CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: **Ohio Development Services Agency**

Regulation/Package Title: **Termination of Home Weatherization Assistance Programs**

Rule Number(s): **Ohio Administrative Code 122:12-1-01 – 122:12-1-04**

Date: **12-20-2013**

Rule Type:

- ☐ **New**
- ☐ **Amended**
- ☐ **5-Year Review**
- ☐ **Rescinded**

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 regulation provides structured, standard guidance on the termination process for providers of the Home Weatherization Assistance Program who fail to meet the obligations of the grant agreement. For more information on the Home Weatherization Assistance Program please see http://development.ohio.gov/is/is_hwap.htm .

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation. ORC 122.02**

3. **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?**
   ***If yes, please briefly explain the source and substance of the federal requirement.* No. Because this process is not defined in the federal statute (see 10 CFR 440.15 (e)), the state process is necessary in order to establish a standard procedure and give the agency the authority to take action when a program has not fulfilled their grant agreement and must be terminated as a provider.**

   10 CFR 440.15 (e) states: "A State may terminate financial assistance under a subgrant agreement for a grant period only in accordance with established State procedures that provide to the subgrantee appropriate notice of the State's reasons for termination and afford the subgrantee an adequate opportunity to be heard."

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement. See above.**

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)? Aside from the requirement from the federal funding partner to establish a process for grant termination, the statute will enable ODSA to ensure quality service delivery to Ohio eligible customers.**

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes? The agency will track and record all terminated programs. In the past five years, no providers have been terminated. The statute provides guidance should the need arise.**

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 rules will be posted to the ODSA website from December 20 to January 3 for public comment. All providers will be notified of the posting, along with stakeholders and leaders on the Home Weatherization Assistance Program Policy Advisory Council.

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

   Feedback will be gathered following the public posting and will take into consideration any comments received.

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?**

   n/a

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?**

    See number 3 above.

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.***

    ODSA is required to have a process for termination of home weatherization providers.

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

    This is the only place in Ohio Administrative Code addressing the weatherization program. ODSA is the only state agency tasked with administering the home weatherization program.

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.**

    All providers will receive the ODSA email notifying them of the amended rules. The regulation establishes consistent and predictable steps when a program fails to perform in connection with the terms of their weatherization grant. ODSA staff persons monitor weatherization providers annually and report on performance. These written reports and onsite visits to weatherized homes are used to determine compliance with federal and state regulations and weatherization policies. Progressive corrective action is employed, up to and including program termination, as a way of ensuring proper use of funds and quality service delivery.

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; 28 local non-profit agencies (including Community Action Agencies) and government entities provide weatherization services to all 88 Ohio counties.**

b. **Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and If terminated, the provider would no longer receive Home Weatherization Assistance Funds for the service territory provided by ODSA. If a hearing is requested, the provider must attend and bring supporting documentation.**

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.

Grants range from approximately $100,000 to nearly $6 million for multi-county programs. However, agencies across Ohio receive nearly $5 from regulated utility sponsors to provide weatherization services, as well. These funds would not necessarily be affected by the termination of ODSA weatherization funding.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community? States receiving federal weatherization funds are required to have a process in place in the event of termination of providers to protect Ohio citizens and ensure quality service delivery. ODSA is entrusted with federal funds to provide services to eligible (low-income, elderly, disabled) customers and must monitor providers to assure compliance with policies and procedures.

Regulatory Flexibility

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

n/a

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?

n/a

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

All providers are assigned a Technical Monitor and Administrative Monitor who are available upon request for training and technical assistance. ODSA also funds the Ohio Weatherization Training Center as a resource for local providers.