the definition "condition of the loan." This deletion of a longstanding definition could create confusion and uncertainty regarding the standard for the meaning of condition of the loan.

The proposed rules add three new broad categories to the recordkeeping requirements not supported by the statute as follows:

- (1) General business records including, but not limited to, financial statements, check registers, bank statements, contracts with third party vendors relating to lending services, policy and procedures manual, and training materials.
- (2) Any and all contracts or agreements relating to business relationships with businesses or individuals licensed by the division of financial institutions.
- (3) Any other records the superintendent may from time to time specify in writing.

Item (3) is of particular concern as it would allow the superintendent to require any record requested in writing.

The recordkeeping rule also adds the following requirements for electronic recordkeeping:

Any records maintained on an electronic storage media or system shall meet all of the following requirements:

- (1) The electronic storage media or system must preserve the records in a nonrewritable, nonerasable format.
- (2) The electronic storage media or system must verify automatically the quality and accuracy of the storage media recording process.
- (3) The electronic storage media or system must serialize the original and the duplicate units of storage media, and affix a date and time for the required period of retention on both

the original and duplicate.

- (4) The electronic storage media or system must have the capacity to readily download indices and records preserved on the electronic storage media or system to any medium acceptable to the superintendent.
- (5) Acceptable facilities and appropriate equipment must, at all times during normal business hours, be available to the superintendent for immediate, easily readable projection or production of electronic storage media or system images and for producing easily readable images.
- (6) Immediate facsimile enlargement must be available upon the superintendent's request.
- (7) A duplicate copy of the electronic record stored on any electronic media or system for the time required must be stored separately from the "original" electronic record.
- (8) The electronic storage media or system must organize and index accurately all information maintained on both the original and duplicate storage media or system.
- (9) At all times, a licensee must be able to have indices of the electronic records being stored available for examination by the superintendent.
- (10) Each index must also be duplicated and the duplicate copies must be stored separately from the original copy of each index.
- (11) Original and duplicate indices must be preserved for the time required for the indexed records.
- (12) An audit system must be in place that does all of the following:
  - (a) Provides for accountability regarding inputting of records and inputting any changes made to every original and duplicate record maintained and preserved;
  - (b) Requires the licensee, at all times, to have the results of the audit system available for examination by the superintendent;
  - (c) Preserves the results of the audit for the time required for the audited records.
- (13) All information necessary to access records and indices

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stored on the electronic storage media or system, a copy of the physical and logical file format of the electronic storage media or system, the field format of all different information types written on the electronic storage media or system, together with the appropriate documentation and information necessary to access records and indices must be maintained, kept current, and provided promptly to the superintendent upon request.

(14) No paper documents produced or reproduced by means of an electronic storage media or system may be destroyed until the conditions of this rule have been met with regard to each paper document that is to be destroyed.

(15) At the request of the Division:

(a) Records must be printed on paper for inspection or examination without cost to the division within 48 hours of the request. The superintendent may grant additional time for good cause shown upon receipt of a request for additional time from the licensee.

(b) The licensee shall provide any court documents in addition to those described in the Rule.

Licensees should review these standards to determine if they are workable.

We encourage lenders to review the proposed rule carefully and to express any concerns to the Division by the June 11, 2021 deadline.

Please contact us with any questions regarding the proposed SLA rules.

✧ *Elizabeth Anstaett and Emily Cellier*